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A LEGAL ANALYSIS OF EMINENT DOMAIN IN ARKANSAS

Phase IA2
of

A STUDY AND SUBJECTIVE CLASSIFICATION OF HIGHWAY LAW PREPARATION OF A MODEL HIGHWAY CODE

HIGHWAY RESEARCH PROJECT NO. 11

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SUBJECTIVE CLASSIFICATION
OF
HIGHWAY LAW
PREPARATION OF A MODEL
HIGHWAY CODE

Highway Research Project No. 11

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Bureau of Public Roads

A LEGAL ANALYSIS OF EMINENT DOMAIN IN ARKANSAS

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A LEGAL ANALYSIS OF EMINENT DOMAIN IN ARKANSAS

It is the intention of this paper to discuss the law of eminent domain in Arkansas as compared to the law in the United States generally and in connection with problems and deficiencies to be dealt with in the code. Such an undertaking is too broad to be accomplished easily, and although many hours have gone into the accumulation of information, there are unquestionably many additional problems of a specific nature which must be considered before a new code is prepared. These specific problems will reveal themselves more clearly as Phases II and III of the project develop and will be dealt with at that time. This paper should, however, provide a beginning in pointing up the general difficulties which exist.

In undertaking this analysis, in order that it may be more easily used in the conferences that will follow, the outline of the Eminent Domain Digest has been followed, and the analytical comments correspond to the sections in the Digest.

I EMINENT DOMAIN: THE BASIS OF THE POWER.

Arkansas has stated that the power of eminent domain is an inherent and inextinguishable right,[1] conditioned only by the right of the citizen to just compensation.[2] Thus, the basic idea is that a citizen may be forced to sell his property for public use at its par value.[3] That the power is inherent is indicated from the cases and from the fact that prior to the 1868 Arkansas Constitution, there were no constitutional provisions dealing with eminent domain.[4] The power is recognized in the current 1874 Constitution.[5]

The origin of the power of eminent domain is lost in obscurity although references may be traced to the Bible and to antiquity.[6] In England there was an ancient prerogative of the King to use land for defense purposes, which was finally abolished by statute in the time of Charles II,[7] although this ancient power bore close resemblance to the power in its modern form.[8] Eminent domain, as it now exists, apparently grew out of the common law proceeding known as "inquest of office," by which jurors inquired into any matter that entitled the King to possession of property, and which became the appropriate proceeding at common law to take land for public use.[9] The power of eminent domain was well recognized in England by the time of the American Revolution, and was used in the American colonies largely for the establishment of roads.[10] Various statutes supported the use of the power. From this background, there is no question but that the power exists in absolute and unlimited form independent of recognition by constitutional provisions.[11] The pre-constitutional existence of the power is properly recognized by the Arkansas Constitution which concedes "the State's ancient right of eminent domain."[12] Thus state constitutional provisions are limitations upon an otherwise absolute legislative power and are not grants of authority to the legislature.[13] Each American state, by virtue of its sovereignty, has complete and unqualified control over the persons and property within its own jurisdiction, deducting only the powers granted to the United States and which the states cannot exercise under the Federal Constitution.[14] The power of eminent domain may be exercised by a state on all proper occasions, and this power cannot be surrendered so as to deprive a subsequent legislature of the right to authorize a taking for public use.[15]

A Delegation of the Power.

Normally, the legislature has the power to authorize the exercise of eminent domain, and there can be no taking without the consent of the owner in the absence of direct legislative authority.[16] There is no doubt that the power may be delegated for proper purposes to duly accredited agencies, and the legislature may select such agents and impose such conditions on such grant of power as it sees fit.[17] Arkansas holds that the legislature may delegate the power to any agency, provided the power is exercised for a public purpose.[18] Such agencies may be public,[19] private,[20] domestic,[21] or foreign (if such foreign corporation complies with the domestication statutes, in which case it

is actually no longer foreign).[22] A foreign corporation may also exercise the power through a domiciled subsidiary.[23] Arkansas does not depart from the general rule. Arkansas also follows the general rule in holding that the agency to which the power of eminent domain is delegated cannot redelegate the power.[24] The grantee of the power may determine the extent of its use in the absence of legislative restriction without judicial intervention, provided its determination is made in good faith.[25] Arkansas holds that delegation of the power is in derogation of the common law and such grant will be strictly construed.[26] It is generally held, as in Arkansas, that the power of eminent domain cannot be conferred for private business purposes.[27]

B. Public Use and Purpose.

It is the universally established rule that private property can only be taken for public use.[28] However, only a few comparatively recent state constitutions, not including Arkansas', specifically prohibit taking property for non-public uses.[29] Nichols states that the usual provision relating to eminent domain in state constitutions is simply that property shall not be taken for public use without compensation, and was intended only to embody the principle enunciated by political philosophers of that period and recognized in England and many of the colonies [30] This principle needed recognition because it had been the practice in European countries and in several colonies to take private property for public use without compensation. In the early cases the taking of private property for a private use, even upon payment of just compensation, was prohibited, first upon the ground that such was opposed to natural justice, beyond the power of the legislature, and an act of spoliation, later through interpretation of eminent domain clauses to prohibit by implication the taking of property for private purposes and in some instances through interpretation of the due process clause of the state constitution.[31]

Arkansas has held that to be a "public use,"[32] the use must concern the public, and that subterfuge may not be employed to satisfy the requirement.[33] It is generally agreed that a precise definition of "public use" is hard to come by, and that the decision in a close case will normally be governed by the practices and needs of the people in that jurisdiction. There are two views as to what "public use" generally encompasses. The narrow view is that it means "use by the public," that is, public service or employment, and that consequently to make a use public a duty devolves to furnish the public with the use intended and the public must be entitled, by right, to use or enjoy the property taken.[34] Arkansas in some early cases followed this restricted view.[35] The broad view is that "public use" means "public advantage," and that anything which tends to enlarge the resources, increase the industrial potential, or promote the productive power, or which leads to the growth of communities and the creation of new resources manifestly contributes to the general welfare of all and constitutes a "public use."[36] This broader view was adopted in Arkansas in Wilson & Co. v. Compton B & M Co.,[37] which provides a classic expression of that position. Presumably, Arkansas could follow either view which served

its purpose at the moment. Nichols argues that neither view should be strictly adhered to, since both are too restricted and too broad in certain ramifications, and that a hard and fast rule should not be enunciated.[38] The proper conclusion would seem to be that while historic judicial guidelines and insights into what constitutes "public use" should not be ignored, the term should be construed liberally to effectuate the needs of society; and we in this time should not unduly constrict future generations as to what the term might encompass.

In Young v. Gurdon,[39] the Arkansas Court held that the opinion of the body exercising the power of eminent domain, whether the legislature or a corporation, as to the necessity of the exercise of the power is conclusive because the question is essentially political; and if the legislature has declared the purpose to be a public one its judgment will be respected by the courts unless the purpose be palpably private or without reasonable foundation. This does not vary materially from the general rule,[40] except that courts probably give less credence to the declarations of a private corporation than to those of the legislature.[41] In that connection, both in Arkansas and elsewhere, private purposes may also be served as long as the public is served.[42]

C. Necessity of the Taking.

The "overwhelming weight of authority" is that the necessity of the taking is a question within the legislature's discretion and "not a proper subject of judicial review."[43] There is, however, "a theoretical limit beyond which the legislature cannot go," which means that the legislature cannot engaged in spoliation, or a subterfuge, or exercise bad faith.[44] A condemnor to whom the power is delegated determines the necessity, and its decision is final as long as it acts reasonably and in good faith.[45] Arkansas holds generally to this view, stating that there is broad discretion in those to whom the power is delegated, and such discretion will not be disturbed unless it is clearly shown that the taking is arbitrary and excessive.[46] This amounts to approximately the same thing. Another case states that there must be a "clear abuse of discretion."[47] Some present or future need must be shown when there is a taking, and no more land may be taken than the public need requires.[48] The Arkansas rule in this regard does not vary materially from the general rule and seems to afford sufficient protection to landowners without unduly restricting the exercise of the power. In order to function properly in this area, the legislature and public agencies to which the power of eminent domain has been delegated by statute should be free to determine the necessity of the taking without undue judicial interference, and only bad faith or arbitrary and excessive takings should render its judgment subject to reversal.

D. Distinguished from Other Powers.

Nichols notes that the distinguishing characteristic between eminent domain and the police power is that the former involves the taking of property, while the latter involves the regulation of property

to prevent the use thereof in a detrimental manner.[49] It is pointed out, however, that if an attempted exercise of the police power is so unreasonable or arbitrary as virtually to deprive the person of the complete use and enjoyment of his property, it comes within the purview of the law of eminent domain.[50] Arkansas follows this view in holding that while property may be regulated, regulation will be recognized as a taking if it goes too far.[51] To deprive one of a property right, proceedings must be by eminent domain and just compensation must be paid.[52] It is not necessary that property should be completely taken in order for eminent domain to apply. It is only necessary that there be such serious interruption of the common necessary use of the property as to interfere with the rights of the owner.[53] Generally speaking, if statutes or ordinances are unreasonable, arbitrary, and capricious, they may result in a taking or damage to property. The fact that an ordinance results in a depreciation in value of property, however, is immaterial if the same is reasonable, not arbitrary nor capricious, and if enacted under the police power.[54] On the other hand, incidental damage to property under a valid exercise of the police power does not give rise to compensation.[55] Thus, a railroad may be required to construct crossings where public roads intersect, in a valid exercise of the police power;[56] the sale of game fish may be prohibited;[57] and a zoning ordinance may restrict the use of property.[58] The mere inhibition upon the use of property is not an exercise of eminent domain.[59] However, a city could not employ a subterfuge for the taking of private property indirectly for public use without compensation by making it unlawful to erect a building within a specified distance from the highway.[60]

All of the above Arkansas law corresponds with the general rule that property is not appropriated to another use under the police power although its value may be impaired, while under the power of eminent domain it is transferred to the state to be enjoyed and used by it.[61] Nichols points out that it is always a question of degree in cases of this type, and a general restriction with the public health, safety, or morals its object, if it effectually deprives the owners of the opportunity to make beneficial use of lawfully acquired property, may be so severe as to constitute a taking.[62] The rule seems a fair one to both landowners and public agencies. Of necessity, the court must decide in each factual situation whether the police power has been so used or abused as to amount to a taking of property.

Arkansas holds that the taking of private property under the power of taxation without giving any protection or other compensation is void.[63] In a normal situation there could presumably be no confusion between a property tax and the actual taking of property. If property were taxed to raise money to devote to a use not public, however, there would be a taking of property since there is no compensation to the person whose property is taxed.[64] Moreover, there might be such a disproportinately high tax levied against property as to amount to an arbitrary taking of the property. The Arkansas rule in this situation does not depart from the general rule and simply is an expression of the idea that where there is a taking, just compensation must be made without regard to the procedural nomenclature employed.

E. Public Lands.

State-owned lands are subject to the Federal power of eminent domain, but the State is entitled to compensation.[65] State lands are not, however, subject to the power of eminent domain existing in an agency of the State.[66] Conversely to the proposition that State lands are subject to Federal eminent domain, public lands of the United States which are held for sale or settlement are subject to the State power of eminent domain.[67] The Arkansas rule on this point coincides with the general rule. Despite the phraseology of the U.S. Fifth Amendment to the effect that private property shall not be taken for public use except upon payment of just compensation, it is generally held that there is no implied limitation inhibiting the taking of a state's public property by the Federal government.[68] The power of the State to condemn Federal lands is denied unless the Federal government consents to such condemnation.[69] Schmidt v. Drainage District No. 17,[70] an Arkansas case, involved a situation in which the U.S. public lands in question were held for sale or settlement, thereby providing the element of consent.

With respect to municipalities, the rule in one Arkansas case that cities have an implied power to cross railroad tracks, and such crossing is not a taking of property,[71] amounts to a holding that eminent domain is not involved. It is in accord with the general rule that where a municipality or private corporation seeks to exercise the power with respect to property already devoted to a public use, and the proposed use will either destroy such existing use or interfere with it to such an extent as to be tantamount to destruction, the exercise of the power will be denied unless the legislature authorizes the acquisition either expressly or by implication.[72]

II. CONDEMNATION PROCEEDINGS AND PROCEDURE.

The procedure for condemning property for public use is statutory in nature and differs widely in the various jurisdictions -- so widely, in fact, that the decisions of any one state are of little value in other jurisdictions in which the statutes and practices may be entirely different.[1] Generally speaking, in Arkansas as in most states, an eminent domain proceeding is a proceeding at law and not at equity[2] and is a special proceeding.[3] Arkansas holds that a condemnation proceeding is a civil action[4] although other states hold it to be not a civil action.[5] There is a fairly equal division of the states on this point, and some states hold that it is or is not a civil action depending upon the use of the phrase in the statute under construction or the applicability of the statute involved to such proceedings.

In Arkansas, the only issue at law is the issue as to the value of the property.[6] This is true of both circuit court and county court proceedings.[7] There is no procedural provision for raising the issue of right to condemn,[8] nor of the legal existence of a private corporation which is in the process of condemning,[9] nor for ascertaining ownership and settling title to lands.[10] These other issues must be raised by the landowner or waived, and the issue of right to condemn, for example, must be pursued in a court of equity.[11] This is hardly a proper manner of handling a proceeding. Properly, the proceeding should be handled entirely in one court and all issues should be adjudicated which the parties may care to raise. All defenses which are going to be asserted should be asserted at this time and in the particular court involved.

By statute in Arkansas there are a multitude of eminent domain acts. These concern cemeteries,[12] coal companies,[13] counties,[14] drainage districts,[15] irrigation companies,[16] levee districts,[17] light and power companies,[18] logging railroads,[19] mills and mill dams,[20] cities,[21] natural gas companies,[22] pipelines,[23] public landings,[24] public utilities,[25] railroads,[26] telegraph and telephone companies,[27] traction companies,[28] and numerous others. We need a uniform eminent domain statute which would be applicable, by its terms, to all agencies necessarily having the power of eminent domain; and which would provide a uniform procedure to be followed. This will be discussed at length later in this paper.

Arkansas apparently holds with other states that a jury trial is not absolutely required where the state is condemning land.[29] Statutes or constitutional provisions do frequently provide for trial by jury on the question of damages.[30] In Arkansas, a jury trial is constitutionally required only where a private corporation condemns property.[31] One of the chief abuses in condemnation proceedings in this State results from trial by jury. Whatever may have been the historic antecedents, the practice today usually leads to the award of disproportionately large verdicts in favor of the landowner and against the State or other such condemning agency. The practice of trial by jury serves to erode the basic underlying concept that an individual should

receive "just compensation" for the taking of his property. It would be far better for the amount of the award to be determined by the court or, if an administrative rather than judicial procedure were followed, by a commission, rather than submitting the matter to the determination of a jury whose primary interest is in seeing that the local landowner obtains a "good" recovery. The code should seek to remedy this situation.

A. County Court Condemnation Proceedings and Jurisdiction.

The Arkansas Constitution in Article 7, Section 28 grants the county court exclusive jurisdiction over roads. It has been held, however, that this constitutional provision does not apply to condemnation proceedings, and the statutes providing for the institution of condemnation proceedings in circuit court are valid.[32] In line with this conclusion, the fact that a county court has established a road improvement district does not prevent the improvement district from instituting a condemnation proceeding in circuit court.[33]

Despite the fact that this constitutional provision, as a result of the limiting effects of cases, does not impose any restriction on the bringing of condemnation proceedings in circuit court, the provision has no sound function in a day and age in which the essential problem is the development of a functional, coordinated statewide system of roads. The provision should either be repealed in its entirety or drastically modified. The primary responsibility for roads should be vested in the State, acting in cooperation with the Bureau of Public Roads. If it is deemed appropriate for administrative purposes to designate certain secondary roads as "county roads" and not part of the state highway system, with jurisdiction over such roads to be granted to a county road administrator, then such procedure might be followed.

B. Effect of Ability to Pay Compensation on County Court Jurisdiction.

Where a County Court enters a condemnation order, a landowner has 12 months, by statute, within which to file a claim for compensation.[34] However, Amendment 10 to the Arkansas Constitution provides that the County Court may not make any allowance in excess of revenues from all sources for the fiscal year in which the allowance is made. Therefore, the County Court may not allow any claims or damages which "accrued" during a particular year if the revenues of that year are exhausted. A claim accrues when the land is actually taken and entered. Thus, a landowner's claim must be satisifed, if at all, out of the revenues for the year in which the land is taken and entered upon by the County.[35] The practical effect of this rule is to shorten the one-year statute of limitations under certain circumstances. If land is "taken" on July 1, and the County operates on a January 1 to December 31 fiscal year, the landowner will have only six months in which to file his claim, and the claim must be paid out of that year's revenues.[36] If there are no funds to pay for the condemned land, a Chancery Court may enjoin the taking of the property until payment of compensation.[37] In the

situation in which an injunction is issued, the condemnation order is not absolutely void, but it may be held to be void if the evidence demonstrates that the County has such a large deficit that the allowance of claims would increase the deficit to such an extent that the landowner could not be paid for several years.[38] If a County has no funds with which to pay claims for compensation, the County Court cannot condemn property,[39] and if a condemnation order makes no provision for payment of compensation to the owner, the order is void.[40] Moreover, the condemnation order is void if payment of compensation is prevented by the provisions of Amendment 10.[41]

Despite these judicial rulings, where the County Court has sought to condemn property the landowner must file his claim and the County Court must refuse it before the taking will be prevented.[42] Clearly, a landowner can be subjected to considerable expense in preventing his property from being taken without receiving compensation, even though the ultimate result will be that any order entered will be declared void. The cases illustrate that quite often the fact that an order is "void" has to be declared by the Supreme Court before that fact will be accepted.

If Counties and County Courts are to be allowed to continue to exercise authority, the injustice caused by situations in which no funds are available, as well as the peculiarity created by cases dealing with the time the land is "taken" and the time the claim must be paid, should be corrected. The correction seems fairly obvious. It should be provided that before a County Court can enter an order of condemnation or even have jurisdiction to proceed in the condemnation of certain land, the County must post a deposit in the amount of the appraised value of the property in question and should demonstrate in a proper evidentiary manner that such deposit comes out of the funds for the current fiscal year and that the deposit of such money is not in violation of Amendment 10 to the Arkansas Constitution. (A bond might suffice if similar safeguards are provided against constitutional difficulties.) The deposit once made should remain in the registry of the County Court until the condemnation proceedings are completed, subject to increase in the amount of the deposit upon its being shown that the deposit is insufficient. At the conclusion of the condemnation proceedings, or at such point as title has vested, the order of the County Court would provide that the amount of the deposit -- whether the original amount or the increased amount -- could be withdrawn from the registry of the Court by the landowner. This requirement would be jurisdictional, and failure to comply would subject the County Court to a writ of prohibition issued either out of the Circuit Court for that County or out of the Supreme Court of Arkansas.

C. County Court Proceedings Initiated by the State Highway Commission.

Under the Arkansas statutes, the State Highway Commission may acquire rights-of-way by two methods.[43] It may petition the County Court and pursue condemnation proceedings through that Court, or if the County Court to condemn the property, the Commission may

institute proceedings in its own name in Circuit Court and deduct one-half of the cost of acquisition from the Counties' next "turnback" funds.[44] The Supreme Court has held the legislative act allowing this to be valid and not to amount to an invasion of the County Court's constitutional jurisdiction over County Roads and taxes.[45]

Some reluctance on the part of the County to condemn land for the State may stem from the fact that the Highway Commission is not liable for damages resulting from a County Court condemnation order, even if the County Court order was made on petition of the Commission.[46] The County itself becomes liable for all damages caused by the condemnation.[47] The landowner has 12 months in which to file a claim, [48] and if he appeals to Circuit Court, the Highway Commission cannot be made a party because such would be a suit against the State.[49] Here again, we encounter the rule that the landowner must file a claim for damages within one year, pursuant to Ark. Stat. Sec. 76-917.

One problem evident in the cases is what constitutes notice to the landowner. It is clear that the landowner is entitled to sufficient notice of an order of condemnation.[50] The notice need not provide information as to the extent of taking but only that an order of condemnation has been made.[51] It has been held that actual notice is given the landowner by virtue of the taking and is as fully binding as if the landowner had been served.[52] One case held that where a right-of-way was extended, and notice given by entry, but such entry did not indicate to the landowner that the Highway Commission had extended the right-of-way since they did not claim any control over other lands by the entry, this did not constitute sufficient notice and did not set in motion the one-year statute of limitation.[53] The same case held that where insufficient notice is given, the Commission can enter the land only by depositing a cash bond. In a situation in which the Commission has to deposit money to satisfy claims of landowners, and claims against the County Court are denied because of lack of funds, the landowner may take the money deposited by the Highway Commission. In order to contest such taking, the Commission must appeal the order of the Chancery Court requiring the deposit.[54]

A County Court order allowing part of a claim amounts to a final judgment with respect to the entire claim, and the landowners must then appeal or lose all further rights.[55] With respect to the Highway Commission, the County Court cannot make changes in an order granting condemnation.[56] Moreover, if the County Court does not act on the petition of the Commission, the petition will be deemed to have been dismissed upon the filing by the Commission of a proceeding in Circuit Court.[57] If a petition is left in the County Judge's office for several weeks, that amounts to sufficient presentation to the County Court from a legal standpoint.[58]

The cases present considerable apparent difficulty with County Court proceedings. Much of this difficulty arises by nature of the County Court itself. In Arkansas, it is presided over by the County Judge, who does not have to be a lawyer and in practice seldom is. The County Court is not a court of record in the sense that its proceedings

are recorded stenographically and transcribed although such proceedings may be recorded in this manner if one of the parties wishes to pay a reporter for the transcript. Officially, however, the proceedings are not recorded. Moreover, as might be expected, the proceedings in County Court are much looser than those in Circuit or Chancery Court, and the result is often cracker-barrel justice in the purest sense. It seems extremely questionable, as a matter of policy, in dealing with something of as much importance and value as property rights that these rights should be adjudicated or even affected by such a court. The code should, unless there are compelling circumstances which are not presently apparent, prepare a uniform system of procedure for condemnation cases as far as the State is concerned, and this procedure should be processed through either the circuit or chancery courts, the judge of which must be an attorney, which are courts of record, and which are used to dealing with matters of this type. If the County Court procedure is still to be allowed for use by the State, then it will have to be reformed considerably. If that route is to be taken, it is obvious that a standard procedure with respect to notice should be adopted. The question of whether the landowner has sufficient notice should be dispelled and cases dealing therewith rendered moot by the adoption of a procedure whereby notice is served upon the landowner or, in cases involving a non-resident landowner, where notice is published in a newspaper having general circulation in the county in which the land is located. In other words, the landowner should be a party to the proceeding from the very beginning, and his rights should be adjudicated and disposed of in the same manner as other cases involving land, such as partition suits, foreclosure actions, and the like.[59]

The present procedure is especially obnoxious with respect to notice and smacks of lack of due process. The fiction of whether the State proceeds in its own name or not should be eliminated. Such would be the natural result of the abandonment of the County Court procedure as far as the State is concerned. However, if the County Court procedure were still to be pursued, the State should be required in any action involving condemnation for state highways to institute the proceeding in the name of the State Highway Commission. As far as the cost of acquisition is concerned, the code generally should provide for some method of restricting the amount of "turnback" funds available to counties, so that a greater proportion of monies will be available to the State Highway Commission for a truly statewide system of roads. The result should somewhat lessen the benefits the State may derive from proceeding in County Court by having the County liable for damages caused by the condemnation.

In summation, it should be the attempt of the drafters of the code to create a situation in which there is a uniform condemnation procedure, in which there is adequate financial support for the State condemnation proceedings and the vast proportion of highway funds in Arkansas are at the disposal of the State, rather than the counties, and in which County Court jurisdiction is restricted as much as it constitutionally can be; preferably restricting it purely to County matters involving County Roads. Even with such restriction, County Court procedural defects should be corrected and commonly accepted

minimum standards of procedural due process applied.

Neither the code nor these comments would alter the ancient rule that a public way may be established through prescription or by voluntary dedication, and in such situation the landowner is not entitled to demand compensation.[60]

D. Proceedings in Circuit Court.

As has been mentioned previously, a condemnation proceeding in Circuit Court is a special proceeding, and the only issue is the value of the property taken.[61] In Arkansas, as elsewhere, when such a proceeding is instituted by the Highway Commission, the Highway Commission becomes liable for damages which may be assessed.[62] If equitable defenses are raised, it is proper to transfer the proceeding to Chancery Court,[63] but both sides may proceed to trial in the law court, thereby waiving the transfer.[64] A county road improvement district may also institute condemnation proceedings in Circuit Court.[65]

Although we have dual court systems of law and equity in Arkansas and although the above-enunciated rule in condemnation cases does not vary from the general Arkansas rule that where equitable defenses are interposed in an action at law, a motion to transfer to Chancery Court will be entertained, there seems to be no sound reason why one court should not settle the entire matter without the necessity of a transfer. Such a provision should be made in the new code. In terms of expediting matters, such a rule would also be desirable, even though it would conflict with the customary Arkansas differentiation between matters cognizant in courts of equity as opposed to courts of law. There is no reason why the Circuit Court could not apply doctrines of equity in deciding equitable defenses, or why the Chancery Court, if that court were given sole jurisdiction by the new code, could not apply the legal doctrine of damages in ascertaining the amount of the award. As a practical matter, this is what actually happens when a case involving equitable issues is transferred to Chancery or when the parties waive the transfer and the Circuit Court determines all the issues. The confinement of the proceeding to a single court would seem to hasten the adjudication of condemnation matters, and this would benefit the public generally while not proving harmful to landowners.

E. Transfer to Chancery Court.

As we have seen, transfer to Chancery Court is proper when equitable issues are raised in condemnation proceedings, and when a case is transferred to Chancery, the Court will have jurisdiction to determine all questions, both legal and equitable, including the measure of damages.[66] A Chancery Court also has jurisdiction to determine whether or not the taking is arbitrary, not in good faith, or discriminatory;[67] the necessity of taking;[68] and the right to condemn.[69] If both sides proceed to trial in the law court, transfer to equity is waived, and when waived the judgment will be tested on appeal on equitable

principles.[70]

There need be no reiteration of the previous comments that delay and confusion could be corrected by the handling of all issues, both legal and equitable, in a single court.

F. Proceedings in Chancery Court.

In order to give a court of equity jurisdiction to prevent the taking of property, the property owner must allege that he has no adequate remedy at law.[71] Moreover, the Chancery Court will not issue an injunction against a landowner in favor of a condemning agency to prevent the landowner from interfering with construction where there has been no condemnation proceeding covering the land in question.[72]

The Chancery Court has jurisdiction to determine whether the taking is necessary,[73] whether private property is being taken for private use,[74] and the right to condemn.[75]

Several cases involve the deposit of a bond by the Highway Commission. Before the Highway Commission can contest the taking of the bond by the landowner, it must contest the order of deposit of the bond; and by failing to appeal from the order, the Commission is deemed to have lulled the landowner into a feeling of security and to have waived its right to raise the question.[76] Where the Highway Commission has accepted benefits of a condemnation order, it is estopped to claim that the Chancery Court erred in requiring bond. The general rule is that one cannot accept the benefits of a decree and then question its validity.[77]

The problem as to equity jurisdiction would be cured by a provision that the entire case be heard in a specific court. Also, a specified statutory procedure in condemnation cases would eliminate any question with respect to failure to contest orders of the court or failure to appeal from certain orders.

G. Pleadings.

If the only issue to be adjudicated in a condemnation suit is that of market value of the land, there is no need for the landowner to file an answer since that issue is raised by the filing of the petition for condemnation and assessment of damages.[78] It is the general rule that the landowner is not obliged, and in some states not even permitted, to file an answer or other pleading upon the question of damages,[79] although it is generally permissible for him to file the answer. If the landowner is claiming special damages, he should file an answer containing appropriate pleadings to support his claim.[80] Moreover, if title to the land is in dispute, and a bill of interpleader is filed,[81] each adverse claimant must file an answer setting forth his claim to the property, and a party failing to do so will be held in default.[82]

The question of when to file an answer and what the answer should contain has provided some sources of litigation in Arkansas. A person whose land was taken by a railroad corporation was held not required to allege, as special damages, injury caused by the construction of the railroad if there is no contention that the roadbed was constructed negligently since damages caused by skillful and proper construction come within the general prayer for damages.[83] It was also held that where land condemned is a part of a larger tract used as a farm, the use as a farm provides notice that injury to a part of the land destroys the value of the whole, and it was not necessary for the owner to file an answer setting forth the extent of the land for which he claimed severance damages.[84] On the other hand, certain allegations must be made in order to allow the other party to defend against such allegation, and where the question arose as to whether a right-of-way had been created, this evidence had to be mentioned affirmatively in the pleadings.[85]

Nichols concludes that the filing of an answer is in many cases the better practice.[86] Obviously, under the Arkansas cases it is the better practice unless the landowner simply wants to adjudicate the question of damages. The rule in Arkansas that failure to file an answer still leaves the question of damages to be adjudicated by the court does not vary from the usual Arkansas rule in personal injury suits or property damage situations, in which default by the defendant still leaves the plaintiff with the burden of proving his damages. Certainly, if any affirmative allegations are to be made which defendant wishes to rely upon during the trial of the case, or if affirmative or equitable defenses to the proceeding are to be asserted, an answer should be filed setting forth these defenses. It would seem to be fairly easy to set out in the code the effect of failure to plead and the necessity of pleading affirmative or equitable defense. This would remove any doubt as to the effect of failure to plead or as to whether an answer was required. As for the rule to be followed, the present rule seems to be a sound one. Failure to plead still leaves the question of value of the land or damages to be adjudicated; but if any affirmative defenses are to be asserted, they must be raised, if at all, in the answer.

Moreover, it would be well to specify in the code what the petition for condemnation should include. Generally, it should include a description of the land to be condemned; the name of the owner or owners of said land (if such names are known or can be reasonably ascertained through a diligent examination of the county records, or if same cannot be ascertained, a statement to that effect); a general statement as to the purpose of the condemnation and use sought; a statement as to the value of the property, with verified appraisals attached to the petition as exhibits; a statement as to any disability the owner or owners of said land may be under; and such other matters as may be appropriate to the proceedings.

Here again, what is recommended is simply a detailed statutory procedure whereby both condemnor and condemnee may readily litigate their rights and ascertain the procedure to be followed.

Generally speaking, the customary civil procedure of the State should be followed as much as possible in condemnation proceedings. Pre-trial discovery procedure should be available to all parties. In addition, it might be well to require that each party submit to the other within a certain length of time prior to the trial date a list of witnesses to be used during the trial of the case. This would at least put an end to the "shopping around" for expert witnesses in which some defendants engage up to the date of the trial.

H. Necessary and Proper Parties.

Arkansas follows the general rule that the owner of properties sought to be condemned and all persons having any interest therein are necessary and proper parties defendant in the condemnation proceeding.[87] This includes tenants in common, life tenants, remaindermen, lessees, and any person having an interest in the land.[88] If any person having an interest is omitted from the suit, the proceeding is thereby rendered nugatory as to such person.[89] The necessity of the parties may be waived by the condemnor if no objection is made before the trial proceeds.[90] Initiation of a condemnation action is an admission that the named defendants are owners of the property and those defendants cannot be compelled to testify regarding title.[91]

All property interests should be determined in a single trial.[92] Thus, persons having a distinct interest in property may proceed jointly to recover compensation for land taken.[93] Generally, all persons whose property is taken or injured may be joined in one proceeding.[94] Where title to land is in dispute, it is proper to join all possible claimants as defendants, have compensation assessed, and leave the contending claimants to settle the issue of title.[95]

Some problem in this area is created by persons who are part of a class or are under some particular disability. For example, it has been held in Arkansas that where property being condemned is subject to a deed of trust, the trustee may represent the various lienholders under the trust deed.[96] On the other hand, it has been held that if no administrator has been appointed and the estate owes no debts, the widow and heirs may sue for injury to or taking of the intestate's property.[97] Where land is subject to a mortgage, the mortgagee should be a party.[98] Persons of unsound mind must be represented by a guardian or guardian ad litem.[99] Owners of reversionary interests are entitled to compensation and should be parties or should be represented.[100] Upon death of the landowner, his cause of action passes to his personal representative.[101] A sale of land pendete lite after accrual of the right to compensation does not destroy the defendant's right to compensation for the property taken.[102] Land is condemned when the judgment is entered ordering condemnation, and the rights of the owner to compensation arise at this time so that a subsequent conveyance does not necessarily transfer the cause of action.[103] On the other hand, the cause of action may be specifically assigned by the original landowner, and the assignee will be entitled to the compensation to which the assignor would have been entitled.[104]

If the wrong party is named as landowner and the true landowner establishes ownership in a collateral lawsuit, it is proper to enter judgment for the true landowner against the Highway Commission and judgment for the Highway Commission against the party erroneously receiving the amount deposited.[105]

The code should state generally that all persons having an interest in the property in question are necessary and proper parties to the proceedings and that their interests will not be deemed to be foreclosed unless adjudicated. Members of a class should be permitted to be represented by the proper legal representative of the class (such as a trustee representing lienholders or other such beneficiaries of a trust). It would be wise, however, to avoid too much specificity in dealing with this problem in the code since the code probably could not cope with all specific problems which might arise, and the enumeration of some might amount to an improper exclusion of others.

The code should encourage joinder in all instances except those which would create a palpable injustice. Where it is possible to join, in a single action, the condemnation of tracts similarly situated within a common area, the efficient and expeditious conduct of such proceedings would seem to make joinder reasonable and desirable. The code should not, however, deprive the trial judge of his discretion in such matters since particular situations may in some instances militate against joinder. In a situation, however, in which there are conflicting claimants to ownership of property, or in which there are a mulitiplicity of interests involved, the rights of the various interests represented or the title to the property should be determined in a single proceeding.

I. Due Process of Law -- General Provisions.

Under Art. 2, Sec. 22, of the Arkansas Constitution, the procedure for ascertaining the value of the property sought to be condemned and the making of reasonable provision for payment of compensation is a matter for the legislature.[106] There is apparently no limitation on the legislature except for the fundamental rule that no man may be deprived of his property without just compensation and without due process of law. The legislature may prescribe the manner in which compensation shall be determined, provided only that the tribunal is impartial and that the parties have an opportunity to be heard.[107] One old Arkansas case held that proceedings to condemn need not be addressed to the courts, and that the legislature might determine directly the mode and occasion and exercise of the power; and further that when provision had been made to give the landowner just compensation, the expression of the legislature's desire to take the property amounted to due process.[108]

The code should provide a judicial procedure for the condemnation of property which would amount to an effective delegation from the legislature to the courts. Secondly, the Arkansas cases dealing with due process of law present minimal standards at the most, and in this

supposedly enlightened day and age, our concepts of what constitutes due process are much more highly developed than the Arkansas condemnation cases reflect. Under the circumstances, the outlining by the code of a mandatory procedural method of condemning property will take care of the deficiencies presented by the cases from the standpoint of procedural due process.

J. Notice to Landowners.

This topic has been discussed previously in connection with county court condemnation proceedings initiated by the State Highway Commission.[109] The same comments are appropriate here and are incorporated by reference.

Under Ark. Stats. Sec. 76-917, a County Court may condemn land for roads and highways without giving formal notice to the landowner. This statute was challenged as a denial of due process in Sloan v. Lawrence County.[110] In that case, the Court conceded that the statute was probably defective but refused to hold it unconstitutional on the ground that the necessity of the taking was a political question and that a hearing on that issue is not essential to the validity of a condemnation proceeding. However, the Court did hold that any proceeding which undertook to assess the amount of compensation to be awarded, without notice to the landowner and an opportunity to be heard, would be unconstitutional. We have previously commented that the code should provide a standard procedure for condemnation proceedings by which the landowner would be notified of the pendency of the proceedings in much the same manner as he is notified in any other civil case. This would eliminate the ill effects of Sloan v. Lawrence County. In this connection, a 1941 case held that the power of eminent domain may be exercised by the State without notice to interested landowners, and in condemning land for highway purposes a hearing on the necessity is not essential since the proceeding is essentially one in rem.[111] This is the type of rule which should be corrected by the code. The power of eminent domain should not be exercised by the State without notice to interested landowners, and use of the argument that it is simply a proceeding in rem does not obviate the need for appropriate standards of due process. Moreover, in every other type of in rem proceeding in the Arkansas Statutes notice of some type is given, even though it be notice by publication. The mere fact that the question of compensation may not be determined without giving notice[112] is not sufficient protection nor sufficient compliance with commonly accepted, modern standards of due process. The statement in Sloan v. Lawrence County[113] that a landowner has a right to a day in court on the question of appropriation of land only if a statute requires it should be corrected by the passage of a statute requiring it -- the code. Similarly, the canard that a statute which contains no notice provisions on the subject of the taking would be constitutional, while a statute which contains no notice provisions on the subject of fixing compensation would be unconstitutional,[114] should be abandoned. The fact that the Arkansas cases hold that actual entry supplies the required notice[115] does not cope with the procedural problem involved.

The Arkansas cases supply various instances in which notice or lack of notice has been discussed. With respect to actual entry supplying notice, it was held that improvement of an existing road is not sufficient notice of additional taking to set in motion the one-year statute of limitations for filing claims.[116] There was not sufficient notice where a condemnation order added 10 feet to either side of an existing right-of-way, but the additional footage was never occupied by the Highway Commission and no notice was ever published.[117] An act[118] providing for service of process on non-residents of the County by publication of notice and allowing the non-resident 10 days from the date of final publication in which to appear was held to be constitutional.[119]

Similar problems arise in connection with the process for determining compensation. It has been held that the legislature may determine the process for ascertaining compensation,[120] and if compensation is to be determined by assessment and no assessment is placed on a particular tract, this amounts to notice that no damages will be paid.[121] This is a questionable policy to follow, to say the least. It may effectively deprive a landowner of his rights without due process.

The interaction of Sloan v. Lawrence County and Amendment 10 to the Arkansas Constitution (prohibiting a County Court from paying compensation on any claim except out of the revenues of the year in which the claim arose) provides a difficult situation. Ark. Stats. Sec. 76-917, which allows condemnation by a County Court without formal notice, and the fact that actual entry upon the condemned land is often not made immediately after the condemnation order, provide additional difficulty. This situation is discussed in the Arkansas Eminent Domain Digest.[122] This is one of the greatest deficiencies in condemnation procedure in Arkansas and is one of the greatest problems for a landowner. It appears to be possible in Arkansas for a landowner to have his land taken legally without ever receiving just compensation and without having any redress in the courts! Such amounts to a lack of both procedural and substantive due process, and it should be the aim of this code to remedy such deficiencies. The answer is a specific mode of procedure which will make mandatory the service of written notice at the time of the institution of the proceedings upon all who claim an interest in the land, and in the case of non-residents, by provision for publication of notice.

K. Taking as Notice to Landowners.

This problem was discussed to some extent in the previous section but will be discussed more specifically here. As to what constitutes sufficient notice of taking under Ark. Stats. Sec. 76-917, this problem may be divided into two classifications: (1) those situations in which a County Court condemns a right-of-way over virgin territory and the State or County subsequently constructs a new highway across the right-of-way; and (2) those situations in which the County Court widens an existing right-of-way. In the first situation, the Highway Department

will prevail, on the ground that this original taking amounts to sufficient notice to the landowner that a portion of his land is being taken and that he must file a claim for compensation with the County Court within one year. Failure to do so will result in the claim being barred by reason of the statute of limitations. In the second situation, the landowner will generally prevail in the absence of some positive proof that compensation has been paid or that the Highway Department has performed some overt act which would reasonably indicate to the landowner that additional land was being taken.

In connection with the second situation, improving or paving an existing road is not sufficient notice to the landowner.[123] It has also been held that the act of taking is not complete when the judgment of condemnation is rendered, and since such judgment may be without notice, the legislature must have had in mind an order of condemnation followed by entry on the land.[124] A taking occurs when the owner can no longer use the land in question for normal and natural purposes, and such taking amounts to notice.[125] The mere driving of stakes in a field is not an act sufficient to constitute a taking of the land nor to require the landowner to cease using the land for its normal and natural purposes.[126] Where a County Court entered a condemnation order without notice to the landowner, but the Highway Commission entered upon the property a month later and removed fences and cleared the right-of-way, the landowner is charged with notice.[127] The statute of limitations for filing claims begins to run from the time of taking,[128] which would be from the time of entry or the time the landowner could no longer use his property for normal purposes.

There is no need to elaborate on the earlier conclusion that a statutory procedure in all cases which would provide notice of the filing of the condemnation petition would be desirable and would eliminate the problem. Anything less is bad not only from the standpoint of the landowner but also of the State. Too many cases have resulted from the question of whether a taking has occurred or whether a landowner can use his property for its normal and natural purposes. Service of notice on the landowner at the outset would eliminate the problem. This is certainly the trend in Arkansas. The current circuit court procedure, as set forth in Ark. Stats. Sec. 76-533, provides for notice of the hearing on the petition.

L. Use and Occupation as Notice.

One case held that where a County Court order called for a 110-foot right-of-way and the Highway Commission entered and constructed a road and occupied only 80 feet of the right-of-way, the landowner was nevertheless charged with notice of taking of the entire width of right-of-way.[129] The Court said that the entry upon the land is not notice of the extent of taking but is notice that an order of condemnation has been made.

This case again serves to illustrate the need of making the landowner a party from the outset in all condemnation proceedings. If

the landowner had been served with notice and had been a party to the proceeding, there would have been no argument about the amount of land taken, because the petition would have set forth that fact. Secondly, the argument over notice would have been non-existent. The landowner's rights would have been protected; the State would have been saved the time and expense connected with litigating the matter through the Supreme Court; and the end result would have better served the interests of both parties in a manner consonant with due process.

M. Withdrawal of Condemnor without Prejudice.

Arkansas holds that a condemnor may withdraw from condemnation proceedings at any time before the rights of the parties mutually vest, and our Court has held that rights do not vest until such time as compensation has actually been made.[130] Nichols comments that the right to discontinue rests in the sound discretion of the court upon a showing of just cause although such applications are generally granted.[131] Nichols also states that unless the right to discontinue is statutorily made absolute and unconditional, the court may grant the application upon such terms, including payment of costs and attorneys' fees, as it sees fit.[132]

In Arkansas, when the condemnor withdraws from the proceeding in good faith, it is not liable to the landowner for his expenses incurred in the defense of the action, including attorneys' fees.[133] However, where a railroad entered upon land under condemnation proceedings and withdrew, it was held that the landowner could recover damages for the rental value of the land for the time it was used by the railroad, for depreciation in value because of acts done thereon by the railroad, and for flooding or overflow during the time of occupancy.[134]

In the states in which condemnation is effected by judicial proceedings, it is almost universally held that the mere fact that compensation has been assessed does not prevent a discontinuance of the proceedings.[135] Nichols states that one of the strong arguments in favor of this is that public policy requires that the cost of improvements be ascertained before it can finally be determined that it is advisable to undertake the work, and that this cannot be done until the compensation for the land has been assessed by the court.[136] There is conflict in this area, however. In some states it is held that after the proceedings have gone to judgment or the award has been confirmed, the owner's right to compensation has vested and a subsequent discontinuance of the proceedings cannot impair that right.[137] On the other hand, in many states in which it is required that a deposit be made in advance, it has been held that the right to compensation is not absolute until the taking is complete and that, in the absence of any statutory provision to the contrary, it may be defeated even after judgment by a discontinuance of the proceedings at any time before payment is made or possession of the property is taken.[138] Arkansas provides (in circuit court proceedings) that title vests upon the making of the deposit.[139]

The code should properly address itself to this situation and establish a time after which the proceeding cannot be dismissed, discontinued, or subject to withdrawal by the condemnor. The actual time set is possibly not as important as the procedural necessity for same. It would seem to be procedurally correct to provide that the condemnation proceedings may be dismissed, abandoned, or withdrawn from at any time up to the rendition of a judgment. The court could presumably determine damages before entering judgment, and the State would then have the option to withdraw rather than suffer a judgment. Once the judgment is entered, however, the rights of the parties should be concluded, subject to the right of either to appeal. If there has been an actual entry or taking in the meantime, or loss suffered by the landowner by reason of a prior vesting of the title, withdrawal by the State would still subject it to payment of damages caused by the entry or vesting or the deprivation of the landowner from use of his land. It would seem to be appropriate, moreover, to provide that a withdrawal after the defendant has appeared, but prior to the rendition of judgment, would subject the State to payment of attorneys' fees and other expenses incurred by the landowner. It is only just that the landowner be placed in the same position he would have been in had he not been forced to defend this action. This is, after all, a different type of proceeding from that in which the landowner becomes embroiled through some act or omission in a legal dispute. In the condemnation situation, the landowner finds himself in court through no fault, act, or omission on his part, but due to the purely unilateral act of the condemning authority, and if the proceeding causes him to incur expenses needlessly, the landowner has been innocently damaged thereby.

N. Statute of Limitations.

As we have seen, when a condemnation order is entered by the County Court, proceeding under Ark. Stats. Sec. 76-917, the landowner must file a claim for damages within 12 months after receiving notice of the order.[140] If the landowner is not notified of the order, the statute does not begin to run until the property has been taken.[141] Such actual notice is as fully binding as if the landowner had been served with process.[142] Upon entry, the landowner is charged with notice of the taking and must file his claim within 12 months.[143] Uncertainty as to damages does not toll the statute of limitations.[144]

Under Ark. Stats. Sec. 35-1103, a landowner has 10 days from receipt of a summons, or the day of the last publication of notice, in which to file exceptions to the appraisers' report on the land being condemned. In a situation in which an award of $600.00 was made to the landowners for the value of the land, and the landowners failed to file exceptions to the award within the 10 days provided, they are not entitled to have a judgment rendered.[145]

The code will presumably eliminate many of the problems presented in this connection. By making the landowner a party to the action and serving him with notice or publishing notice at the outset, many of the statute of limitations problems will be eliminated. This has been

discussed at length previously, and there is no need to comment further.

O. Appeals.

The general statute for appeals from county court judgments is Ark. Stats. Sec. 27-2001, under which the appeal shall be granted as a matter of right to circuit court at any time within six months after the rendition of judgment.[146] Ark. Stats. Sec. 76-915 gives landowners a right of appeal to circuit court from a final county court decision for a new county road, if notice of appeal is filed during the term of county court in which the decision was rendered and an appeal bond is executed and approved by the county clerk.[147] Arkansas Stats. Sec. 32-205, which purports to give railroads 30 days in which to pay damages assessed or lose all rights in the property, has been interpreted to mean 30 days after damages have been finally determined on appeal if an appeal is taken.[148] The legislature cannot deny railroads the right to appeal.

Some questions involve what may be considered on appeal. It has been held that while a railroad cannot question the title of the defendants whose land it sought to condemn, the State and its agencies may recover voluntary payments which were made in error.[149] In another case, assurances to the landowner that a ditch would not be dug at the proposed location before the expiration of the time for appeal estopped the commissioners of the drainage district from asserting the 30-day statute of limitations when an appeal was filed late.[150]

Generally speaking, appeals in condemnation proceedings should be handled under the general statutes providing for appeals as in all other types of matters. There is no reason why an appeal from the Circuit or Chancery Court should not go to the Supreme Court in the same manner as other civil appeals and as provided in the appropriate general statute. Similarly, appeals from county court to circuit or chancery court should be handled as in the case of all other appeals from county court.

In connection with this subject, we should mention writs of prohibition, which are not appeals and which test only the jurisdiction of the lower court. If a petition for a writ of prohibition be treated as one for certiorari, the rule is that certiorari will not lie unless the trial court exceeded its jurisdiction in making the order in question.[151] The usual law with respect to writs of prohibition and certiorari appears to be followed and should be followed in highway cases, and there would appear to be no necessity for dealing separately with these writs in the code.

P. Procedure for Assessing Compensation.

In the absence of a constitutional provision prescribing how compensation shall be ascertained, there is no limitation on the legislature except the provision that no man may be deprived of his property

without due process of law and that the landowner must receive just compensation. The legislature may prescribe the manner of determining compensation which it deems appropriate, provided only that the tribunal is impartial and that the interested parties have an opportunity to be heard.[152] The constitutional guarantee of a jury trail[153] applies only to condemnation by a private corporation.

While the rule is far from unanimous, the rule in a majority of jurisdictions is that the burden of establishing the value of the property is on the landowner.[154] In Arkansas, in circuit court condemnation proceedings instituted by the State Highway Commission, the Commission makes an initial determination of the value of the land by depositing a sum of money estimated to be just compensation for the property taken.[155] If the landowner feels that the amount deposited is insufficient, he is entitled to a hearing on the subject.[156] This procedure seems to be a good one, and should be continued with some modification. Properly, an initial burden is on the Highway Commission to ascertain the value for purposes of the deposit. Burden of proof then shifts to the landowner to show that the amount deposited is insufficient, and in the trial of the case, the burden is on the landowner to establish the amount of compensation to which he is entitled.

In circuit court condemnation proceedings, there is a provision for trial by jury.[157] One commentator states that "not infrequently, the statute in conformance with the constitutional mandate, provides that the damages be determined by a court without a jury".[158] Clearly, under permissible constitutional provisions, the assessment of damages may be delegated to a court or judge.[159] There is normally no constitutional right to a jury trial and a failure to provide for a jury trial does not constitute a violation of due process.[160] As has been stated earlier in this paper, the use of juries in Arkansas more often than not leads to abuse in this type of proceeding. Compensation could more justly be assessed by a court, with the aid of a statutory procedure assuring a fair and thorough appraisal of the property involved. In Arkansas, an appropriate court for jurisdiction in condemnation matters would be the Chancery Court, which customarily handles problems relating to land.

Q. Assessment in State Condemnation Proceedings.

There is no constitutional provision for a jury trial for assessing compensation in condemnation proceedings by improvement districts.[162] Although compensation may be assessed when the tax assessments are made in a local improvement district, where the lands are not taken or damaged at the time the assessment for tax purposes was made, compensation must be paid out of the funds of the district or county.[163] A statute requiring the appointment of three disinterested citizens of the county as viewers[164] does not permit appointment of the father-in-law and brother of the petitioner as viewers.[165]

R. Assessment in Private Condemnation Proceedings.

The constitutional guarantee of a jury trial[166] applies to condemnation proceedings by private corporations.[167] This provision prohibits the taking of property by any corporation until compensation shall first be made to the owner, and it has application only to condemnation by private corporations.[168] Railroad corporations, which were chartered before the Arkansas Constitution of 1868, may take land without compensation; the remedy of the landowner being the right to petition the Circuit Court to appoint five commissioners to assess compensation.[169] The same case held that this procedure is not an assignable franchise and cannot be invoked by a corporation which purchased the assets of the original corporation during receivership proceedings.

The cases clearly indicate that in providing for the handling of condemnation proceedings by a court, without use of a jury, the code must provide separately for a jury trial in the case of private corporations in order not to run afoul of the State Constitution.

III. PROPERTY INTERESTS SUBJECT TO EMINENT DOMAIN.

It is reasonable to assume that the Arkansas Supreme Court would sanction the taking of any privately held property or interest therein. The Court has impliedly approved the taking of real property, contract rights, licenses, and franchises from the State; and the interests in property which the Court has permitted to be taken range from fee simple absolute to temporary easement. There is no necessity to go into the numerous cases on this subject. In drafting the code, if the subject of property interests is to be considered at all, it should be made clear that all property interests except those not subject to taking as a result of provisions of the Federal or State Constitutions, are subject to eminent domain. In short, the scope of property subject to being taken should be as broad as possible.

One Arkansas case stated a very broad scope for the power when it held that the exercise of the power does not interfere with the obligation of contracts since all property is held by tenure from the State and all contracts are made subject to the power of eminent domain.[1]

IV. EXTENT OF INTEREST ACQUIRED BY CONDEMNOR.

The general rule is that only such an estate in the property sought may be taken as is reasonably necessary to accomplish the purpose of the condemnor.[1] There is a marked contrast between voluntary conveyances and property acquired by condemnation, however. In voluntary conveyances the grantee is allowed the greatest interest possible whenever it is necessary to construe the conveyances, while in eminent domain the rule of construction leaves the owner with the greatest possible estate.[2] However, in the absence of a statutory declaration to that effect, the title acquired by condemnation is construed to be a fee by virtue of the sovereign supremacy.[3] In some instances, the condemnor has been forced to pay for a fee where he gets less than the fee, although in other cases it has been held that the condemnor acquires an interest commensurate with that for which compensation is made, and if he pays for a fee he gets a fee.[4] Of course, the condemnor cannot be permitted to condemn more than is necessary, and when an easement will satisfy the purpose, the power to condemn the fee will not be included in the grant.[5] Unless there is a constitutional inhibition upon the power of the legislature, the legislature has the power to determine what shall be acquired both as to the amount and quality of the estate.[6] Of course, the condemnor could not acquire an excess amount of land.[7]

Arkansas holds that a fee simple can never vest in a private corporation exercising the power of eminent domain, because when the purpose for which the right-of-way was taken has been completed, the possession and all other incidents of ownership would revert to the original owner.[8] Although the necessary use for land condemned may be of such a nature as to preclude any possession except that of the condemnor, and to that extent an estate in the nature of a fee would be acquired, where a corporation condemns land for right-of-way for power lines, it has exclusive right to possession only during construction and during times of necessary maintenance, and the owner has the right to enter the land at all reasonable times for purposes not inconsistent with the easement.[9] Once a private corporation acquires a right-of-way, it may be used in any manner its needs may require, and there is no liability for its conduct or compensable injury to the owner's property.[10] A right-of-way may be granted over a homestead without the concurrence of the wife of the owner since the right-of-way is only an easement.[11]

While it is true that a private corporation should not be granted a fee when a right-of-way will accomplish its purpose, there is no sound reason why a private corporation should not be entitled to a fee simple in a situation in which a fee simple is required. Whenever construction of permanent facilities upon property is necessitated, the corporation should be granted a fee simple since such appurtenances will merge with realty.

A. As Affected by Necessity.

It has been held in Arkansas that the Highway Commission has no

right to take a right-of-way for any purpose other than for use as a highway.[12] Similarly, no more private property and no greater interest therein may be taken than is absolutely necessary.[13] One case held that a city condemning part of a railroad right-of-way for a city street acquired only a right-of-way.[14]

B. Fee Simple Absolute.

On the other hand, if a lesser estate is not sufficient to satisfy the purpose of the taking, a fee simple may be acquired.[15] Moreover, a statute giving a municipal corporation the power to enter upon and take property to construct sewers and drains[16] is sufficiently broad to enable the city to obtain a fee simple title.[17]

These Arkansas cases are manifestly proper. Where more than an easement is needed, there should be no inhibition at all on the condemning agency's acquisition of a fee.

C. Easement.

A temporary easement may be condemned, and the condemning agency must pay the fair rental value of the property during the time of its use.[18] Where a permanent easement is condemned, however, the condemnor must pay the full value of the land as though a fee simple had been taken.[19] This is based on the theory that the condemnor has a right to make complete use of the land, thereby leaving no valuable use for the owner after the taking. The better rule would seem to be that where land is acquired for highway purposes, the condemnor acquires an interest commensurate with that for which compensation is paid, and if the condemnor pays the same as it would pay for a fee, it should receive a fee.[20]

The rule followed in Arkansas is that acquisition of an easement carries with it the right to construct such reasonable facilities thereon as may be necessary.[21] However, where a permanent easement is condemned, the owner receives the full value as if a fee simple absolute had been taken, whether a private corporation[22] or the State[23] is involved. Where land is dedicated for a highway or street, the public merely acquires an easement.[24]

There is no sound reason why, if a condemning agency pays for a fee, it should not receive a fee.

D. When Title Vests.

Where the Highway Commission is condemning property for Highway purposes, it may file a declaration of taking and make a deposit of the estimated value of the land.[25] It is provided by statute that title to the property passes to the Highway Commission upon the making of the deposit.[26] Railroad corporations have been held to have no right to

take possession unless a deposit be made under order of the court pursuant to Ark. Stats. Sec. 35-206.[27] Moreover, in the case of railroads, the landowner does not part with title until compensation has been made.[28]

There is some problem with respect to the time title vests as compared to when action may be discontinued or dismissed without prejudice by the condemnor. Earlier, it was stated that the condemnor should be able to discontinue or dismiss at any time up until final judgment is rendered. If title is to vest upon the making of a deposit, the action should not be discontinued after that time, unless it is provided that in the event of discontinuance after the making of the deposit and vesting of title, title will revert to the original landowner and, further, that the landowner will be compensated for any loss sustained while title was in the Commission. There is good reason for title to vest upon the making of the deposit since the Highway Commission might have immediate need for the land. However, the landowner should be recompensed for any damage resulting from loss of use of the land or from the temporary loss of title, in the event of discontinuance prior to the entering of a final judgment.

E. Rights of Abutting Owner in Condemned Property.

Where an easement is taken, the landowner retains the right to continue using the surface for farming or other purposes not inconsistent with the easement.[29] A problem arises with respect to additional servitudes. Since the owner is not deprived of his fee, use of the property for any other purpose will constitute an additional servitude for which the owner must be compensated, such as the construction of poles and power lines along a highway right-of-way.[30] Where land is condemned for use as a right-of-way for power lines, the company has exclusive right to possession only during construction and during times of maintenance; although in this situation, no additional servitude is involved.[31]

In the situation involving use of the same right-of-way for additional servitudes, the landowner may eventually collect more money than the land is worth. However, this is probably a "necessary evil" if we are to proceed under the rule that a condemnor can only acquire such title or interest as is necessary to effect its purposes. The best practice in such a situation is to require the condemning agency to pay only the reasonable amount of the easement or other interest acquired, which would seem to amount to less than the cost of the fee.

V. COMPENSATION.

Arkansas follows the general rule that private property may not be damaged or taken for public use by any private corporation or agency, whether state or local, without just compensation to the owner.[1] As we have previously noted, although the State may condemn private property without notice, it may not determine compensation without giving the landowner notice and an opportunity to be heard.[2] Should there be an inability to pay the compensation due to lack of funds, a Chancery Court can enjoin the taking of the property until compensation is made.[3] Damage to land constitutes a taking, in that the value of the land is reduced and the owner is entitled to compensation for this reduction in value.[4]

A. Constitutional Provisions and Requisites.

Article 2, Sec. 22, of the Arkansas Constitution provides that private property shall not be damaged or taken for public use without just compensation. Any statute which contradicts this rule is unconstitutional, and this includes statutes establishing arbitrary rules limiting compensation.[5] However, a statute which provides for the exercise of eminent domain but does not provide a method for determining compensation is not void since the constitutional provision mentioned previously must be read into the statute.[6]

B. When Compensation Must Be Made.

The taking of property by a state or subdivision need not be accompanied or preceded by payment, the requirement of just compensation being satisfied when the public faith and credit are pledged to a reasonably prompt ascertainment and payment, and there is adequate provision for enforcing the pledge.[7] This is in accordance with the general rule.[8] It has been held that a corporation may obtain an order of condemnation even if at the time the order is obtained by the company, it does not have enough assets to pay the compensation assessed, as long as the company cannot take possession of the land until compensation has been paid.[9] We again encounter the problem, however, that if county court condemnation proceedings are involved, the landowner must file his claim and the Court must refuse to make payment before the County will be prevented from taking the property in question.[10]

There is no need to comment again on the problem created by the County Court condemnation procedure as this has been discussed previously at length. These cases illustrate a necessity to fix a uniform time for the taking and payment of compensation. Where the deposit is made by the State at the time the suit is filed, there seems to be less difficulty with respect to payment of compensation. Certainly, compensation should be made before the landowner is deprived of the use of his property. And following the order of condemnation, the landowner should

not be compelled to wonder whether he will be paid or whether he will have to obtain an injunction in Chancery Court to prevent the taking.

C. Security of Payment before Taking.

Under the more modern statutory procedure in Arkansas,[11] the Arkansas Highway Commission acquires the right of entry upon land being condemned upon filing the declaration of taking and depositing with the clerk of the Circuit Court the estimated compensation due the landowner. The landowner has a right to withdraw this deposit. If the compensation finally awarded is more than the amount of the deposit, the State pays the additional amount necessary; and if the amount of the deposit withdrawn by the landowner exceeds the compensation finally awarded, the landowner pays interest on the difference between the deposit and final award. The Court has the power to order the Highway Commission to make an additional deposit if it determines that the initial deposit will be inadequate to cover the amount of the final award although, under Act 99 of 1963, this additional deposit cannot be withdrawn by the landowner but remains in the registry of the Court until final adjudication. The 1963 act renders moot some recent cases.[12]

If the State Highway Commission names the wrong party as owner of the land, and said party withdraws the deposit, the Commission is liable to the true landowner for the compensation and may sue the party erroneously receiving the deposit.[13]

A statute permitting the Highway Commission to enter property without first making compensation or a deposit is violative of the State Constitution.[14]

The more recent statutory procedure with respect to the handling of eminent domain cases in circuit court is so far superior to the older county court condemnation procedure that it is somewhat difficult to criticize it. With regard to those statutes pertaining to deposit, moreover, it seems eminently proper to require a deposit at the beginning of the action. Certainly, such is essential if the Highway Commission expects to exercise any prerogative over the land in question in the meantime. Also, if the law is going to treat the title as having vested at the time of the deposit, the landowner should be permitted to withdraw the deposit. Act 99 of 1963 seems questionable. If the landowner is to be permitted to withdraw the original deposit, and if the Court in the exercise of its discretion deems the original deposit to be inadequate and has ordered an additional deposit, why should the landowner not be permitted to withdraw that also? Certainly, the landowner does so to some extent at his peril. If he has use of money which rightfully is not his during the period pending final adjudication, he should properly pay interest on the use of that money and return it at the conclusion of the litigation. At the same time, however, there would seem to be no sound reason why the landowner should not be permitted to have full use of the deposit, including the amount added.

Much of the statutory procedure with respect to circuit court condemnation proceedings can be incorporated in the code. However, that procedure should be polished and modified as necessary, and two recommended changes, if adopted, would result in the changing of Act 99 of 1963 and the elimination of jury trials. The latter would be automatic if Chancery Court were given jurisdiction over condemnation proceedings.

D. Time of Fixing Compensation.

Nichols states that there is a diversity of opinion as to the time of assessing compensation -- some states assessing as of the date of taking, and some states assessing before the taking is made.[15] Since Arkansas does not use an administrative proceeding in most instances, the market value of the land is generally held to be measured as of the time of the filing of the petition.[16] However, it has been held that when the Highway Commission obtains an order of condemnation without notice, the assessment of the compensation is to be made as of the time of the actual taking by the Commission.[17] A peculiar situation arose in one case in which the parties agreed upon a date at which the market value should be assessed, and valuable minerals were discovered after the agreed-upon date. The Court stated that the compensation for the minerals should be included in the assessment since the value was there at the time the agreement was actually made, and the owner should receive the actual value of the land and not merely the known value.[18]

It would appear that the difficulty raised in these cases could be solved by providing that the time of fixing compensation will be as of the date the petition is filed. Since notice will be given almost contemporaneously with the filing of the petition, this will be in accord with the general rule in a situation of this type.

E. Taking or Damage as a Basis for Compensation.

The owner of a valuable property right is entitled to compensation when his property right is adversely affected by condemnation proceedings. Thus, a light-and-power company acquires a valuable property right when it obtains a franchise from a city to place its poles and lines along streets, and if the Highway Commission compels the company to relocate its poles, it must do so in exercise of the power of eminent domain and must pay compensation in the form of expenses incurred in such relocation.[19] There need be no plan to use the property on the part of the condemning agency; it is sufficient if the property is actually damaged or taken for public use.[20] To subject property located in an improvement district to claims of the creditors of the district in excess of the benefits of the property derived from the improvement constitutes a taking of property without just compensation.[21] There is no reason why this set of rules should be disturbed by the code since these rules are eminently fair and are founded on the basic concept of the power of eminent domain.

F. Real Property, Freehold and Expectant Estates; Leaseholds; Easements and Servitudes; Contract Rights; Licenses and Franchises; and Mineral Interests.

A person holding a remainder in real property is entitled to recover just compensation for injury or condemnation to his expectant estate. This is true both in the case of a vested remainder and a contingent remainder.[22]

Where condemned property is subject to a leasehold interest, both the lessor and lessee are entitled to compensation for their separate interests. The interests of the various parties should be determined in a single trial,[23] but it is proper for the jury to return separate verdicts for the lessor and lessee.[24] The measure of compensation is the value of the separate interest, not the value of the land had the lease not been made.[25] This is all good law, and there is no reason for the code to have any effect upon it.

The holder of an easement is entitled to compensation for impairment of that easement by condemnation.[26]

The exercise of the power of eminent domain does not interfere with the inviolability of contracts, because all property is held by tenure from the State and all contracts are made subject to eminent domain.[27]

A franchise which is granted from year to year should not be considered a vested right, and a landowner who has a ferry franchise should not be compensated for loss of the ferry rights.[28]

The market value of a tract of land containing minerals cannot be shown by mutliplying the yards or tons of the material by price per unit, because this formula fails to take into consideration factors such as the cost of excavation, processing, overhead, and the market for the finished product. The market value is the price that would be agreed upon by a willing buyer and a willing seller in an arm's length transaction.[29]

The foregoing cases reveal that a landowner is entitled to compensation for a fixed interest in land, and they also reveal the methods adopted by the Arkansas Court in dealing with this problem. We must necessarily consider whether the code will specifically designate those interests for which compensation shall be granted and the measure of damages in each instance. It would appear that such would be a mistake, for the simple reason that in the enumeration of interests in property for which compensation should be awarded, it is always possible to omit an interest, the taking of which would be construed to be included in Constitutional provisions and a part of the commonly recognized scope of eminent domain provisions. Moreover, if the expression of the measure of damages or method of determining damages was such that the Court did not feel that just compensation was being awarded as a result of the measure stated, the Court could invalidate that portion of the code as being violative of the Constitution. It would therefore seem to be the

best policy to make no more than general statements in the code concerning the interests which are compensable and the measure of damages, and such statements should be in accord with commonly accepted legal concepts.

G. Covering Property with Earth, Sewage, or Water.

A landowner is not ordinarily entitled to compensation for injury to his land caused by overflow resulting from the fact that his lands are left between the levee and the river. However, an exception to this rule is that when the property so situated is in fact used by a levee district as a "cushion" to slow down the waters of the river during a flood and protect the levee, this amounts to a taking for which compensation must be made.[30] If a levee blocks the normal flow of a stream and causes water to overflow onto private property, this amounts to a taking of property.[31]

Where the construction of a railroad embankment causes injury to land due to flooding, this injury is compensable in a subsequent condemnation proceeding dealing with the railroad right-of-way.[32]

H. Removal of Earth from Property.

The removal of earth from private property is a compensable injury to land.[33] Here again, we are simply dealing with compensable damage or taking, and there is no need to reiterate that the code should not go into detail on this point.

I. Interference with Existing Easements.

An easement is a valuable property right, and injury to it constitutes a taking for which the owner should be compensated. If an electric power-and-light company which has a franchise to place poles along city streets is compelled to relocate poles, it is entitled to compensation, as we have mentioned previously.[34] The construction of power lines along a street is not an additional servitude on the fee of the street, and abutting owners have no claim for damages,[35] but this is an additional servitude on the fee of the owners abutting a highway right-of-way, and a taking of property for which compensation must be made.[36] Aside from the fact that this is a rather strange interpretation on the part of the Court and there seems to be no logical reason why streets should be distinguished from highways or vice-versa, this again would seem to be an area the code can deal with only generally.

It has also been held that the flooding of land in which a pipeline company has an easement is a taking of property from the pipeline company.[37] Also, constructing a city street across a railroad right-of-way is an impairment of the railroad easement for which compensation must be made.[38]

Basically, this is an area the Court rather than the code must concern itself with in determining the compensability of various types of interests.

J. Compensation for Property Not Physically Taken.

When property is damaged, its value is reduced; and this reduction in value amounts to the taking of property to the extent thereof, so that the owner whose property has been damaged but not physically taken has the same right to demand compensation as the owner whose property has been occupied and taken. The injury, however, must be direct, substantial, and peculiar to the landowner and not one suffered by the general public.[39]

K. Interference with Ingress and Egress.

The owner of property abutting on a street or highway has an easement in such way for the purpose of ingress and egress which attaches to his property and in which he has a property right as fully as in the lot itself. Thus, any impairment of this assessment is a damage to the abutting property for which the owner is entitled to compensation. Interference with ingress and egress is to be distinguished from alteration of traffic flow, which does not constitute the taking or damaging of a property right.[40]

L. Change in Grade of Streets and Highways.

A landowner whose property is damaged by the change in grade of a highway or city street is entitled to compensation for the injury. A city is liable for injuries to abutting property by reason of changing the established grade of a street but is not liable for damage caused by establishing the grade of the street in the first instance.[41]

M. Business Income.

Loss suffered in business cannot be allowed as an element of damages under a theory of a taking of private property without compensation. Thus, a dairy farmer was not entitled to damages for injury to his business resulting from the discharge of sewage into a stream by a sewer district.[42]

N. Personal Property and Moving Expense.

The expense of moving from a leasehold which is being condemned is not compensable because the lessee would have had to move upon termination of the lease anyway.[43] Neither is the cost of moving personal property from land being condemned compensable.[44]

the common and necessary use of the property so serious as to interfere with the rights of the owner to an extent greater than mere temporary inconvenience. Such interruption of the use of the property can consist of regulations against hunting at all times on certain property,[53] or the use of the landowner's property as a "cushion" against the current of a river as a means of protecting a levee behind the property.[54]

V. Damages Not Compensable.

Damages to property which are not compensable include those occasioned by the relocation of a highway[55] and those caused by the initial establishment of a grade of a city street.[56] The State Highway Commission is not liable for the expense of moving power poles on a highway right-of-way where the power company had located its poles there initially with permission of the Highway Commission and pursuant to Ark. Stats. Sec. 35-301(a).[57]

A levee district will not be liable to a landowner whose lands are left between the levee and the river.[58] A drainage district is not liable for damage to crops caused by poison accidentally drifting into a nearby field.[59]

Property owners whose land abuts highways and railroads cannot recover for noise, dust, and similar inconveniences incident to these modes of public transportation.[60]

Where a condemnor has instituted a condemnation proceeding which goes to trial but subsequently withdraws from the proceedings in good faith, it will not be liable to the landowner for his legal expenses in connection with the trial.[61] This rule should be changed since it works an undue hardship on the landowner.

If a landowner plants crops on land after the proceedings to condemn the land are completed, he does so at his own risk, and the condemnor is not liable for destruction of the crops.[62]

W. Damages Caused by Negligence.

Improvement districts are not liable for the torts of their employees or contractors.[63] This immunity of public agencies, however, does not necessarily apply to private corporations. A railroad is not liable for unavoidable injury to adjoining property following the construction of the road, but if the construction itself results in the flooding of adjoining property, or if the roadbed is negligently constructed, damages for these injuries are assessed in the condemnation proceeding along with damages for the taking.[64] The rule apparently is that if construction of the road precedes the condemnation proceedings, damages caused by the construction should be included when determining the amount of compensation due the landowner, but if the condemnation proceedings precede construction, the landowner must sue in tort to recover for subsequent damage caused by negligence or unskillful

construction.

* * * * *

The determination of the type of damages which are compensable, or the type of interests for which compensation must be paid, should be left to the discretion of the Supreme Court of Arkansas as far as specifics are concerned. To attempt to enumerate these interests would run the danger of omitting otherwise compensable interests, unless a broad, all-inclusive provision was inserted along with the other specific enumerations. If the code makes any statement as to the types of interests which are compensable, it should be broad enough to include not only those interests of which we may presently have knowledge, but also interests which may develop in the complexities of the future. The best policy would seem to be to leave these specific situations to the State Supreme Court.

VI. MEASURE OF COMPENSATION.

The measure of compensation, where a portion of a person's land is taken for highway purposes, is the market value of the land plus the damages to the land not taken, less any special benefits to the remaining land.[1] If the condemnor acquires an easement, but theoretically has the right to make complete use of the land (as in the case of a landing strip, a pipeline, etc.), he must pay the full value of the land as though a fee simple absolute had been taken.[2] It is improper for the jury to return a quotient verdict as to the amount of compensation due which has been computed by arriving at an average figure mathematically ascertained from the testimony of the various witnesses.[3]

A. Definition of Market Value.

The market value of property is the sum that the property would reasonably be worth on the market for a cash price, in the hands of a prudent vendor at liberty to fix the time and conditions for the sale.[4] By a "cash price" is meant a sum payable in money as distinguished from an exchange of property.[5] The price should be what a reasonable buyer would pay for the highest and best use of the land -- for example, the price one seeking a plant nursery would pay for land on which the plants were growing.[6]

In connection with definitions of market value, an oft-cited Arkansas case is Little Rock Junction Ry. v. Woodruff, 49 Ark. 381, 5 S.W. 792 (1887), the language of which is relied upon by treatises in this field.[7] Orgel notes that one of the greatest problems in defining market value is the "willing buyer-willing seller" word picture presented by various courts and implicit in the definition. He states that perhaps the most serious question concerns the possibility that this concept may be used to bridge the gap between the value of the property to the landowner and the price at which it can be sold to anyone else.[8]

B. The "Before and After" Rule.

Where part of a man's land is taken, the measure of compensation is the difference between the market value of the whole tract before the taking and of the market value of the remainder after the taking.[9] However, where a portion of a person's property is being taken, but the landowner is not claiming severance damages or damages to the remainder, it is not necessary that the "before and after" rule be followed. In such a case, the measure of compensation is the market value of the property taken.[10] (The "before and after" rule is applicable to an easement situation, also. Thus, if a lake is constructed over a pipeline, the damage is the difference in the cost of maintenance of the land before the lake was built and the cost after it was built.[11])

Orgel comments that, literally interpreted, the "before and after"

rule is advantageous because it requires a consideration of all elements of damage and benefit and resolves the troublesome problems of delimiting damages and setting off benefits that confront the courts when they attempt to apply the formula of "value plus damages".[12] It is stated that one might be led to assume that emphasis on the value of the remainder after the taking would rule out all factors except those that clearly affect market value. However, these theoretical advantages have not always followed from the acceptance of the "before and after" rule.[13] Nonetheless, Orgel concludes that the formula which measures just compensation by use of the "before and after" rule is "theoretically more acceptable" and is definitely superior to the "value plus damages" rule. Arkansas therefore departs from the formula accepted in the majority of jurisdictions -- value of the part taken plus damages to the remainder -- but follows the more theoretically sound formula to the extent that the landowner claims severance damages or damages to the remainder.

Since the obvious conclusion is that Arkansas should continue to follow the "before and after" rule, the question arises as to whether it should be embodied in the code. Orgel mentions only one state which has given it statutory approval,[15] the other states which follow this rule having adopted it through decisions. Statutory embodiment of the rule would have the advantage of limiting the court in straying from it in the future although it might have the drawback of unduly restricting the court if overly specific. Our present problem, however, seems to be that the rule is not fully applied, as will be discussed further, and the conclusion is that it should be expressed in the code in a more broad and comprehensive manner.

C. Damages to Remainder of a Single Tract.

If the land being condemned is a portion of land which has heretofore been used as a unit, the landowner is not limited to severance damages for the portion involved, but may recover for injury to the tract as a whole.[16] But in Lazenby v. Arkansas State Highway Comm'n,[17] the Court goes to great lengths to explain that the "before and after" rule has no application where the landowner is seeking only to recover the value of the land actually taken. There seems to be confusion in the cases as to which rule to apply and when. Apparently, the "before and after" rule is followed in cases in which a part of a person's property is taken and the landowner claims severance damages or damages to the remainder; but in cases in which no such claim is made, the market value per acre is computed. The code should provide that the "before and after" rule is to be followed in all situations. Theoretically, there is no reason why the "before and after" rule should not encompass all types of damages which the landowner might sustain with respect to the taking of a part of his property. Moreover, the landowner should not be forced to claim severance damages or damages to the remainder in order to have the advantage of the "before and after" rule. Automatic application of the rule would be fair to all parties concerned and would clarify much of the confusion existing in this area today.

The following injuries to land have been considered as elements of damage in determining compensation due: when a portion of the land is taken, inconvenience in traveling from one part to the other;[18] the rendering of the remaining land less adaptable for subdivision into building lots;[19] increased fire hazard caused by a railroad;[20] and the sounding of railroad bells and whistles in a situation peculiar to the property involved.[21]

Properly, these elements which diminish the value of the land remaining after the taking can be covered under the "before and after" rule, and there would appear to be no need to consider them except as they are component elements in the mathematical problem of determining the value of the land after the taking. They are elements which go to reduce further the value of the property remaining.

It therefore appears clear that the enunciation of a general standard, in the form of the "before and after" rule, could and should eliminate many of the problems which arise in litigation in Arkansas and thereby result in benefit to both landowners and condemning agencies.

D. The Highest and Best Use.

In determining the market value of land, the landowner is entitled to be reimbursed on the basis of the best and most valuable use for which the land is suited.[22] The possibility of its use for all purposes, both present and prospective, for which it is adapted and to which it might in reason be applied, must be considered, and the value of the land for the use to which men of reason and adequate means would devote the property if owned by them must be taken as the ultimate test.[23] Thus, the market value is the value of the property at its best use and not necessarily the present use.[24] The best use can include historical purposes.[25]

If the "before and after" rule is to be embodied into the code, a general statement of the "highest and best use" rule should also be incorporated. This is a good rule, commonly accepted in the United States, and is a proper element to be considered in determining market value. Of course, in some instances the application of this rule may serve to increase the amount of recovery since the taking may destroy the highest and best use for which the property can be used and greatly diminish the value after the taking as compared to the value prior to the taking. However, it seems only fair that the highest and best use of the property be applied, even though the present use is less lucrative. In fairness to the condemning agency it should be required that the owner first show: (1) that the property is adaptable to the other use; (2) that it is reasonably probable that it will be put to this other use within a reasonable time; and (3) that the market value has been enhanced by this other use for which it is adaptable.

E. Value to Taker.

Orgel states that the problem of value to the taker is "one of the most confusing aspects of the theory of valuation."[26] The problem presents the issue of whether the availability of the property for the taker's use must be considered in estimating just compensation. The courts have uniformly denied that value to the taker is an appropriate measure of compensation.[27] But the problem does not end here. Orgel goes on to point out that the actual market value may be affected somewhat by value to the taker.[28]

Arkansas has stated that a condemnor should not be required to pay an enhanced price for land which its demand alone has created.[29] But if the porperty is so well adapted to the use for which it is being taken as to add something to its value in the minds of prospective buyers, that element may be considered in estimating market value.[30] And thus the owner of land peculiarly adapted for use as a dam site,[31] or as a roadbed for a railroad,[32] or as a bridge,[33] must be compensated for the land on the basis of its highest and best use, which in these cases is the use to which the condemnor intends to put it. The land thereby pulls up its value "by its bootstraps," so to speak, due to the taking.

The drafters of the code should consider the possibility of limiting this type of situation. No one with rural land, even though allegedly it may be peculiarly subject to adaptation for use as a dam site or railroad bed or other such public purpose, should receive additional compensation because of the sheer accident which led to the taking of the land for that purpose. This should be outside the pale of the "highest and best use" rule. The "highest and best use" rule should be limited to the highest and best use of the land for purposes other than those to which it will be put by the taker, unless the taker's use is similar to the highest and best private use to which the land could be put (such as a housing agency condemning land for which the obviously best private use is for residential purposes.) An appropriate definition of this rule in the code would seem to correct this deficiency.

F. Value to Owner.

The value of land to the owner is not the measure of compensation in Arkansas, and it is immaterial except insofar as it is relevant to the market value of the property.[34] Orgel writes that when property is taken, the value to the owner is the only strictly relevant value and that market value is intended to be a rough approximation of the value to the owner.[35] Difficulty arises when the market value is practically nil, but the value to the owner is great. Orgel states that in these cases the courts will abandon the market value theory and use as an alternative measure "value to the owner," "value in use," "value for the use to which the property is devoted," "actual value," or some similar nomenclature.[36] This does not mean, however, that sentimental value will be a factor.[37] Thus, in summation, it may be fairly stated that where economic forces have temporarily created abnormal market

conditions or where the property has no market value of its own, consideration will be given to the value to the owner.[38] Probably this would be true in Arkansas also, despite the language in the case cited previously.

If the code undertakes to define market value or to delineate the manner of measuring compensation, it should make some allowance for abnormal situations in which "value to the owner" may be taken into account, while at the same time clearly indicating that such value will not normally be considered. It may be necessary to express this in the code in order to avoid omission of such situations by inference, thereby creating an injustice to landowners.

G. Buildings, Structures, and Fixtures.

Buildings and machinery or equipment which have become fixtures on real property and which add to the market value of the property must be paid for as part of the realty when determining the before and after value.[39] Replacing fences, shrubs, and flowers, the loss of trees, and rewiring and replumbing a house after moving it are also proper factors to be considered in determining compensation.[40] In this connection, it is proper to admit evidence of the kind of materials used in constructing the building.[41]

Of course, this rule coincides with the property maxim that the words "land" and "real estate" refer to the soil and everything attached to it, and it matters not whether such were affixed by nature or by artificial means.[42] Of course, a statute could provide for removal of buildings, with the landowner to be compensated for the cost of removal and relocation.

It will probably not be necessary for the code to specifically mention buildings, structures, fences, etc. These should be covered by the general language contained in the code. The Arkansas law on this point is standard and is proper, and no departure is warranted.

H. Growing Things.

The value of timber or crops at the time of taking are taken into consideration in determining damages, and the same is true of the replacement cost of shrubs, flowers, nursery plants, and the like.[43] This is the general rule.[44]

I. Mineral Deposits.

The market value of land containing minerals is the value with the minerals intact. It is not permissible to multiply the quantity of minerals by a price per unit, because this does not take into consideration excavation costs, overhead, cost of processing, and the available market.[45] Orgel comments that the mineral deposits may enhance

the market value of the land, but the award may not be reached by separately evaluating the land and the minerals.[46] There seems to be no need to disturb the existing Arkansas law on this point, which appears to be soundly based.

J. General.

Improvements made on property by the condemnor or its assignor before institution of condemnation proceedings are not taken into account in estimating damages to be paid the landowner.[47] With respect to easements, the test seems to be the extent with which the condemnation interferes with the easement. Thus, where land which was subject to a pipeline easement was condemned for the purpose of constructing a lake, the measure for damages was the difference in the cost of maintenance before and after the construction of the lake.[48]

Arkansas follows the majority rule in not requiring the condemnor to pay for its own improvements when they have been made prior to the act of condemnation.[49] New York allows compensation where the condemnor has previously made improvements without the consent of the owner.[50] There seems to be no reason for Arkansas to depart from the general rule, and in fact the condemnor should not be allowed to make improvements prior to the act of condemnation.

VII. EVIDENCE OF MARKET VALUE.

A. General.

Generally, any testimony which will tend to show the market value of the land sought to be condemned is competent.[1] In this evaluation, the law takes into consideration any and all uses to which the land is reasonably adapted and might with reasonable probability be applied.[2]

B. Sufficiency of Evidence to Support Award.

In testing the sufficiency of evidence in eminent domain proceedings, the same rules apply as in a common law action. The evidence is viewed in a light most favorable to the appellee, and if the verdict is sustained by competent evidence, it will not be overturned.[3] In this connection, Nichols observes that more discretion is allowed the trial court in passing upon the admissibility of evidence of value, and there is a modern tendency to restrict the reversal of verdicts for errors which do not cause substantial injustice.[4] Similarly, Arkansas holds that a jury verdict should be set aside only when it is not supported by proof, or when it is so excessive as to indicate passion, prejudice, or incorrect application of the law to the case.[5] The trend in these cases seems entirely proper, and there would seem to be no reason for the code to alter or depart from this trend.

Despite this broadening trend, there are some specific limitations on testimony, some of which have been previously mentioned. In addition, testimony for which no reasonable basis is given has been held to be insubstantial.[6] A jury verdict must generally fall within the range of the highest and lowest estimates made by knowledgeable witnesses who base their opinions on facts, in order for the verdict to be upheld.[7]

Nichols states that evidence must be competent, relevant, and material and must be of such nature that it would motivate a prospective purchaser and seller in fixing a price.[8] Evidence of peculiar value to the owner or special value to the taker are equally inadmissible. Nichols also comments that a view by the jury of the premises taken or damaged is almost, if not absolutely, essential to an intelligent understanding of the case, and in every jurisdiction a view is either authorized or required by statute.[9] This is certainly the better practice, and the jury should also be permitted to view surrounding land in order that they may note the elements which affect the value of the land taken and how the land not taken will be improved or damaged. At common law, the question as to whether the jury could view the land was within the discretion of the Court, subject to review only in case of abuse.[10] The code should make provisions for the jury (unless use of juries is terminated as recommended earlier) to view the land condemned and immediately surrounding land, subject to regulation but not denial of this privilege by the Court.

C. Opinion Evidence.

Arkansas has said that the question of whether the witness has sufficient knowledge concerning the value of property to give him a definite opinion on the subject is a matter to some extent within the sound discretion of the trial judge, and the Supreme Court will not reverse unless an abuse of discretion is apparent.[11] One of the recognized exceptions to the general rule that witnesses must state facts and not opinions is that the issue of market value is determined by the testimony of those who have knowledge of or are familiar with the property in question.[12] This is in accord with the general rule.[13] Moreover, if a portion of a witness's testimony is admissible, all of it need not be stricken.[14]

Lay witnesses, including landowners, may testify regarding the value of land if their testimony shows they are familiar with such matters.[15] Similarly, intelligent men who have resided for a long time at a place and are acquainted with the land being condemned and who claim they know its value are competent even though they have never bought or sold land in the area.[16] There is a split among the jurisdictions as to whether a witness may give his opinion of the extent of damage suffered by the owner, with Arkansas and some jurisdictions holding such testimony admissible and others holding it not admissible.[17] The better view would be to allow lay testimony, as Arkansas does, but with sufficient safeguards imposed to assure some semblance of accuracy. This is particularly true if the jury system is abandoned. This type of evidence is less dangerous in trials before a judge sitting without a jury than in cases involving a jury. Nichols states that it should be shown that a witness has some peculiar means of forming an intelligent, correct judgment as to the value of the property in question which is beyond that means possessed by men generally. In that connection, one who has resided or done business in the vicinity of the property in question for a sufficient length of time to have familiarized himself with the facts upon which its value depends is considered competent to testify.[18] This seems to be a reasonable conclusion.

With respect to expert testimony, the expert witness must establish his qualifications and his familiarity with the land in question and then is ordinarily in a position to state his opinion. Thus, a person who has been established as an expert need not, on direct examination, state the facts on which his opinion is based, according to the Arkansas case law.[19] This rule as to expert witnesses varies from the rule as to non-expert witnesses, who must give the basis for their opinion. While real estate experts are quite common in eminent domain proceedings, due to their supposed special knowledge of conditions upon which value depends, and are qualified because of their supposedly particular skill in that field, their testimony is often looked upon with distrust by courts due to the element of selection and payment by the opposing parties. However, without such testimony the Court could not make an informed judgment as to land values, and there seems to be no real alternative.[20] This situation might be helped by requiring that expert witnesses, as well as non-expert witnesses, give the basis of their opinion on direct examination along with their

qualifications. Moreover, the code should develop more stringent qualifications and more properly define what constitutes an expert. Under the present situation in Arkansas, it is far too easy to qualify as an "expert."

The landowner may be allowed to testify regarding the market value of his land if his testimony shows that he is familiar with such matters,[21] but if he has no experience in real estate business and gives no basis for his opinions, his testimony is entitled to little weight.[22] The general rule is that the owner may express his opinion although the weight to be given his testimony is to be determined by the Court.[23] Some states hold that mere ownership does not render a person competent to give an opinion, unless he is familiar with facts that give the property value.[24] The better rule would seem to be to permit the landowner to give such testimony but require him to state the basis for his opinion in order that it may be weighed in its proper light by the Court.

D. Basis for Opinion.

It is generally held that qualification as an expert witness in itself does not qualify one to give an opinion of value. One must possess in addition such general knowledge and have had such dealings as to have become acquainted with values in the vicinity of the land in question, and must be familiar with the property itself or at least have examined the property at or around the time of taking.[25] In this connection, Arkansas has held that a mere statement by a witness of the "before" and "after" value of land being condemned without a statement or consideration of the related factors upon which the opinion is based is no evidence of damages.[26] This holding has been modified to apply to a non-expert witness but not to an expert witness. A non-expert witness must give the basis for his opinion,[27] but a qualified expert witness need not give the basis for his opinion on direct examination[28] although his testimony may be discredited on cross-examination by showing that he is not versed on the physical facts concerning the property involved.[29] This should be corrected by the code to provide that all witnesses shall state the basis for their opinion on direct examination. This would not preclude further cross-examination on the subject, but it would set to rest the false proposition that merely because a man is a real estate agent he becomes an expert and can give an opinion without stating the basis of it. Nichols states that although there is authority to support the proposition that an opinion witness need not state the reasons for his opinion on direct examination, the absence of supporting evidentiary facts has been held to affect the weight of the opinion, and it is generally held that he should testify as to the facts which substantiate his conclusion and explain the reasons for his opinion.[30] A provision requiring a statement as to the basis of opinions of expert witnesses would remove the presently existing ambiguity in the Arkansas law on the point.

E. Income from a Business on the Property.

Arkansas holds that in arriving at the "before" and "after" value in determining the market value of commercial property, it is not proper to consider profits from a business conducted on the property.[31] This is in accord with the general rule, under which it is well settled that an owner is not entitled to recover the anticipated profits of his business which are lost by the taking of the land upon which it is located.[32] Evidence of profits may be considered, however, in determining market value where the profits are attributable to the character of the land rather than to the character of the operator.[33] An exception to the general rule that profits from a business are not admissible is found with respect to profits from a farm. Evidence as to farm profits is admissible.[34] While there is some tendency to admit testimony as to farm profits, this evidence is often admitted simply to "shed light upon reasonableness of the value fixed by the evidence,"[35] or as a means of measuring production.[36] The decision in these cases is "so much eyewash." If the rationale of the rule which excludes evidence of profits from a business is proper in the case of non-farm property, it should also be proper in the case of farm property. The rationale is that business conducted upon the condemned land and the fruits thereof are too uncertain, remote, and speculative to be used as the criterion of the market value of the land since the profits for any given period depend upon many diverse circumstances.[37] Despite the existence of agricultural price supports, this same rule should be no less true (at least from an academic standpoint) in connection with farm property. This does not of course eliminate the possibility that the character of the land is such that independently of the skill or knowledge of the owner, it lends itself to a particular use, thereby making relevant the profits from a business inducted thereon.[38] Thus, the drafters of the code should consider whether to exclude the profits altogether with the exception of the situation involving a peculiar adaptation of the land for a certain use. The alternative seems to be to make admissible testimony as to business income for whatever weight the Court may wish to give it. It may be that substantial consideration should be given to this possibility. Why should profits not be an element to be considered in determining market value? Why is not the Court qualified to consider profits, taking into account the fact that these are transitory and cannot necessarily be viewed as "fixed"? If we are to follow the general view, however, such testimony would remain inadmissible.

F. Rental Value of Property.

Nichols states that as a safe working rule, if property is rented for the use to which it is best adapted, the actual rent reserved, capitalized at the rate which local custom adopts for the purpose, forms one of the best tests of value.[39] Evidence of the rent actually received at a time reasonably near the time of the taking should be admitted. This is predicated on the assumption that the rent is received by reason of the best available use to which the property may be put. This general rule is followed in Arkansas, which admits testimony as to rent

solely for the purpose of determining market value.[40] Fair rental value has been held to be not determinative where no amount was provided in the lease for rent but payment was to be made on a commission per gallon of gasoline sold.[41] This latter situation begins to get into the profits area and would seem to be proper under the prevailing rule. Again, however, it might be well to ask: If the amount of rent paid is admissible, then why should profits not be admissible?

G. Sales of Other Nearby Property.

Evidence of the price paid for similar lands sold voluntarily near the time of the taking is admissible in most jurisdictions,[42] and this is true in Arkansas. However, before sales of other property in the vicinity will be admitted in evidence in Arkansas, it must be shown that the other property is in fact similar or comparable to the property in question. Factors considered in establishing similarity are location, size, sales price, conditions surrounding the sale of the property (such as the date and character of the sales), business and residential advantages or disadvantages, and the extent of improved and unimproved lands.[43] If none of these criteria is present, the evidence of the other sale would be inadmissible. Sales of land and other commercial areas of a city which are regarded as comparable in value to the land in question have been admitted with other factors bearing on market value.[44]

H. Reproduction Cost and Cost of Improvements.

Reproduction cost is not admissible as a measure of damages in Arkansas. Thus, where buildings and fixtures are located on land, the measure of compensation is the value of the land with the buildings and other fixtures on it, and if the buildings and fixtures do not increase the value of the land, the owner receives nothing for them.[45] The cost of the property and the improvements may be admissible as an aid in determining market value, although not as a replacement for market value, where there is no readily ascertainable market value for the particular use to which the property is being put.[46] The Arkansas rule on this seems to be in accord with the general rule.[47]

I. Restoration Costs.

Evidence of the cost of improvements for restoration purposes and of relocation costs is admissible, but such prospective costs are not the measure of damages and are only an aid in determining the difference in the "before" and "after" value of the property.[48] Arkansas seems more conservative on this point than the general rule. Nichols states that when damage to the owner's property can be avoided by repairs, and the reasonable cost of such work is less than the decrease in the market value, such costs form the measure of damages.[49] Despite the semantics used in Arkansas, this is probably the practical result. In any event,

there seems to be little doubt that restoration and relocation costs would be admissible whether they be viewed as "the measure of damages" or simply as being of assistance in determining the "before and after value."

J. Removal Cost.

Removal cost is properly admissible in arriving at the "before" and "after" value -- e.g., replacing a fence, loss of trees, replacement of shrubs and flowers, moving a house back from the right of way, replumbing, rewiring, and so forth.[50] An exception to this rule is that injury to personal property and the cost of removing same are not to be considered as elements of damage.[51] Also, the expense of removal of a lessee's property is not a proper element to be considered.[52] The same distinction is made in the United States generally although cost of removal is considered along with other elements as bearing upon the market value and not as an independent item of damages.[53]

In a minority of states, recovery for removal of personal property has been based upon specific statutory authorization therefor. Certainly, such is an erosion of the market value concept. However, in all fairness to the landowner, it is only proper that he be placed in the same position that he would have been in, had it not been for the taking (which is nothing less than the theory of compensatory damages). Consequently, the drafters of the code should consider the possibility of an additional element of damage other than market value, which would be the removal cost of the personal property. The market value concept could be sustained even in this situation by providing that removal cost of personal property would be an item of evidence having a bearing upon the proof of fair market value and not an independent item to be added to the value of the land.

K. Assessment for Taxation.

By statute in Arkansas,[54] evidence of the assessed valuation for tax purposes may be admitted in a condemnation proceeding brought for highway purposes. However, this evidence is not conclusive and is merely to be considered with the other evidence.[55] Evidence of valuation placed on property by a tax assessment is not admissible in a condemnation proceeding instituted by a railroad corporation, for the reason that the valuation, being for a different purpose, is not a fair criterion of market value.[56] Although these railroad cases are old cases, the statute seems to be confined to highway condemnation proceedings. There seems to be no reason why the statutory procedure should not be continued in Arkansas, keeping in mind that Arkansas property is assessed at approximately 20 per cent of its true value. Arkansas is contrary to the general rule, however, in this situation. It is the rule in most jurisdictions that the value placed upon a parcel for tax purposes is no evidence of its value for any other purpose.[57] Of course, Arkansas should not go beyond simply providing for the admissibility of this type of evidence as an element to be

considered in determining market value. It should not be conclusive.

L. Offers to Purchase.

Arkansas follows the absolute exclusion rule, which is to the effect that evidence of an unaccepted offer to purchase property is not admissible to show market value. In a case on this point, however, the Court discussed the "Illinois Rule" which admits the evidence if the proponent thereof can show that it was a bona fide offer for cash and was made by a person able to comply with the offer.[58] The general rule seems to be one of exclusion,[59] and a great deal of abuse could creep in if there were much departure from the rule of exclusion in this connection. The danger of "trumped-up" testimony is greater than the advantage from admitting testimony as to such offers.

M. Owner's Purchasing Price.

The price that the owner paid for land being condemned has some bearing on the present market value, if the purchase was not too remote in time.[60] Nichols views this type of evidence as one of the most important aids in determining present market value if the sale was recent and was a voluntary transaction, and there have been no significant market fluctuations since then.[61] With these qualifications, such evidence should certainly be admitted.

N. Purchase Price Paid by Condemnor for Other Property in the Vicinity.

The price paid by the condemnor for other land in the same vicinity is held not competent evidence in Arkansas.[62] This is the general rule.[63] The rationale is that such payments are not indicative of market value. This seems to be an appropriate rule although some difficulty arises in separating testimony as to the value of other similarly located property and the testimony of the purchase price paid by the condemnor for other similarly located property. The purchase price paid by the condemnor for such other property serves to fix the value of it and thereby has an indirect effect on the land being condemned. Admittedly, however, the price paid by the condemnor for other similarly located lands may vary considerably, and the rationale for the rule seems a proper one. The right of the landowner to judge compensation should not be measured by the necessity, generosity, fear of litigation, or other factors which may have influenced the sale of adjoining or nearby property.

O. Maps and Plats Showing Intended Use of Property.

Maps and plats of residential property which is being condemned which show the property divided into lots are admissible only to show that the highest and best use of the property is for residential purposes and for showing the location of the improvements thereon.[64] However, where property which is being condemned is suitable for

subdivision into residential lots but is not being so developed or used, it is error to admit in evidence a map or plat showing such division.[65] This is somewhat stricter than the rule cited in Nichols, which states that the owner may present plans showing a possible scheme of development for the purpose for which the land in question is most available.[66] He cannot go further, however, and describe a speculative enterprise for which the land might be used.[67]

The general rule would seem to be preferable. As long as the use of the map or plat is not entirely speculative, there would seem to be no reason for prohibiting its introduction to illustrate the highest and best use of the land.

P. Cost of Fencing.

Cost of new fences required by the construction of a railroad is a proper element for consideration in determining depreciation and market value of severed tracts of land.[68] This is in accord with the general rule that inability to make the most advantageous use of the remaining land without precautions that will cause additional expense is a proper element of damage.[69] The additional fencing may be considered so far as it affects the market value of the remaining area, unless the land is so valueless as not to deserve fencing or may be utilized to its fullest and most advantageous use without fencing. This matter should properly be keyed to market value.

Q. Remote and Speculative Items.

The possible uses of land which are to be considered in fixing value must be so reasonably probable as to have an effect on the present market value of the land, and a speculative use cannot be considered.[70] This is the general rule. To warrant admission of testimony as to value for purposes other than that to which the land is being put, the landowner must show: (1) That the property is adaptable to the other use, (2) that it is reasonably probable that such a use will be made of it in the near future, and (3) that the market value has been enhanced by the other use for which it is adaptable.[71]

R. Highest and Best Use.

A landowner may show every advantage that his property possesses, both present and prospective, in order that the Court may determine the price for which it could be sold on the market.[72] The uses considered must be so reasonably probable as to have an effect on the present market value of the land, however, and speculative values cannot be considered.[73] As a general rule, the landowner may show every fact concerning his property that he would be naturally disposed to show in order to place it in an advantageous light if he were attempting to sell it to a private individual.[74] The highest and best use doctrine is that the Court may consider the value for the use to which men of

prudence and wisdom, having adequate means, would devote the property if owned by them.[75] This doctrine is followed generally in the United States. The Arkansas law on this point appears to be proper.

S. Other Considerations.

Various other considerations are often presented. Arkansas has held that the amount of deposit made by the Highway Commission prior to entry is not admissible in evidence at the trial although it may be used to impeach a witness if the witness was the appraiser who set the deposit.[76] This presumably means that the Highway Department must be extremely cautious in presenting the testimony of the appraiser who set the deposit if the appraiser is going to testify that the land is actually worth less than the amount deposited. The general rule is that payment of deposit into court has no bearing upon the amount of the just compensation ultimately paid, and the condemnor may introduce evidence of a sum less than that originally estimated and is not bound by the earlier declaration of estimated value.[77] The better practice would be to hold such deposit inadmissible even for the purpose of impeaching the appraiser. Such deposit is merely made in compliance with a statutory requirement and does not constitute an admission against interest.[78] The Arkansas Court's conclusion that the deposit may be used for such purpose is, therefore, erroneous and should be changed by the code.

Both the general rule[79] and the Arkansas rule[80] is that evidence of a compromise offer by the condemnor is not admissible.

The general rule is that cost of construction is not material and is inadmissible where the improvements do not increase the market value; but where the improvements do enhance the market value, the cost of construction would aid the jury in arriving at the market value, and such evidence would be admissible.[81] Arkansas, however, has held that evidence of the cost of construction of the highway is not admissible for the purpose of showing enhanced value of the remaining property,[82] and in this respect departs from the general rule. In this situation, it would appear that Arkansas is correct and the majority rule is wrong. The cost of the highway construction has no direct relationship to the enhancement of land values. If in a situation involving a major arterial highway, connecting such points as Little Rock and Dallas, the cost of construction was reduced through use of asphalt or asphaltic cement, rather than concrete, it cannot be said that the value of the adjoining landowners is in any manner diminished. Certainly, if the road were graveled rather than paved, the value to the landowner is less, but this is not because of the cost of construction, but because of the different mode of construction. The cost of construction of the highway could actually become a confusing figure, and if court or jury attempted to apply a mathematical formula in connection with it, disaster would result. Since such cost items can only breed confusion, the best thing is to leave them out.

As a general rule, the market value of a tract of land containing

valuable minerals cannot be determined by estimating the amount of minerals present and multiplying the estimate by a fixed price per unit. However, where the fee owner had leased the property for a per-yard rental, this computation should be admitted.[83] Of course, the existence of mineral deposits may be considered in determining market value although the mere possibility or known existence of mineral deposits is not enough to warrant consideration, unless they exist in quantity sufficient enough to justify commercial exploitation.[84] This appears to be a good rule. Value of the minerals should definitely be considered although it should be considered in the context of the total market value, rather than as a separate item. Certainly, however, the witness testifying should not be so constricted that he cannot talk in terms of the quantity of minerals present, the current market price for such minerals, the commercial possibilities for the tract of land in question, the difficulty of extraction of the minerals, and such other factors which enter into a consideration of market value of the entire tract.

Arkansas holds that it is within the discretion of the trial judge to permit the jury to view the property being condemned[85] and that it is proper for the trial judge to view the property involved in order to enable him to better understand and evaluate the testimony of witnesses.[86] This is true in every jurisdiction, and it is the better practice to allow the judge or jury to view the surrounding land also.[87]

The value of timber growing on land is a proper element to be considered in arriving at market value,[88] and this Arkansas view is in accord with the view generally that all natural assets of real property should be considered in determining market value.[89]

VIII. BENEFITS.

A. General and Special Benefits.

The courts draw a distinction between general and special benefits, placing in the "special" category those benefits which result in increases in value of particular properties directly affected by the taking and classifying as "general" those benefits that accrue generally to the public at large.[1] Arkansas holds that special benefits accruing to the land of a particular owner may be set off against the damages to the land.[2] However, general benefits should not be considered in assessing damages since it would be unjust to charge the owner whose property has been taken with benefits he receives in common with other landowners whose property is not taken.[3] The question of whether the benefits are "special" or "general" is a question of fact.[4] This seems to be a reasonable and fair manner of dealing with the problem.

B. Property Taken by the State.

Where the public use for which a portion of land is taken so enhances the value of the remainder as to make it of greater value than the whole was before the taking, the owner thereby receives his just compensation and benefits. The benefits which fall into such category, however, must be those which are local, peculiar, and special to the owner's land in order for this doctrine to apply.[5] An exception to this rule is that Art. 12, §§ 9, of the Arkansas Constitution contemplates that benefits will not be considered when a private corporation is condemning land.[6]

C. Property Taken by Local Improvement District.

Where property is taken for a proposed public improvement which is purely a local improvement and is to be paid for by special assessments, Arkansas holds that there should not be a deduction of benefits to the remainder of the owner's property.[7] The reason for this is that the owner would be paying for benefits by the assessments which are levied against his property anyway. To credit them against his compensation would amount to a deprivation of just compensation.

D. Property Taken by Private Corporations.

As mentioned previously, where private property is condemned by a private corporation, the Arkansas Constitution requires that benefits not be subtracted from the consideration.[8] The landowner must be paid in money and cannot be compelled to accept the estimated enhancement in value of his remaining property.[9]

IX. INTEREST AND COSTS PAYABLE ON AWARD.

A. Interest.

When payment of damages is postponed, the right to interest from the time payment ought to have been made until it is actually made is a generally recognized right. There is no right of interest where compensation is made before the taking. There must be a fixed point of time when the interest begins to accrue, and this point of time is generally fixed by statute although the point of time cannot be later than the time of actual disposition.[1]

In Arkansas, a landowner may recover interest on a judgment from the date of entry upon the land by the Highway Commission until the judgment is paid, the calculation of interest being based on the value of the land.[2] Our statute in Arkansas provides that in cases of condemnation by the State Highway Commission, the landowner shall be paid interest at the rate of six per cent on the amount finally awarded as the value of the property.[3] This interest is to extend from the date of surrender to the date of payment but is not allowed on money paid into court. Neither the cases nor the statute expressly say that interest should be allowed on damages incurred other than through the actual taking of property.[4] The rule which allows the landowner interest from the date of the filing of the condemnation proceedings applies only where property is actually taken.[5]

Arkansas holds that if a landowner compels the Highway Commission to deposit more money than the land is ultimately determined to be worth, and the landowner withdraws the deposit, the State may charge six per cent interest for the use of the excess money.[6] This type of case has probably been rendered moot, however, by Act 11 of the Arkansas Acts of 1963, which provides that the landowner may not withdraw any additional deposit that the Highway Commission is compelled to make over and above the amount of the original deposit. Conceivably, the original deposit could be excessive, but this seems unlikely.

Certainly, the landowner should receive interest on the judgment from the date he loses use of his land. If the code is to provide for entry on the land prior to judgment, the interest should run from that date as the Arkansas cases hold. Otherwise, interest should run from the date of the judgment itself. There seems to be no sound reason why the landowner should not have use of the full amount deposited, but it is only fair that he pay interest on the excess in the event of a judgment for less than the total amount of the deposit if he has had use of it.

B. Costs.

The allowance of costs is purely statutory, and in the absence of a statute the fees of expert witnesses cannot be charged against the losing party.[7] When the only issue is the value of the land, the owner

should not be compelled to pay the cost of a proceeding brought for the purpose of taking his property. However, in an unsuccessful contest of the validity of the taking, the cost may be taxed against the landowner.[8] Where a landowner wrongfully demands and obtains a judgment for fees or expenses to which he is not entitled, the cost of appeal may be taxed against him.[9]

The general rule is that these matters are purely statutory with respect to the award of costs although it is often held that the owner may be compelled to pay costs where he unsuccessfully contests the validity of the taking.[10] Arkansas is in accord with the general rule. Looking toward the code, it has previously been stated that costs and attorneys' fees should be assessed against the State in situations in which the condemnation proceeding is discontinued after it is begun but before judgment. The Arkansas cases are proper in stating that the owner should not be compelled to pay the cost where the only issue is land value, but that the landowner should have to pay the cost where he contests the validity of the proceeding and loses.

X. REMEDIES OF LANDOWNER WHEN COMPENSATION IS NOT TENDERED.

A. Limitations.

The Statute of Limitations for an action for damage to real property is important only when an entity subject to suit has taken or damaged the land. Thus, if the action is to recover for damage caused by a levee or drainage district, the Statute of Limitations is one year.[1] An action for damage caused by a sewer district must be brought within three years.[2] An action against a railroad corporation (and presumably any private corporation) must be brought within seven years.[3] Where the State or an agency thereof has taken the property, the landowner may not sue for damages.[4] The landowner's remedy is by injunction,[5] and the action must be brought before the agency has made substantial improvements.[6]

The code should provide a uniform Statute of Limitations for suits against improvement districts, private corporations, and the like. A three-year statute of limitations would seem appropriate.

B. Actions for Damages.

A landowner cannot bring suit against the Highway Commission for damages since such a proceeding would be a suit against the State and prohibited by Art. 5, § 20 of the Arkansas Constitution. The landowner is limited to filing an administrative claim for relief.[7] He may, however, enjoin the State or Commission from taking or injuring his property until damages have been paid or provision for payment made.[8] It has also been held that the State cannot be made a defendant in a mortgage foreclosure proceeding, where a portion of the mortgaged premises had been taken by the Highway Commission without notice or proceedings in favor of the mortgagee.[9] These rules, however, do not prevent the Highway Commission from suing in condemnation proceedings, which makes it subject to the same restrictions as a private individual and permits judgment to be entered against it.[10]

The rules with regard to the State do not apply, however, to improvement districts. Actions for damages may be brought against improvement districts.[11]

Since the State's constitutional prohibition against suits by the landowner against the State cannot be corrected in the Highway Code, there seems to be no need to consider this further from the standpoint of the code. By proper administrative procedure for condemnation matters, which would be applicable to the State and all agencies, districts, towns, subdivisions, etc., there would seem no need to be concerned about the rights of landowners to sue. Under such a procedure, a prescribed method of condemnation would be followed, and no land could be taken without affording an adequate remedy to the landowner.

With respect to private corporations, an Arkansas Statute[12] gives a landowner the right to sue railroads which have taken land without paying compensation, by bringing suit at any time before the seven-year statute of limitations has run.[13]

C. Ejectment and Estoppel.

If a railroad takes more land than it can legally take, the landowner's remedy is an action for ejectment from the excess.[14] Ejectment may be maintained at any time before title is acquired by adverse possession or continued acquiescence on the part of the landowner amounts to estoppel.[15] One difficulty in this area is the estoppel rule, which is that if a landowner fails to assert his right to prohibit the Highway Commission from taking his property until payment of compensation and permits the State to occupy his property before compensating him, he is estopped to coerce compensation by retaking the property.[16] Moreover, one who permits a railroad corporation to construct a road bed is estopped to eject the company and is restricted to an action for damages.[17] These difficulties can be cleared up by providing a mandatory procedure to be followed in eminent domain situations.

D. Injunctions.

Although the State is immune from suits for damages, a landowner may enjoin the State from taking or injuring his property until damages have been paid or provision for payment made.[18] An injunction will not lie, however, after property has been taken and substantial improvements made thereon.[19] We have previously commented in this paper on the difficulty in connection with counties. To maintain an injunction in a situation involving the county procedure, the landowner must allege and prove that the county is insolvent and cannot pay the damages suffered.[20] Injunctive relief may also be obtained against private corporations unless the petition is filed too late.[21]

E. Mandamus.

A writ of mandamus may not be used to compel the Highway Commission to institute condemnation proceedings since such a proceeding would simply have the object of forcing the Highway Commission into a position where a claim for damages could be asserted against it, which is directly prohibited by Art. 5, § 20 of the Arkansas Constitution.[22] Mandamus will lie, however, to force a Court to exercise jurisdiction where the Court has made an erroneous decision of law, and there is no specific remedy by appeal.[23] Writs will also lie to compel the State auditor to pay compensation assessed in condemnation proceedings.[24]

The rule is universal that a State, by virtue of its sovereignty, is immune from suit unless it consents thereto. Its susceptibility to suit is ordinarily predicated upon a contractual obligation. The

tortious acts of its agents do not subject it to liability.[25]

There is no difference, however, in the liability of a municipal corporation and a private corporation where the injury amounts to a taking and where the statutes authorizing such injury do not provide a remedy. The same is true where injury to property is incidental to activity authorized by the Legislature, even though landowners are injured and the injury is of such character as to constitute an actionable nuisance at common law as between landowners. Where the Legislature fails to provide a remedy, a landowner may have the taking enjoined or may recover the land by ejectment or may recover damages in an action for trespass.[26]

It is generally well settled that where land is wrongfully taken, under the color of eminent domain, the owner may recover possession in an action of ejectment.[27]

Many jurisdictions treat the passive submission of a landowner to the erection of valuable improvements upon his land as a waiver of his constitutional right to exclusive use of his property.[28] Nichols says that an unfortunate result of the constitutional requirement that compensation be paid in advance and condemnation proceedings be followed is that these proceedings have been abandoned in many jurisdictions, resulting in the waiver mentioned.[29] Nichols believes that a corporation should be held to have acted at its peril in all situations where it acquires property and that the ultimate effect of requiring corporations to comply with the law and to respect the property rights of ordinary individuals cannot fail to be more beneficial to the public interest than the continued existence of a public work.[30]

It is the universal rule that where an unlawful entry upon private land is undertaken or threatened, and the landowner has no opportunity to contest such entry, a court of equity will restrain the entry.[31] Where there is, in a constitutional sense, a taking of land without legislative provision for compensation and without exercise of eminent domain by a corporation, an injunction will issue as a matter of course. Where there is a constitutional provision that compensation shall be paid in advance, the taking is enjoined until this deficiency is overcome.[32]

The Arkansas law on this point is fairly orthodox, and the main problem seems to be to provide an administrative procedure which negates the necessity for consideration of the problems of injunction, estoppel, waiver, and the like. The possibility of a corporation's ignoring this procedure could be eliminated by a statement in the code that any property acquired in a manner contrary to the procedure provided therein would not be effective to pass title and that waiver, estoppel, laches, and adverse possession would not apply to deprive the landowner of his rights.

CONCLUSION

This paper illustrates that the legal decisions involving eminent domain in Arkansas are fairly orthodox, for the most part, and in fact some Arkansas decisions are leading cases in this field. The greatest problem in eminent domain in Arkansas, and the one to which the code can best direct its attention, is the procedural problem with regard to condemnation suits. Arkansas' statutes present a patchwork of different condemnation proceedings which may be pursued by different bodies or agencies, with different modes or procedure and different statutes of limitation. There is no sound reason why there should not be a single procedure applicable to all condemnation proceedings, regardless of the agency or body involved. The only possible exceptions to this rule are created by the Arkansas Constitution, in that (1) jury trials are required in condemnation proceedings brought by private corporations, and (2) the constitutional provision granting county courts exclusive original jurisdiction over roads may necessitate alternate jurisdiction in the County Court over County condemnation actions although this provision has been held not to apply to condemnation. It would be preferable to require the County to proceed in the same Court as the State, but if it is concluded that the County should still be permitted to proceed in the County Court, then the condemnation provisions for that Court should be identical to the regular code provisions. The constitutional provision itself (Art. 7, § 28) should be repealed.

The procedure adopted should be one which makes the landowner a party and gives adequate notice to him in the very beginning. It should bear some similarity to the procedure in other civil actions in which the defendant is served with summons and given a period of time in which to respond. We have previously discussed certain specific allegations which should be contained in the petition (description of the land involved, the owners, the purpose of the action, the value of the property, any disability -- such as incompetency -- the owners may be under, and other appropriate statements). The defendants should be served with notice. The defendants should be required to assert, within a given period of time, any defenses they may have. A deposit should be made by the condemnor, subject to increase by the Court. The code should provide for the time when title vests and entry may be made (subject to the right of the Court to enjoin in the event an issue is raised such as the right to condemn or condemnation for a private purpose or the like). Without elaborating on other details mentioned previously in this paper, suffice it to say that a mandatory procedure should be developed which affords adequate notice to landowners and sufficiently protects the rights of landowners while making ample provision for the condemnor to accomplish its purposes in an expeditious and efficient manner.

It is recommended that as a part of this procedure, jury trials be abandoned in condemnation cases except as constitutionally required in the case of a private corporation. Whether the Court which decides these cases is the Circuit or Chancery Court is not as important as the necessity for obtaining a fair adjudication of the award, based upon an

impartial evaluation of the evidence. This is not effectively being accomplished by juries at the present time.

Where condemnation proceedings are instituted, an answer is filed, and the proceedings are discontinued prior to final judgment, the landowner involved should recover his costs and attorneys' fees. Moreover, no discontinuance should be allowed following the entering of final judgment. Appeals would be handled as in all other civil cases.

The establishment of a uniform procedure would eliminate many problems, the foremost being those with respect to notice and lack of procedural due process and those problems created by the inability of the landowner to obtain payment of compensation. If an adequate deposit were made in the very beginning, this difficulty would not exist.

The code should also spell out the manner in which compensation is to be measured and the various elements to be taken into consideration. Fair market value should be the general standard, and the "before and after rule" should be followed in all situations involving a partial taking. We will not again go into the various elements to be considered in determining value, but everything which may afford an appropriate indication of the true worth of the property should be taken into account, while those elements which are speculative, misleading, or irrelevant should be discarded.

In summation, the major problems in the Arkansas law of eminent domain are created by procedural defects rather than substantive errors. The code can best address itself to correction of this type of situation and at the same time codify the best of the substantive rules pertaining to the measurement of value. In so doing, the code can provide a major service to the people of Arkansas.

FOOTNOTES

I.

1 - Young v. Gurdon, 169 Ark. 399, 275 S.W. 890 (1925)

2 - Cairo & Fulton R.R. v. Turner, 31 Ark. 494 (1876)

3 - Ex parte Martin, 13 Ark. 198 (1853)

4 - 1 Nichols, Eminent Domain, p. 52

5 - Art. 2, § 22; Art. 2, § 23; Art. 12, § 9

6 - 1 Nichols, pp. 30-31

7 - 1 Nichols, pp. 33-34

8 - Little Rock Junction R.R. Co. v. Woodruff, 49 Ark. 381, 5 S.W. 792 (1887)

9 - 1 Nichols, p. 34

10 - 1 Nichols, pp. 38-39

11 - 1 Nichols, § 1.3, p. 50

12 - Art. II, § 23

13 - Munn v. Illinois, 94 U.S. 113 (1876); Taylor v. The Governor, 1 Ark. 27 (1837)

14 - 1 Nichols, § 3.12, p. 201

15 - Georgia v. Chattanooga, 264 U.S. 472, 68 L. Ed. 796, 44 S. Ct. 369 (1924)

16 - Mitchell v. Harmony, 13 How. 115, 14 L. Ed. 75 (1851); Hooe v. U.S., 218 U.S. 322, 54 L. Ed. 1374, 33 S. Ct. 1019 (1910); 1 Nichols § 3.2 pp. 203-204

17 - 1 Nichols, § 3.21, pp. 207-209

18 - Hogue v. Housing Authority of N.L.R., 201 Ark. 263, 144 S.W.2d 49 (1940)

19 - McClintock v. Bovay, 163 Ark. 388, 260 S.W. 395 (1924); 1 Nichols, § 3.222, p. 250

20 - Little Rock Junction R.R. v. Woodruff, 49 Ark. 381, 5 S.W. 792 (1887); 1 Nichols, § 3.23, p. 260

21 - McClintock v. Bovay, 163 Ark. 388, 260 S.W. 395 (1924)

22 - Gregory v. Oklahoma - Miss. R. Products Lines, Inc. 223 Ark. 668, 267 S.W.2d 953 (1954); 1 Nichols § 3.23, p. 264

23 - Patterson Orchard Co. v. Southwest Ark. Utility Corp., 179 Ark. 1029, 18 S.W.2d 1028 (1929); 1 Nichols, § 3.23 (3), p. 267

24 - Newport Levee Dist. v. Price, 148 Ark. 122, 229 S.W. 12 (1921); 1 Nichols, § 3.211 p. 217

25 - Arkansas State Hwy. Comm'n v. Saline County, 205 Ark. 860, 171 S.W.2d 60 (1943); 1 Nichols § 3.21, pp. 213-215

26 - City of Little Rock v. Sawyer, 228 Ark. 516, 309 S.W.2d 30 (1958); See similarly, City of Tacoma v. Taxpayers of Tacoma, 307 P.2d 567 (1957)

27 - Clear Creek Oil & Gas Co. v. Ft. Smith Spelter Co., 148 Ark. 260, 230 S.W. 897 (1921); Lakehead Pipe Line Co. v. Dehn, 64 N.W.2d 903 (1954) (Mich.)

28 - 2 Nichols, § 7.1 p. 418 et seq.; Cloth v. Chicago R. I. & Pac. Ry. Co., 97 Ark. 86, 132 S.W. 1005 (1910)

29 - 2 Nichols, § 7.1, p. 422, lists eight states.

30 - 2 Nichols, § 7.1, pp. 421-422

31 - 2 Nichols, § 7.1, pp. 423-428

32 - Railway Company v. Petty, 57 Ark. 359, 21 S.W. 884 (1893)

33 - Hampton v. Arkansas State Game & Fish Comm'n, 218 Ark. 757, 238 S.W.2d 950 (1951); See similarly, 2 Nichols, § 7.1, p. 429

34 - 2 Nichols, § 7.2 pp. 430-433

35 - Cloth v. Chicago R. I. & P. Ry. Co., 97 Ark. 86, 132 S.W. 1005 (1910) Ozark Coal Co. v. Pennsylvania Anthracite R.R. Co., 97 Ark. 495, 134 S.W. 634 (1911)

36 - 2 Nichols, § 7.2 (2), pp. 433-437

37 - 103 Ark. 452, 146 S.W. 110 (1912)

38 - 2 Nichols, § 7.2 (3), pp.437-438

39 - 169 Ark. 399, 275 S.W. 890 (1925)

40 - 2 Nichols, § 7.4 (1), pp. 470-472

41 - 2 Nichols, § 714 (1), pp. 474-475

42 - Butler Co. R.R. Co. v. St. Louis, Lennett & S. R.R. Co., 132 Ark. 426, 200 S.W. 1007 (1918); Cloth v. Chicago R. I. & Pac. Ry. Co., 97 Ark. 86, 132 S.W. 1005 (1910); 2 Nichols, § 7.222, p. 447

43 - Nichols, § 4.11, p. 373, citing among other cases, Greene County v. Hayden, 175 Ark. 1067, 1 S.W.2d 803 (1928)

44 - 1 Nichols, § 4.11 (2), pp. 377-380

45 - 1 Nichols, § 4.11 (3), p. 383, citing McKennon v. St. Louis, I. M. & So. Ry. Co., 69 Ark. 104, 61 S.W. 383 (1901)

46 - Gray v. Ouachita Creek Watershed Dist., 234 Ark. 181, 351 S.W.2d 142 (1961)

47 - Burford v. Upton, 232 Ark. 456, 338 S.W.2d 929 (1960)

48 - Gregory v. Okla. - Miss. R. Products Lines, Inc., 223 Ark. 668, 267 S.W. 2d 953 (1954); Wollard v. Arkansas State Hwy. Comm'n, 220 Ark. 731, 249 S.W.2d 564 (1952)

49 - 1 Nichols, § 1.42, p.66

50 - Treigle v. Acme Homestead Assn., 297 U. S. 189, 80 L. Ed. 575, 56 S. Ct. 408 (1936); 1 Nichols, § 1.42, pp. 68-69

51 - Arkansas State Hwy. Comm'n v. Union Planters National Bank, 231 Ark. 907, 333 S.W.2d 904 (1960)

52 - Arkansas State Hwy. Comm'n v. Anderson, 184 Ark. 763, 43 S.W.2d 356 (1931)

53 - Shellnut v. Arkansas State Game & Fish Comm'n, 222 Ark. 25, 258 S.W.2d 570 (1953)

54 - West Helena v. Bockman, 221 Ark. 677, 256 S.W.2d 40 (1953); City of Little Rock v. Sun Building & Development Co., 199 Ark. 333, 134 S.W.2d 582 (1939)

55 - City of Ft. Smith v. Van Zandt, 197 Ark. 91, 122 S.W.2d 187 (1938)

56 - Kansas City So. Ry. Co. v. Mena, 123 Ark. 323, 185 S.W. 290 (1916); St. Louis & S. F. Ry. v. Fayetteville, 75 Ark. 534, 87 S.W. 1174 (1905)

57 - Farris v. Arkansas State Game & Fish Comm'n, 228 Ark. 776, 310 S.W.2d 231 (1958)

58 - West Helena v. Bockman, 221 Ark. 677, 256 S.W.2d 40 (1953)

59 - Murray v. Menefee, 20 Ark. 561 (1859)

60 - Arkansas State Hwy. Comm'n v. Anderson, 184 Ark. 763, 43 S.W.2d 356 (1931)

61 - 1 Nichols, § 1.42, p. 70

62 - 1 Nichols, § 1.42 (7), p. 75

63 - Waldrop, Collector v. Kansas City So. Ry., 131 Ark. 453, 199 S.W. 369 (1917)

64 - 1 Nichols, § 1.41 (2), p. 62

65 - Tennessee Gas Transmission Co. v. State, 232 Ark. 156, 335 S.W.2d 312 (1960)

66 - Lindwood & Auburn Levee Dist. v. Arkansas, 121 Ark. 489, 181 S.W. 892 (1915)

67 - Schmidt v. Drainage Dist. # 17, 140 Ark. 541, 215 S.W. 614 (1919)

68 - Stockton v. Baltimore & N. Y. R. Co., 140 U. S. 699; 35 L. Ed. 603, 11 S. Ct. 1028 (1891); U. S. v. Forty Acres of Land, 24 F. Supp. 390 (1938)

69 - I Nichols, § 2.22, p. 166

70 - Schmidt v. Drainage Dist. No. 17, 140 Ark. 541, 215 S.W. 614 (1919)

71 - St. Louis & S. F. Ry. v. Fayetteville, 75 Ark. 534, 87 S.W. 1174 (1905)

72 - 1 Nichols, § 2.22, p. 132

II.

1 - 6 Nichols, § 24.1, pp. 1-2

2 - Beedeville Special School Dist. #28 v. Bone, 218 Ark. 253, 236 S.W.2d 65 (1951); 6 Nichols, § 24.1 (1), p. 3

3 - Beedeville Special School Dist. #28 v. Bone, 218 Ark. 253, 236 S.W.2d 65 (1951); 6 Nichols, § 26.1, p. 105. The Bone case states that the only issue is the value of the property.

4 - Lindwood & Auburn Levee Dist. v. State, 121 Ark. 489, 181 S.W. 892 (1915); State ex rel. Arkansas W. Ry. v. Rowe, 69 Ark. 642, 65 S.W. 463 (1901)

5 - 6 Nichols, § 24.1 (1), p. 4

6 - Beedeville Special School Dist. #28 v. Bone, 218 Ark. 253, 236 S.W.2d 65 (1951)

7 - McClintock v. Bovay, 163 Ark. 388, 260 S.W. 395 (1924)

8 - St. Louis, I. M. & So. Ry. v. Faisst, 99 Ark. 61, 137 S.W. 815 (1911)

9 - Brown v. Wyandott & So. E. Ry., 68 Ark. 134,56 S.W. 862 (1900)

10 - Bentonville R.R. v. Stroud, 45 Ark. 278 (1885)

11 - McClintock v. Bovay, 163 Ark. 388, 260 S.W. 395 (1924)

12 - Ark. Stats. Sec. 35-801 et seq.

13 - Ark. Stats. Sec. 35-702

14 - Ark. Stats. Sec. 35-901 et seq.

15 - Ark. Stats. Sec. 35-1101 et seq.

16 - Ark. Stats. Sec. 35-1201 et seq.

17 - Ark. Stats. Sec. 35-1101 et seq.

18 - Ark. Stats. Sec. 35-301 et seq.

19 - Ark. Stats. Sec. 35-601 et seq.

20 - Ark. Stats. Sec. 35-501 et seq.

21 - Ark. Stats. Sec. 35-901 et seq.

22 - Ark. Stats. Sec. 35-601 et seq.

23 - Ark. Stats. Sec. 35-601 et seq.

24 - Ark. Stats. Sec. 35-1001 et seq.

25 - Ark. Stats. Sec. 35-401 et seq.

26 - Ark. Stats. Sec. 35-201 et seq.

27 - Ark. Stats. Sec. 35-201 et seq.

28 - Ark. Stats. Sec. 35-208 et seq.

29 - State ex rel. Arkansas W. Ry. v. Rowe, 69 Ark. 642, 65 S.W. 463 (1901)

30 - 6 Nichols, § 26.52, p. 210; See Ark. Stats. Sec. 76-533

31 - State v. Rowe, 69 Ark. 642, 65 S.W. 463 (1901)

32 - Road Dist. #6 of Laurence County v. Hall, 140 Ark. 241, 215 S.W. 262 (1919)

33 - Cazort v. Road Imp. Dist. #3, 175 Ark. 570, 299 S.W. 1014 (1927)

34 - Ark. Stat. Sec. 76-917

35 - See Miller County v. Beasley, 203 Ark. 370, 156 S.W.2d 791 (1941), for the rule discussed.

36 - See Miller County v. Beasley, 203 Ark. 370, 156 S.W.2d 791 (1941)

37 - State Hwy. Comm'n v. Hammock, 201 Ark. 927, 148 S.W.2d 324 (1941)

38 - Dowdle v. Raney, 201 Ark. 836, 147 S.W.2d 42 (1941)

39 - Madison County v. Nance, 182 Ark. 775, 32 S.W.2d 1073 (1930)

40 - Greene County v. Knight, 174 Ark. 618, 297 S.W. 861 (1927)

41 - Independence County v. Lester, 173 Ark. 796, 293, S.W. 743 (1927)

42 - Justice v. Greene County, 191 Ark. 252, 85 S.W.2d 728 (1935)

43 - Ark. Stats. Sec. 76-510 and 76-511

44 - Arkansas State Hwy. Comm'n v. Palmer, 222 Ark. 603, 261 S.W.2d 772 (1953)

45 - Arkansas State Hwy. Comm'n v. Pulaski County, 205 Ark. 395, 168 S.W.2d 1098 (1943)

46 - Arkansas State Hwy. Comm'n v. Croom, 225 Ark. 312, 280 S.W. 2d 887 (1955)

47 - Hot Spring County v. Bowman, 229 Ark. 790, 318 S.W.2d 603 (1958); Arkansas State Hwy. Comm'n v. Palmer, 222 Ark. 603, 261 S.W.2d 772 (1953)

48 - Arkansas State Hwy. Comm'n v. Means, 192 Ark. 628, 93 S.W.2d 314 (1936)

49 - Arkansas State Hwy. Comm'n v. Palmer, 222 Ark. 603, 261 S.W. 2d 772 (1953)

340

50 - Arkansas State Hwy. Comm'n v. Dobbs, 232 Ark. 541,/S.W.2d 283 (1960)

51 - Arkansas State Hwy. Comm'n v. Cook, 233 Ark. 534, 345 S.W.2d 632 (1961)

52 - Arkansas State Hwy. Comm'n v. Cook, 233 Ark. 534, 345 S.W.2d 632 (1961)

53 - Arkansas State Hwy. Comm'n v. Dobbs, 232 Ark. 541, 350 S.W.2d 283 (1960)

54 - Arkansas State Hwy. Comm'n v. Bollinger, 230 Ark. 877, 327 S.W.2d 381 (1959)

55 - Fulton County v. Barham, 181 Ark. 593, 27 S.W.2d 87 (1930)

56 - State Hwy. Comm'n v. Saline County, 205 Ark. 860, 171 S.W.2d 60 (1943)

57 - Wollard v. Arkansas State Hwy. Comm'n, 220 Ark. 731, 249 S.W.2d 564 (1952)

58 - Arkansas State Hwy. Comm'n v. Pulaski County, 205 Ark. 395, 168 S.W.2d 1098 (1943)

59 - See the strong language on notice in 1 Nichols, § 4.103 and 4.103 (1) et seq., p. 329 et seq.

60 - See Craig v. Greenwood Dist. of Sebastian County, 91 Ark. 274, 121 S.W. 280 (1909)

61 - Beedeville Special School Dist. #28 v. Bone, 218 Ark. 253, 236 S.W.2d 65 (1951)

62 - Arkansas State Hwy. Comm'n v. Palmer, 222 Ark. 603, 261 S.W.2d 772 (1953)

63 - Gregory v. Okla. - Miss. R. Products Lines, Inc., 223 Ark. 668, 267 S.W.2d 953 (1954)

64 - City of El Dorado v. Kidwell, 236 Ark. 905, 370 S.W.2d 602 (1963)

65 - Greene County v. Hayden, 175 Ark. 1067, 1 S.W.2d 803 (1928)

66 - Gregory v. Okla. - Miss. River Products Lines, Inc., 223 Ark. 668, 267 S.W.2d 953 (1954)

67 - Beedeville Special School Dist. #28 v. Bone, 218 Ark. 253, 236 S.W.2d 65 (1951)

68 - Selle v. City of Fayetteville, 207 Ark. 966, 184 S.W.2d 58 (1944)

69 - Gilbert v. Shaver, 91 Ark. 231, 120 S.W. 833 (1909)

70 - City of El Dorado v. Kidwell, 236 Ark. 905, 370 S.W.2d 602 (1963)

71 - Wilson v. Interstate Construction Co., 178 Ark. 482, 10 S.W.2d 908 (1928)

72 - Dickson v. Board of Directors of Long Prairie Levee Dist., 151 Ark. 22, 235 S.W. 45 (1921)

73 - Gray v. Ouachita Creek Watershed Dist., 234 Ark. 181, 351 S.W.2d 142 (1961)

74 - Butler County R.R. Co. v. St. Louis, Kennet & S.E. R. R., 132 Ark. 426, 200 S.W. 1007 (1918)

75 - Mountain Park Terminal Ry. v. Field, 76 Ark. 239, 88 S.W. 897 (1905)

76 - Arkansas State Hwy. Comm'n v. Bollinger, 230 Ark. 877, 327 S.W.2d 381 (1959)

77 - Arkansas State Hwy. Comm'n v. Marlar, 236 Ark. 385, 366 S.W.2d 191 (1963)

78 - Ft. Smith & Van Buren Dist. v. Scott, 103 Ark. 405, 147 S.W. 440 (1912); See also Bentonville R.R. v. Stroud, 45 Ark. 278 (1885); St. Louis I. M. & So. Ry. v. B. Faisst Co., 99 Ark. 61, 137 S.W. 815 (1911)

79 - 6 Nichols, § 26.13, pp. 149-150

80 - Bradley v. Keith, 229 Ark. 326, 315 S.W.2d 13 (1958)

81 - See Ark. Stat. § 35-906 (Repl. 1957)

82 - Bradley v. Keith, 229 Ark. 326, 315 S.W.2d 13 (1958)

83 - Arkansas Central R.R. v. Smith, 71 Ark. 189, 71 S.W. 947 (1903)

84 - Fayetteville & L. R. Ry. v. Hunt, 51 Ark. 330, 11 S.W. 418 (1888)

85 - Urban Renewal Agency of Harrison v. Hefley, 237 Ark. 39, 371 S.W.2d 141 (1963)

86 - 6 Nichols, § 26.13, pp. 150-151, citing among other cases, Selle v. Fayetteville, 207 Ark. 966, 184 S.W.2d 58 (1944)

87 - Arkansas State Hwy. Comm'n v. Thomas, 231 Ark. 98, 328 S.W.2d 357 (1959) ; For the general rule, see 6 Nichols, §26.1132, p. 132 et seq.

88 - Hare v. Ft. Smith & W. R. R. Co., 104 Ark. 187, 148 S.W. 1038 (1912)

89 - Hare v. Ft. Smith & W. R. R. Co., 104 Ark. 187, 148 S.W. 1038 (1912)

90 - Arkansas State Hwy. Comm'n v. Thomas, 231 Ark. 98, 328 S.W.2d 357 (1959)

91 - Bentonville R. R. v. Stround, 45 Ark. 278 (1885)

92 - Arkansas State Hwy. Comm'n v. Thomas, 231 Ark. 98, 328 S.W. 2d 357 (1959)

93 - Missouri and North Ark. R. R. v. Chapman, 150 Ark. 334, 234 S.W. 171 (1921)

94 - 6 Nichols, § 24.4, p. 44

95 - Bentonville R. R. v. Stroud, 45 Ark. 278 (1885)

96 - White River Bridge Corp. v. State, 192 Ark. 485, 92 S.W. 2d 856 (1936)

97 - Madison County v. Nance, 182 Ark. 775, 32 S.W. 2d 1073 (1930)

98 - Board of Directors of St. Francis Levee Dist. v. Home Life & Accident Co., 176 Ark. 558, 3 S.W. 2d 967 (1928)

99 - Hare v. Ft. Smith & W. R. R. Co., 104 Ark. 187, 148 S.W. 1083 (1912)

100 - Little Rock & Ft. Smith R. R. v. Allister, 68 Ark. 600, 60 S.W. 953 (1901)

101 - Louisville N. O. & Texas R. R. v. Jackson, 123 Ark. 1, 184 S.W. 450 (1916). This case appears to be contrary in part, to Madison County v. Nance, 182 Ark. 775, 32 S.W.2d 1073 (1930)

102 - Little Rock & Ft. Smith R. R. v. Allister, 68 Ark. 600, 60 S.W. 953 (1901)

103 - Johnson v. Washington County, 179 Ark. 1116, 20 S.W.2d 179 (1929)

104 - Johnson v. Washington County, 179 Ark. 1116, 20 S.W.2d 179 (1929)

105 - Arkansas Real Estate Co., Inc. v. Arkansas State Hwy. Comm'n, 237 Ark. 1, 371 S.W.2d 1 (1963)

106 - Cannon v. Felsenthal, 180 Ark. 1075, 24 S.W.2d 856 (1930)

107 - Road Dist. #6 of Laurence County v. Hall, 140 Ark. 241, 215 S.W. 262 (1919)

108 - Cribbs v. Benedict, 64 Ark. 555, 44 S.W. 707 (1897)

109 - See notes II - 50 through 54, supra.

110 - 134 Ark. 121, 203 S.W. 260 (1918)

111 - Arkansas State Hwy. Comm'n v. Hammock, 201 Ark. 927, 148 S.W.2d 324 (1941); See also, Crawford County v. Simmons, 175 Ark. 1051, 1 S.W.2d 561 (1928); Cf., Arkansas State Hwy. Comm'n v. Cook, 233 Ark. 534, 345 S.W. 2d 632 (1961)

112 - State Life Insurance Co. of Indianapolis v. Arkansas State Hwy. Comm'n, 202 Ark. 12, 148 S.W.2d 671 (1941)

113 - 134 Ark. 121, 203 S.W. 260 (1918)

114 - Greene County v. Hayden, 175 Ark. 1067, 1 S.W.2d 803 (1928)

115 - Arkansas State Hwy. Comm'n v. Cook, 233 Ark. 534, 345 S.W.2d 632 (1961)

116 - Arkansas State Hwy. Comm'n v. Dean, 236 Ark. 488, 367 S.W.2d 107, (1963)

117 - Arkansas State Hwy. Comm'n v. Anderson, 234 Ark. 774, 354 S.W.2d 554 (1962)

118 - See Ark. Stats. Sec. 35-1101---35-1109

119 - Young v. Red Fork Levee Dist., 124 Ark. 61, 186 S.W. 604 (1916)

120 - Dickson v. Board of Directors of Long Prairie Levee Dist., 151 Ark. 22, 235 S.W. 45 (1921)

121 - Schmidt v. Drainage Dist. #17, 140 Ark. 541, 215 S.W. 614 (1919)

122 - Arkansas Eminent Domain Digest, § 2.83

123 - Arkansas State Hwy. Comm'n v. Dean, 236 Ark. 488, 367 S.W.2d 107 (1963)

124 - Arkansas State Hwy. Comm'n v. Dobbs, 232 Ark. 541, 340 S.W.2d 283 (1960)

125 - Hot Spring County v. Fowler, 229 Ark. 1050, 320 S.W.2d 269 (1959)

126 - State Hwy. Comm'n v. Holden, 217 Ark. 466, 231 S.W.2d 113 (1950)

127 - Hot Spring County v. Fowler, 229 Ark. 1050, 320 S.W.2d 269 (1959)

128 - Hot Spring County v. Fowler, 229 Ark. 1050, 320 S.W.2d 269 (1959)

129 - Arkansas State Hwy. Comm'n v. Cook 233, Ark. 534, 345 S.W.2d 632 (1961)

130 - Selle v. City of Fayetteville, 207 Ark. 966, 184 S.W. 58 (1944). See also Reynolds v. Louisiana, A. & M. Ry., 59 Ark. 171, 26 S.W. 1039 (1894)

131 - 6 Nichols, § 26.4 pp. 183-184

132 - 6 Nichols, § 26.4, pp. 184-185

133 - Selle v. Fayetteville, 207 Ark. 966, 184 S.W. 58 (1944)

134 - Pine Bluff & Western Ry. v. Kelly, 78 Ark. 83, 93 S.W.562 (1906)

135 - See 6 Nichols, § 26,42, p. 189

136 - 6 Nichols, § 26.42, p. 190

137 - 6 Nichols, § 26.42, p. 191

138 - 6 Nichols, § 26.42, p. 191

139 - Ark. Stats. Sec. 76-536

140 - See Hempstead County v. Gilbert, 182 Ark. 280, 31 S.W.2d 297 (1930)

141 - Hot Spring County v. Fowler, 229 Ark. 1050, 320 S.W.2d 269 (1959)

142 - Arkansas State Hwy. Comm'n v. Cook, 233 Ark. 534, 345 S.W. 632 (1961)

143 - Hot Spring County v. Fowler, 229 Ark. 1050, 320 S.W.2d 269 (1959)

144 - Hot Spring County v. Fowler, 229 Ark. 1050, 320 S.W.2d 269 (1959)

145 - Caladera v. Little Rock, Pulaski Drainage Dist. #2, 215 Ark. 167, 219 S.W.2d 759 (1949).

146 - See Carter v. Randolph County, 146 Ark. 221, 225 S.W. 297 (1920)

147 - See Nemier v. Bramlett, 103 Ark. 209, 146 S.W. 486 (1912)

148 - Arkansas, La. & Gulf Ry. v. Kennedy, 84 Ark. 364, 105 S.W. 885 (1907).

149 - Arkansas Real Estate Co., Inc. v. Arkansas State Hwy. Comm'n, 237 Ark. 1, 371 S.W.2d 1, (1963).

150 - Protho v. Williams, 147 Ark. 535, 229 S.W. 38 (1921)

151 - Arkansas State Hwy. Comm'n v. Light, 235 Ark. 808, 363 S.W.2d 134 (1962)

152 - Road District No. 6 of Lawrence County v. Hall, 140 Ark. 241, 215 S.W. 262 (1919)

153 - Art. 12, § 9, Ark. Const. of 1874

154 - Jahr, Eminent Domain, pp. 359-360

155 - See Ark. Stats. Sec. 76-535---76-538

156 - Ark. Stats. Sec. 76-541 (1963 Supp.)

157 - Ark. Stats. Sec. 76-533

158 - Jahr, p. 365

159 - 6 Nichols, § 26.51, p. 209

160 - 6 Nichols, 26.52, p. 210; Jahr, p. 367

161 - For a discussion of the function of the court in such a situation, see Jahr, pp. 365-366.

162 - Young v. Red Fork Levee District, 124 Ark. 61, 186 S.W. 604 (1916)

163 - Greene County v. Knight, 174 Ark. 618, 297 S.W. 861 (1927)

164 - Ark. Stat. Sec. 76-905

165 - Beck v. Biggers, 66 Ark. 292, 50 S.W. 514 (1899)

166 - Art. 12, § 9, Ark. Const. of 1874

167 - Young v. Red Fork Levee District, 124 Ark. 61, 186 S.W. 604 (1916)

168 - Dickerson v. Tri-County Drainage Dist., 138 Ark. 471, 212 S.W. 334 (1919)

169 - Little Rock & Ft. Smith R. R. v. McGehee, 41 Ark. 202 (1883)

III.

1 - Fulton Ferry & Bridge Co. v. Blackwood, 173 Ark. 645, 293 S.W. 2 (1927)

IV.

1 - 3 Nichols, § 9.2, p. 163, citing among other cases, Young v. Gurdon, 169 Ark. 399, 275 S.W. 890 (1925)

2 - 3 Nichols, § 9.2, pp.164-165

3 - 3 Nichols, § 9.2, p. 165

4 - 3 Nichols, § 9.2, pp. 165-166

5 - 3 Nichols, § 9.2 (2), pp. 168-169

6 - 3 Nichols, § 9.2 (1), pp. 166-167

7 - Jahr, p. 52

8 - Patterson Orchard Co. v. Southwest Ark. Utilities Corp., 179 Ark. 1029, 18 S.W.2d 1028 (1929)

9 - Patterson Orchard Co. v. Southwest Ark. Utilities Corp., 179 Ark. 1029, 18 S.W.2d 1028 (1929)

10 - Bracey v. St. Louis, S. F. & N. O. R. R., 79 Ark. 124, 95 S.W. 151, (1906)

11 - St. Louis & S. F. Ry. v. Tapp, 64 Ark. 357, 42 S.W. 667 (1897)

12 - Cathey v. A. P. & L. Co., 193 Ark. 92, 97 S.W.2d 624 (1936)

13 - Young v. Gurdon, 169 Ark. 399, 275 S.W. 890 (1925)

14 - St. Louis & F. F. Ry. Co. v. Fayetteville, 75 Ark. 534, 87 S.W. 1174 (1905)

15 - Hopewell School Dist. v. Rush, 179 Ark. 316, 15 S.W.2d 985 (1929)

16 - Ark. Stat. Sec. 19-2313

17 - Young v. Gurdon, 169 Ark. 399, 275 S.W. 890 (1925)

18 - Mobley Construction Co. v. Fox, 201 Ark. 646, 146 S.W.2d 905 (1941)

19 - State v. Earl, 233 Ark. 348, 345 S.W.2d 20 (1961)

20 - See Nichols, § 9.2 pp. 165-166

21 - Padgett v. A. P. & L. Co., 226 Ark. 409, 290 S.W.2d 426 (1956)

22 - Arkansas P. & L. Co. v. Morris, 221 Ark. 576, 254 S.W.2d 684 (1953)

23 - State v. Earl, 233 Ark. 348, 345 S.W.2d 20 (1961)

24 - Taylor v. Armstrong, 24 Ark. 102 (1863)

25 - See Ark. Stats. Secs. 76-734-540

26 - Ark. Stat. Sec. 76-536

27 - Arkansas, La. & G. Ry. v. Kennedy, 84 Ark. 364, 105 S.W. 885 (1907)

28 - Organ v. Memphis & L. R. R. R., 51 Ark. 235, 11 S.W. 96, (1888)

29 - Arkansas P. & L. Co. v. Morris, 221 Ark. 576, 254 S.W.2d 684 (1953); Texas, Ill. Natural Gas Pipeline Co. v. Lawhon, 220 Ark. 932, 251 S.W.2d 477 (1952); Patterson Orchard Co. v. Southwest Utilities Corp., 179 Ark. 1029, 18 S.W.2d 1028 (1929)

30 - Cathey v. Arkansas P. & L. Co., 193 Ark. 92, 97 S.W.2d 624 (1936); Southwestern Bell Tel. Co. v. Biddle, 186 Ark. 294, 54 S.W.2d 57 (1932). See also Padgett v. Arkansas P. & L. Co., 226 Ark. 409, 290 S.W.2d 426 (1956)

31 - See Patterson Orchard Co. v. Southwest Utilities Corp., 179 Ark. 1029, 18 S.W.2d 1028 (1929)

V.

1 - Young v. Gurdon, 169 Ark. 399, 275 S.W. 890 (1925); Madison County v. Nance, 182 Ark. 775, 32 S.W.2d 1073 (1930); See Nichols, § 8.1, p. 2

2 - State Life Ins. Co. of Indianapolis v. Arkansas State Hwy. Comm'n, 202 Ark. 12, 148 S.W.2d 671 (1941)

3 - Arkansas State Hwy. Comm'n v. Hammock, 201 Ark. 927, 148 S.W.2d 324 (1941)

4 - Arkansas State Hwy. Comm'n v. Kincannon, 193 Ark. 450, 100 S.W.2d 969 (1937)

5 - Board of Directors of St. Francis Levee Dist. v. Morledge, 231 Ark. 815, 332 S.W.2d 822 (1960); Staub v. Mud Slough Drainage Dist. No. 1, 216 Ark. 706, 227 S.W.2d 140 (1950)

6 - Fenolio v. Sebastian Bridge Dist., 133 Ark. 380, 200 S.W. 501 (1918)

7 - Joslin Mfg. Co. v. Providence, 262 U. S. 668 (1922); Cannon v. Felsenthal, 180 Ark. 1075, 24 S.W.2d 856 (1930)

8 - 3 Nichols, § 8.71, p. 121

9 - Southwestern Water Co., Inc. v. Merit, 224 Ark. 499, 275 S.W.2d 18 (1955)

10 - Justice v. Greene County, 191 Ark. 252, 85 S.W.2d 728 (1935). See also Miller County v. Beasley, 203 Ark. 370, 156 S.W.2d 791 (1941)

11 - Ark. Stats. Sec. 76-536 -- 76-541

12 - Rendered moot are: Arkansas State Hwy Comm'n v. Rich, 235 Ark. 858, 362 S.W.2d 429 (1962) and Arkansas State Hwy. Comm'n v. Light, 235 Ark. 808, 363 S.W.2d 134 (1962)

13 - Arkansas Real Estate Co., Inc. v. Arkansas State Hwy. Comm'n, 237 Ark. 1, 371 S.W.2d 1 (1963)

14 - Arkansas State Hwy. Comm'n v. Partain, 192 Ark. 127, 90 S.W.2d 968 (1936)

15 - 3 Nichols, § 8.5, pp. 17-26. Nichols cites Arkansas cases to support both views.

16 - Keith v. Drainage Dist., 183 Ark. 384, 36 S.W.2d 59 (1931); Missouri & N. Ark. R. R. v. Chapman, 150 Ark. 334, 234 S.W. 171 (1921)

17 - Caldarera v. Little Rock - Pulaski Drainage Dist. #1, 215 Ark. 167, 219 S.W.2d 759 (1949)

18 - City of Little Rock v. Moreland, 231 Ark. 996, 334 S.W.2d 229 (1960)

19 - Arkansas State Hwy. Comm'n v. Arkansas P. & L. Co., 235 Ark. 227, 359 S.W.2d 441 (1962), 231 Ark. 307, 330 S.W.2d 77 (1959)

20 - Watson v. Harris, 214 Ark. 349, 216 S.W.2d 784 (1949)

21 - Thibault v. McHaney, 119 Ark. 188, 177 S.W. 877 (1915)

22 - 2 Nichols, § 5.22 (2), pp. 31-32

23 - Arkansas State Hwy. Comm'n v. Thomas, 231 Ark. 98, 328 S.W.2d 367 (1959)

24 - Arkansas State Hwy. Comm'n v. Cochran, 230 Ark. 881, 327 S.W.2d 733 (1959). See also 2 Nichols, § 5.23, pp. 35-41

25 - Arkansas State Hwy. Comm'n v. Fox, 230 Ark. 287, 322 S.W.2d 81 (1959)

26 - St. Louis & S. F. Ry. Co. v. Fayetteville, 75 Ark. 534, 87 S.W. 1174 (1905). See also 2 Nichols, § 5.72, pp. 70-72

27 - Fulton Ferry & Bridge Co. v. Blackwood, 173 Ark. 645, 293 S.W.2d (1927)

28 - Desha v. Independence County Bridge Dist. #1, 179 Ark. 561, 18 S.W.2d 337 (1928)

29 - Arkansas State Hwy. Comm'n v. Stanley, 234 Ark. 428, 353, S.W.2d 173 (1962)

30 - Watson v. Harris, 214 Ark. 349, 216 S.W.2d 784 (1949)

31 - Keith v. Drainage Dist. #7, 183 Ark. 384, 36 S.W.2d 59 (1931)

32 - Springfield & Memphis Ry. v. Henry, 44 Ark. 360 (1884)

33 - North Arkansas Hwy. Imp. Dist. #1 v. Greer, 163 Ark. 141, 259 S.W. 380 (1924)

34 - Arkansas State Hwy. Comm'n v. Arkansas P. & L. Co., 235 Ark. 277, 359 S.W.2d 441 (1962); Arkansas State Hwy Comm'n v. Arkansas P. & L. Co., 231 Ark. 307, 330 S.W.2d 77 (1959)

35 - Padgett v. Arkansas P. & L. Co., 226 Ark. 409, 290 S.W.2d 426 (1956)

36 - Cottey v. Arkansas P. & L. Co., 193 Ark. 92, 97 S.W.2d 624 (1936)

37 - W. R. Wrape Stave Co. v. Arkansas State Game & Fish Comm'n, 215 Ark. 229, 219 S.W.2d 948 (1949)

38 - St. Louis & S. F. Ry. Co. v. Fayetteville, 75 Ark. 534, 87 S.W. 1174 (1905)

39 - Sewer Imp. Dist. #1 of Wynne v. Fiscus, 128 Ark. 250, 193 S.W. 521 (1917)

40 - Arkansas State Hwy. Comm'n v. Bingham, 231 Ark. 934, 333 S.W.2d 729 (1960)

41 - Van Buren v. Smith, 175 Ark. 697, 300 S.W. 397 (1927)

42 - El Dorado v. Scruggs, 113 Ark. 239, 168 S.W. 846 (1914)

43 - Arkansas State Hwy. Comm'n v. Fox, 230 Ark. 287, 322 S.W.2d 81 (1959)

44 - Kansas City So. Ry. v. Anderson, 88 Ark. 129, 113 S.W. 1030 (1908)

45 - Kansas City So. Ry. v. Anderson, 88 Ark. 129, 113 S.W. 1030 (1908)

46 - See Arkansas State Hwy. Comm'n v. Bingham, 231 Ark. 934, 333 S.W.2d 728 (1960); Arkansas Hwy. Comm'n v. Union Planters National Bank, 231 Ark. 907, 333 S.W.2d 904 (1960)

47 - Tuggle v. Tribble, 177 Ark. 296, 6 S.W.2d 312 (1928)

48 - Arkansas Hwy. Comm'n v. Union Planters National Bank, 231 Ark. 907, 333 S.W.2d 904 (1960)

49 - Arkansas State Hwy. Comm'n v. Ptak, 236 Ark. 105, 364 S.W.2d 794 (1963)

50 - Campbell v. Arkansas State Hwy. Comm'n, 183 Ark. 780, 38 S.W.2d 753 (1931)

51 - Sewer Improvement Dist. #1 of Sheridan v. Jones, 199 Ark. 534, 134 S.W.2d 551 (1939)

52 - Sewer Improvement Dist. #1 of Wynne v. Fiscus, 128 Ark. 250, 193 S.W. 521 (1917)

53 - Shellnut v. Arkansas State Game & Fish Comm'n, 225 Ark. 25, 258 S.W.2d 570 (1953)

54 - Garland Levee Dist. v. Hutt, 207 Ark. 784, 183 S.W.2d 296 (1944)

55 - Collom v. Van Buren County, 223 Ark. 525, 267 S.W.2d 14 (1954)

56 - Van Buren v. Smith, 175 Ark. 697, 300 S.W. 397 (1927)

57 - Arkansas State Hwy. Comm'n v. Arkansas P. & L. Co., 235 Ark. 277, 359 S.W.2d 441 (1962)

58 - Sharp v. Drainage Dist. #7, 164 Ark. 306, 261 S.W. 923 (1924)

59 - St. Francis Drainage Dist. v. Austin, 227 Ark. 167, 296 S.W.2d 668 (1956)

60 - Campbell v. Arkansas State Hwy. Comm'n, 183 Ark. 780, 38 S.W.2d 753 (1931)

61 - Selle v. Fayetteville, 207 Ark. 966, 184 S.W.2d 58 (1944)

62 - Alexander v. Temple, 172 Ark. 611, 290 S.W. 63 (1927)

63 - St. Francis Drainage Dist. v. Austin, 277 Ark. 167, 296 S.W.2d 668 (1956)

64 - Newgass v. St. Louis, Ark. & Tex. R.R., 54 Ark. 140, 155 S.W. 188 (1891)

VI.

1 - Scott v. State, 230 Ark. 766, 326 S.W.2d 812 (1959)

- Clark County v. Mitchell, 223 Ark. 404, 266 S.W.2d 831 (1954)

Hempstead County v. Huddleston, 182 Ark. 276, 31 S.W.2d 300 (1930)

See also 4 Nichols, § 12.2, p. 41, et seq; Jahr, § 71, p. 102.

2 - State ex. rel. Publicity and Parks Comm. v. Earl, 223 Ark. 348, 345 S.W.2d 20 (1961)

3 - Arkansas State Hwy. Comm'n v. Kennedy, 234 Ark. 89, 350 S.W.2d 526 (1961)

4 - Lazenby v. Ark. State Hwy. Comm'n, 231 Ark. 601, 331 S.W.2d 705 (1960); Baucum v. A. P. & L. Co. 179 Ark. 154, 15 S.W.2d 399 (1929); See also, Orgel, Valuation Under Eminent Domain, § 20, pg. 90, et seq.

5 - Baucum v. A. P. & L. Co., 179 Ark. 154, 15 S.W.2d 399 (1929)

6 - Arkansas State Hwy. Comm. v. Hood, 237 Ark. 202, 372 S.W.2d 387 (1963)

7 - This case is cited at length in 1 Orgel, § 20, p. 90; 4 Nichols, § 12.2 [1] p. 49; Jahr, § 70, p. 99.

8 - Orgel, § 20, p. 95

9 - Arkansas State Highway Comm'n v. Bryant, 233 Ark. 841, 349 S.W.2d 349 (1961)

10 - Lazenby v. Arkansas State Hwy. Comm'n, 231 Ark. 601, 331 S.W.2d 705 (1960)

11 - Magnolia Pipe Line Co. v. Arkansas State Game & Fish Comm'n, 218 Ark. 932, 240 S.W.2d 857 (1951)

12 - 1 Orgel, § 64, p. 290

13 - 1 Orgel, § 64, p. 291

14 - 1 Orgel, § 65, pp. 300-302

15 - 1 Orgel, § 64, p. 292. The state is Ohio: Ohio General Code, § 1053.

16 - Kansas City So. Try. v. Boles, 88 Ark. 533, 115 S.W. 375 (1908)

17 - Lazenby v. Ark. State Hwy. Comm'n, 231 Ark. 601, 331 S.W.2d 703 (1960)

18 - Arkansas State Hwy. Comm'n v. Union Planters Nat'l Bank, 231 Ark. 907, 333 S.W.2d 904 (1960); Malvern & Ouachita River R.R. v. Smith, 181 Ark. 626, 26 S.W.2d 1107 (1930)

19 - Herndon v. Pulaski County, 196 Ark. 284, 117 S.W.2d 1051 (1938)

20 - Texas & St. Louis Ry. v. Cella, 42 Ark. 528 (1884)

21 - Little Rock, Miss. R. & Tex. Ry. v. Allen, 41 Ark. 431 (1883)

22 - State ex rel. Publicity & Parks Comm'n v. Earl, 223 Ark. 348, 345 S.W.2d 20 (1961)

23 - 4 Nichols, § 12.314, p. 140 et seq.

24 - Buford v. Upton, 232 Ark. 456, 338 S.W.2d 927 (1960)

25 - Scott v. State, 230 Ark. 766, 326 S.W.2d 812 (1959)

26 - Orgel, § 81, p. 351

27 - Orgel, § 81, p. 353

28 - Orgel, § 83, p. 355 et seq.

29 - Ark. State Hwy. Comm'n v. Cochran, 230 Ark. 881, 327 S.W.2d 733 (1959)

30 - Scott v. State, 230 Ark. 766, 326 S.W.2d 812 (1959)

31 - Burford v. Upton, 232 Ark. 456, 338 S.W.2d 927 (1960)

32 - Gurdon & Ft. Smith R. R. v. Vaught, 97 Ark. 234, 133 S.W. 1019 (1911)

33 - Ft. Smith & Van Buren Dist. v. Scott, 103 Ark. 405, 147 S.W. 440 (1912)

34 - Desha v. Independence County Bridge Dist. #1, 176 Ark. 253, 3 S.W.2d 969 (1928)

35 - 1 Orgel, § 37, §. 172

36 - 1 Orgel, § 38, pp. 175-176

37 - 4 Nichols, § 12.1 [5], p. 40, and § 12.22 [2], p. 70

38 - 4 Nichols, § 12.22 [2], p. 71

39 - Ark. State Hwy. Comm'n v. Richards, 229 Ark. 783, 318 S.W.2d 605 (1958); Kansas City Southern Ry. v. Anderson, 88 Ark. 129 133 S.W. 1030 (1908)

40 - Ark. State Hwy. Comm. v. Carpenter, 237 Ark. 46, 371 S.W.2d 535 (1963)

41 - Kansas City Southern Ry. v. Boles, 88 Ark. 533, 115 S.W. 375 (1908)

42 - See 2 Nichols, § 5.81, p. 201

43 - Ark. State Hwy. Comm'n v. Carpenter, 237 Ark. 46, 371 S.W.2d 535 (Oct. 14, 1963); State Hwy. Comm'n v. Holden, 217 Ark. 466, 231 S.W.2d 113 (1950)

44 - 2 Nichols, § 5.81, p. 201; § 5.81 [3], p. 204

45 - Ark. State Hwy. Comm'n v. Stanley, 234 Ark. 428, 353 S.W.2d 173 (1962)

46 - 1 Orgel, § 165, p. 672

47 - State ex rel. Publicity & Parks Comm'n v. Earl, 223 Ark. 348, 345 S.W.2d 20 (1961)

48 - Magnolia Pipe Line Co. v. Ark. State Game & Fish Comm'n, 218 Ark. 932, 240 S.W.2d 857 (1951)

49 - 1 Orgel, p. 409

50 - 1 Orgel, § 95, p. 409

VII.

1 - Desha v. Independence County Bridge Dist. #1, 176 Ark. 253, 3 S.W.2d 969 (1928)

2 - 5 Nichols, § 18.11 p. 142

3 - Malvern & Ouachita River R. R. v. Smith, 181 Ark. 626, 26 S.W.2d 1107 (1930)

4 - 5 Nichols, § 18.1 [3], pp. 134-135

5 - Ark. State Hwy. Comm'n v. Muswick Cigar & Beverage Co., 231 Ark. 265, 329 S.W.2d 173 (1962)

6 - Ark. State Hwy. Comm'n v. Stanley, 234 Ark. 428, 353 S.W.2d 173 (1962)

7 - Collum v. Van Buren County, 223 Ark. 525, 267 S.W.2d 14 (1954). In this case two witnesses stated that the benefits to the landowner's remaining land for exceeded all damages, and the jury after viewing the land by consent of the parties decided the landowner should receive no damages. This was upheld on appeal.

8 - 5 Nichols, § 18.11, p. 146

9 - 5 Nichols, § 18.3, p. 165

10 - Ibid.

11 - Ark. State Hwy. Comm'n v. Kennedy, 223 Ark. 844, 349 S.W.2d 132 (1961)

12 - Bridgeman v. Baxter County, 202 Ark. 15, 148 S.W.2d 673 (1941)

13 - See 5 Nichols, § 18.4, p. 183

14 - Urban Renewal of Harrison v. Hefley, 237 Ark. 39, 371 S.W.2d 141 (1963)

15 - Lazenby v. Ark. State Hwy. Comm'n, 231 Ark. 601, 335 S.W.2d 705 (1960)

16 - City of Little Rock v. Sawyer, 228 Ark. 516, 309 S.W.2d 30 (1958)

17 - 5 Nichols, § 18.4, p. 183 et seq.

18 - 5 Nichols, § 18.4 [4], p. 204

19 - Ark. State Hwy. Comm'n v. Johns, 236 Ark. 585, 367 S.W.2d 436 (1963)

20 - See a discussion of this in 5 Nichols, § 18.41, p. 220

21 - Ark. State Hwy. Comm'n v. Covert, 232 Ark. 463, 338 S.W. 2d 196 (1960)

22 - Hot Spring County v. Prickett, 229 Ark. 941, 319 S.W.2d 213 (1959)

23 - 5 Nichols, § 18.4 [2], p. 198

24 - 5 Nichols, § 18.4 [2], p. 201

25 - 5 Nichols, § 18.42, p. 234

26 - Feibleman v. Truckline Gas Co., 234 Ark. 277, 351 S.W.2d 447 (1961)

27 - Ark. State Hwy. Comm'n v. Stanley, 234 Ark. 428, 353 S.W.2d 173 (1962)

28 - Ark. State Hwy. Comm'n v. Johns, 236 Ark. 585, 367 S.W.2d 436 (1963)

29 - Ark. State Hwy. Comm'n v. Ptak, 236 Ark. 105, 364 S.W.2d 794 (1963)

30 - 5 Nichols, § 18.42 [1], pp. 240-241

31 - Ark. State Hwy. Comm'n v. Hood, 237 Ark. 202, 372 S.W.2d 387 (1963)

32 - 4 Nichols, § 13.3, p. 439

33 - See foot note 32, supra.

34 - Ark. State Hwy. Comm'n v. Addy, 229 Ark. 768, 318 S.W.2d 595 (1958), citing 1 Orgel, § 167 and 5 Nichols, p. 225. The citation to Nichols is erroneous. The Orgel citation refers to "Scattering decisions" and is more limited than the Arkansas Court indicates.

35 - City of Cushing v. Pote, 128 Okla. 303, 262 Pac. 1070 (1928)

36 - Kentucky Water Service Co. v. Bird, 239 S.W.2d 66 (1951)

37 - See 4 Nichols, § 13.3 [1], p. 443 and § 13.3 [2], p. 449

38 - 4 Nichols § 13.3 [2], pp. 449-450

39 - 4 Nichols, § 12.3122, p. 127

40 - Desha v. Independence County Bridge Dist. #1, 176 Ark. 253, 3 S.W.2d 969 (1928)

41 - Ark. State Hwy. Comm'n v. McHaney, 234 Ark. 817, 354 S.W.2d 738 (1963)

42 - 4 Nichols, § 12.311 [3], p. 89. Nichols considers this a good rule.

43 - Ark. State Hwy. Comm'n v. Witkowski, 236 Ark. 66, 364 S.W.2d 309 (1963)

44 - Ark. State Hwy. Comm'n v. Carder, 228 Ark. 8, 305 S.W.2d 330 (1957)

45 - City of Little Rock v. Sawyer, 228 Ark. 516, 309 S.W.2d 30 (1958); Ark. State Hwy. Comm'n v. Richards, 229 Ark. 783, 318 S.W.2d 605 (1958)

46 - Ark. State Hwy. Comm'n v. Richards, 229 Ark. 783, 318 S.W.2d 605 (1958)

47 - 4 Nichols, § 12.313, p. 135 et seq.

48 - Ark. State Hwy. Comm'n v. Ptak, 236 Ark. 105, 364 S.W.2d 794 (1963)

49 - 4 Nichols, § 14.22, p. 520

50 - Ark. State Hwy. Comm'n v. Carpenter, 237 Ark. 46, 371 S.W.2d 535 (Oct. 1963)

51 - Kansas City So. Ry. v. Anderson, 88 Ark. 129, 113 S.W. 1030 (1908)

52 - Ark. State Hwy. Comm'n v. Fox, 230 Ark. 287, 322 S.W.2d 81 (1959)

53 - 4 Nichols, § 14.2471, pp. 653-661

54 - Ark. Stats. Sec. 76-521

55 - Washington County v. Darp, 196 Ark. 147, 116 S.W.2d 1051 (1938)

56 - Texas & St. Louis Ry v. Eddy, 42 Ark. 527 (1854)

57 - 5 Nichols, § 22.1, p. 499

58 - Ark. State Hwy. Comm'n v. Elliott, 234 Ark. 619, 353 S.W.2d 526 (1962)

59 - 4 Nichols, § 12.311 [2], p. 87

60 - Ark. State Hwy. Comm'n v. Snowden, 223 Ark. 565, 345 S.W.2d 917 (1961)

61 - 4 Nichols, § 12.311 [1], p. 85

62 - Yonts v. Public Service Comm'n, 179 Ark. 695, 17 S.W.2d 886 (1929)

63 - 4 Nichols, § 12.3113 [2], p. 107

64 - Ark. State Hwy. Comm'n v. Witkowski, 236 Ark. 66, 364 S.W.2d 309 (1963)

65 - Ark. State Hwy. Comm'n v. Watkins, 229 Ark. 27, 313 S.W.2d 86 (1958)

66 - 5 Nichols, § 18.11 [2], p. 159, pp. 161-162

67 - See footnote 66

68 - St. Louis & Ark. & Tex. R. R. v. Anderson, 39 Ark. 167 (1882)

69 - 4 Nichols, § 14.24321, p. 597

70 - Ark. State Hwy. Comm'n v. Watkins, 229 Ark. 27, 313 S.W.2d 86 (1958); Testimony that pools of water were left on the remainder of a tract being partially condemned, which might cause sickness in animals, was held too speculative in Railway v. Combs, 51 Ark. 324, 11 S.W. 418 (1888)

71 - 4 Nichols, § 12.314, p. 140-152

72 - Ark. State Hwy. Comm'n v. Carder, 228 Ark. 8, 305 S.W.2d 330 (1957)

73 - U. S. v. 620 Acres of Land, 101 F. Supp. 686 (Ark. 1952)

74 - Kansas City So. Ry. v. Boles, 88 Ark. 533, 115 S.W. 375 (1908)

75 - 4 Nichols, § 12.314, p. 140

76 - Ark. State Hwy. Comm'n v. Blakeley, 231 Ark. 271, 329 S.W.2d 158 (1959)

77 - 5 Nichols, § 18.7, p. 316

78 - See footnote 77

79 - 4 Nichols, § 12.311 [2]

80 - City of Little Rock v. Sawyer, 228 Ark. 516, 309 S.W.2d 30 (1958)

81 - 4 Nichols, § 20.1, p. 369

82 - Ark. State Hwy. Comm'n v. Jelks, 203 Ark. 878, 159 S.W.2d 465 (1942)

83 - Ark. State Hwy. Comm'n v. Cochran, 230 Ark. 881, 327 S.W.2d 733 (1959); 4 Nichols, § 13.22, p. 408

84 - 4 Nichols, § 13.22, p. 408

85 - Bridgeman v. Baxter County, 202 Ark. 15, 148 S.W.2d 673 (1941)

86 - City of Fayetteville v. Stone, 194 Ark. 218, 106 S.W.2d 158 (1937)

87 - 5 Nichols, § 18.3, p. 165

88 - City of Little Rock v. Sawyer, 228 Ark. 516, 309 S.W.2d 30 (1958)

89 - 4 Nichols, § 13.2, p. 402

VIII

1 - 1 Orgel, § 7, p. 41

2 - Ross v. Clark County, 185 Ark. 1, 45 S.W.2d 31 (1932)

3 - Little Rock & Ft. Smith R.R. v. Allister, 68 Ark. 600, 60 S.W. 953 (1901)

4 - Bridgeman v. Baxter County, 202 Ark. 15, 148 S.W.2d 673 (1941)

5 - Weideneyer v. Little Rock, 157 Ark. 5, 247 S.W.2d 62 (1923)

6 - City of Paragould v. Milner, 114 Ark. 334, 170 S.W. 78 (1914)

7 - Gregg v. Sanders, 149 Ark. 15, 231 S.W. 190 (1921)

8 - Little Rock & Ft. Smith R.R. v. Allister, 68 Ark. 600, 60 S.W. 953 (1901)

9 - St. Louis, Ark. & Tex. R.R. v. Anderson, 39 Ark. 167 (1882)

IX.

1 - 3 Nichols, § 8.63, p. 104-109

2 - Ark. State Hwy. Comm. v. Stupenti, 222 Ark. 0 257 S.W. 2d 37 (1953)

3 - Ark. Stats. Sec. 76-536

4 - See Ark. State Hwy. Comm'n v. Stupenti, 222 Ark. 0 257, S.W.2d 37 (1953)

5 - Donaghey v. Lincoln, 171 Ark. 1042, 287 S.W. 407 (1926)

6 - Ark. State Hwy. v. Rich, 235 Ark. 837, 362 S.W.2d 425 (1962)

7 - Ark. State Hwy. Comm'n v. Union Planters Nat'l Bank, 232 Ark. 200, 334 S.W.2d 879 (1960)

8 - Ark. State Hwy. Comm'n v. Union Planters Nat'l Bank, 232 Ark. 200, 334 S.W.2d 879 (1960)

9 - Ark. State Hwy. Comm'n v. Union Planters Nat'l Bank, 232 Ark. 200, 334 S.W.2d 879 (1960)

10 - 3 Nichols, § 8.64, p. 117

X.

1 - Ark. Stats. Sec. 35-1109

2 - Sewer Improvement Dist. of Sheridan v. Jones, 199 Ark. 534, 134 S.W.2d 551 (1939)

3 - Memphis & Little Rock R.R. v. Organ, 67 Ark. 84, 55 S.W. 952 (1899)

4 - Ark. State Hwy. Comm'n v. Partain, 193 Ark. 803, 103 S.W.2d 53 (1937)

5 - Ark. State Hwy. Comm'n v. Palmer, 222 Ark. 603, 261 S.W.2d 772 (1953)

6 - Miller County v. Beasley, 203 Ark. 370, 156 S.W.2d 791 (1941)

7 - Bryant v. Ark. State Hwy. Comm'n, 233 Ark. 41, 342 S.W.2d 415 (1961); See also Watson v. Dodge, 187 Ark. 1055, 63 S.W.2d 993 (1933)

8 - Ark. State Hwy. Comm'n v. Palmer, 222 Ark. 603, 261 S.W.2d 772 (1953)

9 - Federal Land Bank of St. Louis v. Ark. State Hwy. Comm'n, 194 Ark. 616, 108 S.W.2d 1077 (1937)

10 - Ark. State Hwy. Comm'n v. Partain, 193 Ark. 803, 103 S.W.2d 53 (1937)

11 - Sewer Improvement District No. 1 of Sheridan v. Jones, 199 Ark. 534, 134 S.W.2d 551 (1939); Hogge v. Drainage Dist. No. 7, 181 Ark. 564, 26 S.W.2d 887 (1930); See also Dobbs v. Town of Gillett, 119 Ark. 398, 177 S.W. 1141 (1915)

12 - Ark. Stats. Sec. 35-101

13 - Missouri & North Ark. R.R. v. Chapman, 150 Ark. 334, 234 S.W. 171 (1921); Ratcliff v. Adeer, 71 Ark. 269, 72 S.W. 896 (1903)

14 - McKennon v. St. Louis, I.M. & So. Ry. 69 Ark. 104, 61 S.W. 383 (1901)

15 - Reichert V. St. Louis & S.F. Ry., 51 Ark. 491, 11 S.W. 696 (1889)

16 - Federal Land Bank of St. Louis v. Ark. State Hwy. Comm'n, 194 Ark. 616, 108 S.W.2d 1077 (1937)

17 - Warren & O.V.R.R. v. Garrison, 74 Ark. 136, 85 S.W. 81 (1905)

18 - Ark. State Hwy. Comm'n v. Palmer, 222 Ark. 603, 261 S.W.2d 772 (1953)

19 - Miller County v. Beasley, 203 Ark. 370, 156 S.W.2d 791 (1941)

20 - State Life Insurance Co. of Indianapolis v. Ark. State Hwy. Comm'n, 202 Ark. 12, 148 S.W.2d 671 (1941). See also, Independence County v. Lester, 173 Ark. 796, 293 S.W. 743 (1927)

21 - Ark., La. & G. Ry. v. Kennedy, 84 Ark. 364, 105 S.W. 885 (1907) Organ v. Memphis & Little Rock R.R., 51 Ark. 235, 11 S.W. 96 (1888)

22 - Bryant v. Ark. State Hwy. Comm'n, 233 Ark. 41, 342 S.W.2d 415 (1961)

23 - Gilbert v. Shaver, 91 Ark. 231, 120 S.W. 833 (1909)

24 - Grise v. Auditor, 17 Ark. 572 (1856)

25 - 6 Nichols, § 30.1, p. 446

26 - 6 Nichols, § 32.1, p. 552

27 - 6 Nichols, § 28.32, p. 410

28 - 6 Nichols, § 28.321, p. 414

29 - See Footnote 28, supra.

30 - 6 Nichols, § 28.321 [1], pp. 416-417

31 - 6 Nichols, § 28.22, p. 378

32 - 6 Nichols, § 28.22 [3], p. 388

16678

PROPOSED
ARKANSAS
HIGHWAY, ROAD AND STREET CODE

Research Project
HRC-11
Phase III

Prepared By
The
University of Arkansas
School of Law
And The
Arkansas Highway Department, Division of Planning and Research, and Legal Division
In Cooperation with the U.S. Department of Transportation
Federal Highway Administration, Bureau of Public Roads

PREAMBLE

WHEREAS, the body of Arkansas highway, road, and street law now comprises an enormous accumulation in the Arkansas Statutes, an accumulation which has been enacted over the last ten decades and which reflects three very separate and distinct eras of legal evolution in highway, road, and street law; to wit:

First. The earliest era, the decades following the War Between the States and including the first decade of the present century, a fifty-year period when better than nine of every ten Americans lived on farms, and railroads dominated the flow of commerce, while legal concepts were inclined to consider the horse-and-wagon highway, road, and street network, fanning out from the railhead in a collector/distributor function, an adjunct to the railroad, which was primarily of service to the abutting landowner -- although the economic importance of farm produce was then such that the entrepreneurs of the market center (railhead being usually synonymous with market center and seat of county government) had a strong economic self-interest in the adequacy of collector roads to bring farm products to the market and farm consumers to the emporium;

Second. The comparatively short and awkward era of transition, from (a) the earlier horse-and-wagon economy radiating from the railhead or market center or seat of government to (b) the automotive economy, with its concept of the arterial flow of goods and people by highway with little more than incidental or collateral relationship to the railroad and eliminating the horse as an element in the traffic flowing over the highways, roads, and streets of the Nation -- this short transitional era covering the second and third decades of this century, the adolescence of the automobile age, being a period of parallelism between the evolving automobile and the evolving legislation it made necessary, for as the early automobile was built in the horse-and-buggy tradition to resemble a horsedrawn vehicle, so the new legislation was written in the horse-and-buggy tradition and awkwardly adapted to a frame of reference which continued to regard the horse as the prime mover but was compelled to give grudging recognition to the internal combustion engine and was often required to act at the last minute with hasty expedience;

Third. The contemporary era, roughly the past thirty-five years, which established the automobile and the truck as the basic in the modern way of life and saw highway, road, and street law reach its maturity although as yet unable to shake off the cumbersome and useless impedimenta left over from the two earlier eras -- impediments which still, by reason of statutory position, require that all new legislation be cognizant of, integrated into, and correlated with this archaic structure until such time as the accumulation can be sorted out, the useless discarded, the ill-conceived repaired, and the useful set free of these encumbrances whose only remaining value is historic; and

WHEREAS, these many obsolete and conflicting laws cause much awkwardness and inefficiency in a contemporary application and the difficulty of organizing, classifying, annotating, and cross-referencing this great mass of law becomes more burdensome and less accurate each biennium, creating conflict and confusion in the administration of highway, road, and street affairs; and

WHEREAS, the elimination of obsolete highway, road, and street law; the resolution of conflicts in highway, road, and street law; and the modernization of archaic highway, road, and street law will greatly improve the effectiveness of the highway, road, and street segment of the Arkansas Statutes and the administration of highway, road, and street affairs; and

WHEREAS, considerable interest has been expressed in a codification of the highway, road, and street laws of Arkansas with the ultimate objective of developing a comprehensive "Highway, Road, and Street Code" for consideration by the General Assembly:

NOW, THEREFORE, the accompanying draft of such a Code has been prepared and is hereby submitted to the Arkansas Legislative Council for their study.

Affected Sections and Comments

CHAPTER 1. TITLE, PURPOSES, LEGISLATIVE INTENT, CONSTURCTION, DEFINITIONS

ARTICLE I. MISCELLANEOUS PROVISIONS

Section 1. Short Title.

This Act shall be known as the Arkansas Highway, Road, and Street Code.

Section 2. Purpose and Legislative Intent.

The purpose of this Act is to provide a code of statutes for highway, road and street law for the State of Arkansas. The legislative intent is to provide an effective legal basis for the organization, administration and operation of an efficient, modern system of public ways.

Section 3. Construction.

This Act shall be construed liberally to effectuate its purposes.

ARTICLE II. DEFINITIONS

Section 1. Definitions - Rules for Application

a. All words used in this Code which are not specifically defined herein shall be given the legal meaning customarily applied to such words.

b. The definitions officially published by the American Association of State Highway Officials, the National Committee on Uniform Traffic Laws and Ordinances, the National Joint Committee on Uniform Traffic Control Devices, the National Association of County Officials, and the National League of Cities are incorporated herein by reference and shall be given appropriate application whenever and wherever pertinent in the highway, road, and street law of Arkansas.

c. In situations in which a specific Chapter, Article or Section shall contain definitions which pertain to the subject matter within such Chapter, Article or Section, the definitions contained herein shall apply and take precedence over the general definitions contained in this section.

Section 2. General Definitions

a. As used in this Code, except in the situation mentioned in Subsection B, the following words or phrases are specifically defined as follows:

a. Commission - Shall refer to the State Highway Commission.

b. Department - Shall refer to the State Highway Department.

c. County - Shall refer to a subdivision of the State of Arkansas which is recognized by the Constitution or statutes of Arkansas as a county.

d. Municipality - Shall refer to a municipal corporation of any class recognized as such under the laws of the State of Arkansas.

e. Vehicle - Any object or device moving or traveling upon or over the public highways, roads or streets of this State.

f. Motor Vehicle - Any object or device moving or traveling upon or over the public highways, roads or streets of this State which is capable of self-propulsion.

g. Traffic - The movement of vehicles over the State Highway System, County Road System, Municipal Street Systems, or any part or parts of the foregoing, or other systems of public ways.

h. Police Power - The power to regulate private property for public use without the payment of compensation therefor.

i. Eminent Domain - The power to take private property for public use upon the payment of just compensation therefor.

"The distinguishing characteristic between eminent domain and the police power is that the former involves the taking of property because of its need for the public use while the latter involves the regulation of such property to prevent the use thereof in a manner that is detrimental to the public interest." NICHOLS, Eminent Domain, Section 1.42 Police Power.

Also see City of Ft. Smith v. Van Zandt, 197 Ark. 91, and Arkansas State Highway Commission v. Union Planters National Bank, 231 Ark. 907.

j. Condemnation - The exercise of the power of eminent domain.

k. System - Shall refer to the State Highway System, any one of the County Road Systems, any one of the Municipal Street Systems, the Federal-aid Primary System, the Federal-aid Secondary System, or the National System of Interstate and Defense Highways, depending upon the context in which it is used, and shall mean the complete network of highways, roads, and/or streets which fall within the administrative or fiscal jurisdiction responsible for them.

l. Jurisdictional System - Shall refer to the identification by administrative responsibility for the highway, road, or street network or any part thereof as described in Section 3, Chapter 5, HIGHWAY, ROAD, AND

STREET CLASSIFICATION AND DESIGNATION OF JURISDICTIONAL SYSTEMS, Arkansas Code of Highway, Road, and Street Law.

m. Functional System - Shall refer to the identification by service level of any element of the highway, road, or street network as described by reference in Section 2, Chapter 5, HIGHWAY, ROAD, AND STREET CLASSIFICATION AND DESIGNATION OF JURISDICTIONAL SYSTEMS, Arkansas Code of Highway, Road, and Street Law. The term "System" as defined in definition k of this Section shall never in any context be interpreted as meaning "functional system" and the word "system" shall never in any use mean "functional system" unless immediately preceded by the adjective "functional".

n. Federal-aid System - The term "Federal-aid System" means any one of the Federal-aid highway systems described in Section 3, Chapter 12, FEDERAL AID, Arkansas Code of Highway, Road, and Street Law; and in Section 103, Title 23, United States Code "Highways".

o. Interstate System - The term "National System of Interstate and Defense Highways" or "Interstate System" means the Federal-aid highway system described in Subsection a, Section 3, Chapter 12, FEDERAL AID, Arkansas Code of Highway, Road, and Street Law; and in Subsection (d), Section 103, Title 23, United States Code "Highways".

p. Federal-aid Primary System - The term "Federal-aid Primary System" means the Federal-aid highway system described in Subsection b, Section 3, Chapter 12, FEDERAL AID, Arkansas Code of Highway, Road, and Street Law; and in Subsection (b), Section 103, Title 23, United States Code——"Highways".

q. Federal-aid Secondary System - The term "Federal-aid Secondary System" means the Federal-aid highway system described in Subsection c, Section 3, Chapter 12, FEDERAL AID, Arkansas Code of Highway, Road, and Street Law; and in Subsection (c), Title 23, United States Code——"Highways". The term "Federal-aid Secondary System——Local" means that portion of the Federal-aid Secondary System which is not a part of the State Highway System; while the term "Federal-aid Secondary System——State" means that portion which is a part thereof.

r. Authorization - Shall refer to the Congressional authorizations for the appropriation of Federal funds for projects on the Federal-aid Primary Highway System, projects on the Federal-aid Secondary Highway System, projects on the extensions of these Systems within urban areas (places of 5,000 or more population and including the urban fringes outside the corporate limits), and projects on the National System of Interstate and Defense Highways, including extensions thereof through urban areas.

s. Apportionment - Shall refer to the distribution among the States of the Federal funds appropriated by the Congress, such distribution being according to formulae established by law as set out in Title 23-Highways, United States Code.

t. Appropriation - Shall refer to the legislative disposition of funds, Federal funds by the Congress, State funds by the General Assembly, for the broad categories of use. Federal funds: Planning, Research, Rights-of-way, and Construction. State funds: Planning, Research, Rights-of-way, Construction, Maintenance, and Operations.

u. Allocation - Shall refer to the disposition of Federal or State or local funds among jurisdictions, State and County, County and County, State and Municipality, or County and Municipality.

v. Allotment - Shall refer to the distribution of funds to specific projects.

w. Owners-in-value-of-real-estate - Shall refer to the relationship among land owners on the basis of the assessed value of their land holdings.

x. Commissioner of Motor Vehicles - Shall refer to the Commissioner of Revenues.

y. Public Way - For the purposes of this Code, shall be restricted to the context of motor vehicular transportation facilities and shall mean those motor vehicular ways, including but not limited to those commonly termed highways, roads, streets, parkways, drives, lanes, trails, freeways, expressways, throughways, trunkways, beltways, and any other motor vehicular ways, which by reason of the character of their use are public in nature in that the use or service offered is available or potentially available to anyone and the disciplines of its use are established by governmental agency rather than by private agency.

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CHAPTER 2. ADMINISTRATION OF STATE HIGHWAY SYSTEM

ARTICLE I. State Highway Commission

Affected Sections and Comments

Section 1. Basic Authority. Authority over the State Highway System and State Highway Department is vested in the State Highway Commission, as provided by the Constitution of Arkansas.

Section 2. Powers. The State Highway Commission shall have all powers necessary or proper for the effective and complete development of the State Highway System and for the administration and execution of all laws and regulations pertaining to the Commission, the State Highway Department, or the State Highway System; and including the power to appoint the Director of Highways and to charge him with such responsibilities and duties and delegate to him such power and authority as are deemed necessary and proper. The following powers, which may be delegated to the chief executive officer of the Highway Department, are specifically vested by this Code in the Highway Commission.

76-201.1 (modified)

a. To establish policies for the administration of the State Highway Department.

b. To formulate and promulgate such policies, rules,

and regulations as are deemed necessary, proper, or expedient for the development or control of the State Highway System, including the extensions of such System through municipalities, subject to such limitations as are or may be provided by the State or Federal Constitutions, by this Code, or by applicable State or Fedearl laws or regulations. 76-201.5 (e)

c. To maintain the State Highway System, as its first responsibility, in order to properly protect the public investment, and to divide the System into such maintenance districts as may be deemed reasonable and proper. 76-201.5

d. To negotiate and enter into contracts for the planning, design, construction, improvement, operation, and maintenance of, or for the benefit of or pertaining to, the State Highway System, or any part thereof, or the State Highway Department, or its employees, in the manner provided or required by this Code or other applicable laws. 76-201.5

e. To negotiate and enter into reciprocal agreements with other states or subdivisions thereof concerning highway matters or related affairs. 76-250

f. To enter into any contract or agreements with the United States or its agencies or subdivisions, realting to the planning, construction, improvement, operation, and maintenance of public highways, roads, or streets under the provisions of any Congressional enactment; to accept and use Federal funds and to comply in all respects with the provisions and requirements of all applicable Federal-aid or assistance acts; to do all things necessary, proper, or expedient to achieve and accomplish such full cooperation as may be required, provided, or contemplated by any Congressional enactment or administrative regulation for the planning, construction, improvement, operation, and maintenance of public highways, roads, or streets, wherever situated in this State; to submit such proposal or program for planning, construction, improvement, operation, or maintenance as may be required by Federal law or regulation of the Bureau of Public Roads or other appropriate Federal agency; and to withhold funds where any political subdivision has violated or wrongfully deviated from the terms of any Federal-aid agreement.

c/r Chapter 12, Section 1

76-201.5(c) & 76-522

76-418 & 76-420

76-417 & 76-416

g. To establish, conduct, and carry on a program of current and long-range planning for the State Highway System and to extend, enlarge, reduce, or reconstitute the State Highway System in any manner which shall best serve the public interest. 76-201.5

h. To recommend Departmental budget requests, proposed expenditures, and programs to the General Assembly; and to have ultimate responsibility for all financial matters and the expenditure and disbursement of all funds allocated to or received by the Department, subject to such requirements and limitations as are or may be imposed by law in connection therewith. 76-201.5

i. To purchase such materials, supplies, machinery, furniture, equipment, or personalty as may be needed for the operation of the Commission or Department, in the manner and subject to the provisions and limitations provided by this Code, and where desirable, to require contractors to use materials, supplies, machinery, or equipment purchased by the Department; and to sell all obsolete or surplus machinery, furniture, equipment, material, or supplies and deliver title to the purchaser, in the manner and subject to the limitations provided by this Code. 76-201.5 76-509 76-201.5(k)

j. To authorize and permit excavation of portions of the State Highway System for legitimate public or quasi-public purposes, such as the laying of pipelines, sewers, poles, wires, ditches, drains, conduits, and other such structures or objects, under such conditions as would reasonably protect the public interest and not result in loss to the State. 76-531

k. To keep an accurate record of all meetings of the Commission; which shall be a public record and in which shall be set forth all actions taken by the Commission and the proceedings of the Commission. 76-201.1 & 76-201.7

l. To purchase, exchange, or otherwise acquire or receive by gift, dedication, or devise, or in any other manner, any and all real property, or any rights, interests, estates, or title therein, and to exercise the right and power of eminent domain, in the manner and following the procedure provided elsewhere in this Code. 76-546 & 76-544 76-532 & 76-543

m. To remove sand and gravel from beds of any navigable river or lake for use in construction, maintenance, or repair of

State Highways or any portion of the State Highway System without payment to the State. 10-1005

n. To classify all public highways, roads, and streets according to use or function, as considered necessary to proper administration.

o. To adopt, publish, and enforce such rules and regulations as are deemed necessary or proper to regulate or control traffic passing over or using the State Highway System, including access to said system. 76-201.5

p. To limit loads and speeds of specific vehicles passing over or using the State Highway System when such is necessary to the reasonable protection or preservation of the System, or when excessive damage might result to the System, and to erect and post signs showing such limits. 75-601

q. To approve or disapprove the use of and to establish and publish requirements for safety devices of any kind which may be used on motor vehicles or other vehicles permitted to travel over the public highways, roads, and streets of the State; and to prepare and maintain lists of approved safety 75-720 75-732

devices and to promote and enforce the use of such approved safety devices.

r. To establish, operate and administer a merit system within the Department. 76-201.5

s. To establish, operate, and administer a state highway employees' health insurance plan and a highway employees' group insurance program; and to provide required funds for the State Highway Employees' Retirement Fund.

t. To cooperate with, furnish advisory services to, contract with, and enter into agreements with, counties, municipalities, improvement districts, and state, local, or federal agencies in respect to the financing, planning, establishment, vacation, improvement, maintenance, use, or regulation of highways, roads, streets, or other public ways, including controlled-access facilities. 76-2208

u. To fix and enforce the schedule or rate of tolls to be collected on any privately-owned toll ferry located on any route which is now or hereafter may become a part of the State Highway System; such rate to give due regard to both the interest of the owner and the general public. 76-625

v. To operate, maintain, and collect tolls on the Mississippi river Bridge connecting Phillips County, Arkansas, and Coahoma County, Mississippi, in accord with existing laws and interstate agreements. 76-2101.

w. To exercise fully all authority and power customarily exercised by the highest highway authority of a state or which may be necessary, proper, or expedient for the proper conduct, management, operation, or development of the State Highway System or Department.

x. To issue revenue bonds, as authorized by law, for the construction of bridges or ferries within the State Highway System; to set and collect tolls to provide revenue for the retirement of said bonds; and to regulate ferry rates on ferries in competition with state-owned ferries or toll bridges. 76-610 76-618, 76-625, & 76-602 76-1727

Any power herein vested in the Commission but not implemented in this Code by specific provisions for the exercise thereof, may be executed and carried out by the Commission in a reasonable manner, pursuant to such rules, regulations, and procedures as the Commission may adopt and subject to such limitations as may be provided by law.

Section 3. Rules and Regulations. The Commission shall adopt such rules and regulations as are deemed necessary or proper to implement its powers and duties. The rules and regulations, together with any additions or amendments thereto, prescribed by the Commission under the provisions of this Code, shall have the force and effect of law, and any person, firm, or corporation violating any such rule or regulation or any addition or amendment thereto shall be guilty of a misdemeanor and, upon conviction, be fined not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00) for each offense. 76-201.5(1) 76-201.5(n)(1)

a. All rules and regulations adopted by the Commission under the powers granted to it herein, and any additions or amendments thereto or repeals thereof, shall be published in a newspaper having a general statewide circulation, once each week for three consecutive weeks, and in addition shall cause two (2) copies thereof to be mailed forthwith to the Circuit Clerk of each County, and one (1) of which copies shall be posted immediately upon receipt thereof by the Clerk, at a conspicuous place in or about the courthouse, and the other copy retained in his office for the information of the public. Within a reasonable time after the adoption thereof, the Commission shall file one copy thereof 76-201.5(n)(2)

with the Secretary of State. The Commission shall keep on file for public inspection all rules and regulations so adopted. No rules, regulations, additions, amendments, or repeals shall become effective until sixty (60) days after the last publication thereof, except as provided hereinafter in subsection b. Any existing statutes imposing additional requirements shall no longer apply to the Commission. 5-501 76-201.5(n)(2)

b. Notwithstanding any contrary provisions of this Code or other Arkansas statutes, any regulations adopted by the Commission which are of an emergency nature, and are so designated by the Commission, shall take effect immediately without any prior notice. Publication of notice and the filing of such regulations shall, however, still be carried out as provided herein. 5-501

Section 4. Qualifications, Appointment, Terms of Office, Removal Vacancies. The qualifications, appointment, terms of office, and removal of members of the Commission, as well as the filling of vacancies on same, shall be as provided in Amendment 42 to the Arkansas Constitution. 76-201.2

Section 5. Organization of Commission. The members of the Commission shall organize by selecting one of their members as chairman 76-201.2

and another as vice-chairman. The vice chairman shall have all powers of the chairman in the event of his absence or disability, or of a vacancy in office.

Section 6. Meetings. The Commission shall meet at least once every two (2) months and at such other times as may be deemed necessary, proper, or expedient for the conduct of its affairs. Meetings shall be called by the Chairman of the Commission, or in his absence or inability to serve, by the Vice-Chairman, or in any situation by a majority of the members. Except as otherwise provided herein, three members of the Commission shall constitute a quorum for any and all purposes. All administrative decisions, rules, regulations, orders, policies, and directives made in the exercise of the powers and duties of the Commission shall be adopted in a regular or special called meeting at which a quorum is present; which meeting shall be open to the public. This does not preclude closed meetings for the discussion of privileged matters in accordance with Act 343 of 1953, Act 158 of 1959, and Act 93 of 1967.

76-201.6(2)

Chapter 2, Article III, Section 1

6-604 & 12-2805.

Section 7. Office. The principal office of the Commission shall be in the City of Little Rock, or in the immediate vicinity thereof. 76-201.1 & 76-201.9

Section 8. Compensation. The members of the Commission shall each receive twenty-five ($25.00) per diem and their actual expenses while engaged in the work of the Commission; but no such member shall receive in excess of one thousand, two hundred and fifty dollars ($1,250.00) and actual expenses in any one fiscal year. 76-201.8

Section 9. Reports. The Commission annually shall submit a written report to the Governor of its activities and plans, a copy of which shall be filed in the office of the Secretary of State and shall be open to inspection. 76-201.11

The Commission biennially shall submit a written report to the General Assembly containing a statistical record of highway activities during the preceding period and stating therein such activities and recommendations as it deems appropriate; and a copy of said biennial report shall be filed with the Secretary of State, to be placed in the State Archives. 76-238

Section 10. Bond and Oath. Each member of the Commission, before assuming office, shall execute a bond in the principal amount of twenty-five thousand dollars ($25,000.00) made payable to the State of Arkansas, on which the surety shall be a corporation or association of underwriters authorized to conduct business in Arkansas, and shall be conditioned on the faithful and honest execution of the duties of such member of the Commission. It shall be a condition of such bond that the member shall not be financially or benefically interested 76-221
in any contract or business undertaking of the Commission, now have an 76-222
interest in any corporation, firm, partnership, or other business organization contracting or doing business with the Commission; and violation of this provision shall render the principal and surety on such bond liable to the State of Arkansas for any loss resulting therefrom to the extent of the principal amount of the bond. The members of the Commission shall each, before entering upon the discharge of his 76-201.4
duties, take an oath that he will faithfully and honestly execute the duties of the office during his continuance therein.

(1) Premimums on these and such other bonds as may be 76-201.4
required by law or Commission policy shall be paid out of the annual 76-220
appropriation for the Commission.

Section 11. Suits Against Commission-Venue. Suits against the State Highway Commission, which are not otherwise violative of the State Constitutional sanction prohibiting suits against the State, shall be filed in Pulaski County, with the exception of suits seeking injunctive relief in connection with condemnation proceedings or such other proceedings as may relate to a particular tract or parcel of real estate. 76-232

ARTICLE II. State Highway Department.

Section 1. Authorization. The State Highway Department shall be the administrative and operational agency of the Commission.

Section 2. Powers.

a. The State Highway Department, operating under the chief executive officer appointed by the Commission, shall have and exercise all of the powers provided herein for the Commission, except such powers or duties as the Commission may expressly reserve, and the Department shall be responsible for the operation and administration of the State Highway System subject to the policies and limitations adopted by the Commission and subject to the direction and control of the Commission.

b. The Department shall, in addition, exercise fully all authority and power customarily vested in a state highway department, or necessary, proper, or expedient for the proper and efficient conduct, management, operation, or development of such a department, or of a highway system generally, subject to such policies, regulations, or limitations as may be promulgated or imposed by the Commission.

c. The Department shall enforce such rules and regulations as are adopted by the Commission in connection with the development, regulation, or control of the State Highway System.

ARTICLE III. State Highway Director. 76-201.3 & 76-201.4

Section 1. Basic Authority. The executive head of the State Highway Department shall be the Director of Highways, who shall be selected by a majority vote of the full Commission and who shall be responsible to the Commission and shall as chief executive officer have direct and full control of the administration, management, and conduct of the Department.

Section 2. Qualifications. The Director shall be qualified by education and experience in matters pertaining to the management, administration and operation of highway departments and highway systems. 76-201.3

Section 3. Compensation. The Director shall receive such compensation as shall be fixed by the Commission within the limits of the appropriations made by the General Assembly. The Director shall also be reimbursed for his actual traveling expenses while engaged in the discharge of his duties. 76-206

Section 4. Removal and Replacement. The Director may be removed only by a majority vote of the full Commission. Upon removal, or upon a vacancy in the office of the Director by reason of resignation, death, or incapacity and inability to perform the duties of the office, the Commission may appoint an Acting Director until such time as a new Director has been selected. 76-201.3

Section 5. Limitations. The Director shall devote full time and attention to his duties and responsibilities during his tenure. 76-201.3, 76-201.4, 76-201.6 & 76-206.

Section 6. Bond and Oath. Upon appointment, the Director shall execute a bond in the principal amount of twenty-five thousand dollars ($25,000.00), made payable to the State of Arkansas, on which 76-201.4, 76-206, 76-220, & 76-221

the surety shall be a corporation or association of underwriters authorized to conduct business in Arkansas, and such bond shall be conditioned on the faithful and honest execution of his duties as Highway Director. The Director shall, before entering upon the discharge of his duties, take an oath that he will faithfully and honestly execute the duties of the office during his continuance therein.

The Director shall never be beneficially or financially interested in any construction contract or any purchase or any other business undertaking of the Commission or Department. This principle shall be found inherent in the faithful and honest performance of duties covered by his bond and his otah. 76-206, 76-221 & 76-222

Section 7. Powers. As chief executive officer of the Department, subject to the approval, limitations, and policies of the Commission, the Director shall have complete control and management of the operations and affairs of the Department. The Director shall be responsible for the efficient management and administration of the Department and for the execution by the Department of the policies of the Commission and of the powers and responsibility exercised

by the Department on behalf of the Commission. The Director shall attend all meetings of the Commission and shall furnish the Commission with such information as it may require.

a. The Director, acting under rules, regulations, and policies adopted by the Commission, shall employ, dischrage, promote, supervise, and direct such personnel as are deemed necessary for the effective operation and administration of the Department and its affairs. 76-210

b. The Director shall create and staff such organizational elements of the Department as are deemed necessary and useful and grant to such units appropriate powers and duties. The Director may also abolish or otherwise limit or regulate such units when necessary or proper for the efficient operation of the Department.

c. The Director shall maintain and operate an organizational unit having police powers, which unit shall be charged with the protection of the State Highway System and the traffic thereon through administration, inspection, and enforcement of the motor vehicle size and weight provisions set forth in this Code, as 75-1022.6 & 75-1022.9

well as the enforcement of other pertinent statutues, and all moneys collected by such unit shall be transferred to the cashier of the State Highway Department for proper districution in accordance with law.

CHAPTER 3. ADMINISTRATION OF COUNTY ROAD SYSTEM

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CHAPTER 3. ADMINISTRATION OF COUNTY ROAD SYSTEMS. Affected Sections and Comments

ARTICLE I. County Court.

Section 1. Authority

Authority over each County Road System is vested in the County Court in each County in Arkansas, as provided by the State Constitution, and nothing herein shall be construed to limit the exclusive original jurisdiction of County Courts over county roads, county bridges, and county ferries, as provided in Article 7, Section 28, of the Constitution of Arkansas.

Section 2. Powers and Duties. 22-601

The County Court shall exercise the following powers and duties relative to the County Road System within its jurisdiction, and such powers and duties are specifically delegated to and vested in the County Court:

a. To administer, regulate, plan, direct, develop, maintain, operate, classify, and control the County Road System, and to do all things which may be necessary or desirable in connection therewith, except as limited herein or by other applicable laws. 76-810

b. To coordinate its road activities with the State Highway Commission in such manner as to achieve the most effective and efficient development of the County Road System and consistent with the highest development of that part of the State Highway System lying within the County.

c. To cooperate fully and to contract with the State or Federal government, or their agencies or subdivisions; with any other County of the State; or with any Municipality or improvement district within the County, in connection with the survey, construction, improvement, repair, maintenance, development, or benefit of the County Road System, the State Highway System, the Municipal Street System, or any improvement district within the County; to accept and use Federal funds and to comply fully with the provisions and requirements of all applicable Federal or State aid or assistance laws; to submit any proposals or programs which may be required by the Bureau of Public Roads for survey, construction, improvement, maintenance, or research projects, or as may be otherwise required by Federal or State law; and to do all things which may be necessary or proper to achieve and accomplish full cooperation with all Federal or State agencies as may be required, provided, or contemplated by any Federal or State enactment or administrative regulation of any type.

76-1034 & 76-1035

76-924

76-1501

d. To plan, construct, maintain, repair, open, establish, replace, vacate, close, re-route, or otherwise alter any road or portion of a road within the County Road System, as defined in this Code, or any bridges, ferries, viaducts, overpasses, underpasses, or other structures in connection with such road or roads; to grant licenses for the operation of privately-owned ferries where the same would be beneficial to the County Road System or to the movement of traffic within the County, and to negotiate and enter into contracts with privately-owned ferries upon reasonable terms; and to classify, in accordance with the provisions of Chapter 5 of this Code, all the roads of the County Road System, provided, however, that the power to open, establish, re-route, vacate, close, or alter any county road, or any part of the County Road System may only be exercised pursuant to appropriate orders of the County Court permitting and directing such action.

76-916 through 76-919

76-1707

e. To receive, control, and administer funds appropriated for county roads or the County Road System from any agency or governing body whatsoever, whether Federal, State, County, or otherwise, and to utilize, disburse, and expend such funds for and on behalf of the County in connection with the County Road System or any part thereof, and for any purpose in connection therewith which may be authorized herein or by any other law; provided, however, that the County Treasurer shall keep separate and accurate books, records, and accounts pertaining to the County Road Fund, shall make such expenditures from the Fund as the County Court shall direct, shall exercise no discretionary functions or powers in connection with the Fund, shall cooperate fully with the auditor or auditors designated to examine said books, records, and accounts, and shall publish in a newspaper of general circulation in the County, within ninety (90) days of the end of each fiscal year, a financial report showing all monies received and the sources thereof, and all monies expended and the purposes therefor, during the fiscal year just completed.

Art. 7 § 28 of the Constitution

f. To negotiate and enter into contracts and to incur

obligations, subject to constitutional and statutory limitations relating thereto, for and on behalf of the County in connection with the construction, improvement, maintenance, administration, or operation of the County Road System, or any part thereof, or in connection with or pursuant to any other powers and duties provided herein, and to obligate the County for payment of same; provided, however, that in addition to compliance with the constitutional limitations imposed upon Counties, the County Court shall under no circumstances incur obligations for a larger amount than will be available for the County Road System from all sources, including bonds, during any fiscal year.

76-925

76-1034

and 76-1035

constitutional limitations, Art. 12, Sec. 4.

g. To assume and absorb within the County Road System any roads constructed or created by land developers or improvement districts; provided, however, that any such roads must be free of indebtedness when accepted as a part of the County Road System or the assumption of said indebtedness by the County must be approved by a majority of those voting at a regular election, or at a special election called for such purpose within the County, following reasonable and adequate notice of such election and the purpose thereof.

h. To acquire real property and any right or interest therein through gift, devise, exchange, purchase, prescription, dedication, eminent domain, or otherwise, for the uses and purposes of the County Road System.

'6-1517

(76-1517

Art. II, Chapter 6, of this Code.

i. To exercise the right and power of eminent domain in condemning property and any and all rights, interests, estates, or title therein for present or future needs of the County Road System, and to do all things necessary or desirable in connection with or incident to the condemnation of private property or any legal or equitable interest, right, or estate therein for purposes of the County Road System, and to make payment of just compensation therefor to the owner or owners of such lands or interests, rights, or estates.

j. To purchase all supplies, materials, furniture, or other items which may be necessary for the operation of the County Road System, subject to any constitutional or statutory

provisions which now have or may hereafter exist in connection therewith or in connection with County purchasing procedures.

k. To purchase, borrow, rent, lease, control, manage, receive, and make payment for all personal property, such as equipment, machinery, and vehicles, which may be needed in the operation of the County Road System, and to sell or otherwise dispose of all personal property owned by the County and used in the operation of said County Road System which is no longer necessary or useful in connection with the operation of said System, subject to such other limitations as may be provided herein or by law; and to execute such instruments as may be necessary in connection with the exercise of the foregoing powers.

76-925

76-1517

76-902 through 76-916, 76-918, 76-806, 76-919, and 76-924.

76-1702; 76-1701 76-1730

l. To administer, operate, and promulgate a program of present and future planning for the County Road System.

m. To prepare and to submit to the County Quorum Court, or any applicable State or Federal agency, such budget requests, estimated expenditures, projected programs, expected needs, or

other information as may be desired.

n. To adopt and enforce such rules and regulations as may be necessary in connection with the regulation or control of traffic over the County Road System, or the development of the County Road System; provided that such rules and regulations shall not be in derogation of any State statute of general application.

o. To regulate the speed, size, and weight of vehicles and loads passing over the County Road System, subject to State statutes of general application and with the advice and assistance of the State Highway Commission; to classify roads according to the maximum allowable weight of vehicles; to vary upward or downward or temporarily suspend the load limit on any part of the County Road System, based upon conditions reasonably necessitating same; to issue special permits or authorizations allowing the use of the county roads for hauling irreducible oversize or overweight cargoes and the movement of farm machinery or other machinery where such movement would otherwise be prohibited; to erect and post signs showing speed limits, load limits, and other warnings; and to erect signals or traffic control devices of the uniform type specified by the State

76-121

76-126

Highway Commission.

p. To authorize and permit excavation of portions of the County Road System for legitimate public or quasi-public purposes, such as the laying of pipelines, sewers, poles, wires, ditches, drains, conduits, and other such structures or objects, under such conditions as would reasonably protect the public interest and not result in loss to the County.

q. To employ, discharge, promote, and set the salaries, duties, qualifications, and working conditions for all persons whose services are needed in the administration, operation, development, or other work of the County Road System; and to employ or contract with such engineers, surveyors, attorneys, and all other professional employees or independent contractors whose services may be required.

76-920

r. To create and supervise the operations and administration of a county road department if the same be necessary; to promulgate and enforce rules and regulations governing the operation and administration of the county road department; to appoint and direct any qualified individual to serve as supervisor of the county road department and to charge him with such responsibilities and duties as may be desirable; to delegate and vest in the county road department and its supervisor such

power and authority as may be necessary and proper to carry out its function; to exercise complete authority and control over all employees of the road department and the supervisor thereof, as well as responsibility for the actions of such employees or supervisor; and to formulate such policies, rules, and regulations as may be necessary for the operation of such road department or of the County Road System in general; subject to such limitations as may be imposed by the State or Federal constitutions, by this Code, or by other applicable laws.

s. To cooperate with the County Quorum Court in the levying of such taxes as may be authorized by law for the benefit of the County Road System; and to appropriate receipts from such taxes for use in the operation of the County Road System.

76-710.

t. To call a special election on the first levy of the County and Municipality Vehicle Tax by the County Quorum Court. Act 446 of 1965

u. To call an election on the issuance of revenue bonds under the provisions of the County and Municipality Vehicle Tax Act and, if approved by a majority of the voters, issue such revenue bonds.

v. To appoint qualified electors of the County to serve on the County Road Commission; and to appoint, as commissioners of a road, street, or bridge improvement district created within the County but lying outside the corporate boundaries of any Municipality, property holders who reside in that district. Section 1, Article II, Chapter 13

w. To provide an enclosure for impounding animals running at large on the public highways, roads, and streets lying within the County, including highways which are a part of the State Highway System and streets which are a part of a Municipal Street System. 78-1146.

x. To exercise fully all authority and power customarily vested in a highway, road, or street administrative agency, or which may be reasonably necessary or proper for the efficient conduct, management, operation, or development of the County Road System, subject to such limitations as may be imposed by this Code or by the State Constitution. 76-810.

Any power or duty provided herein but not implemented in this Code by specific provisions for the exercise thereof shall be

executed and carried out by the County Court in a reasonable manner, subject to such limitations as may be provided by law.

Section 3. Audit of Financial Records.

C/R, Notes to Decisions, Art. 7, § 28, of the Constitution.

The County Court may appoint and compensate an auditor or auditors to examine the financial books, records, and accounts showing all receipts, expenditures, disbursements, accounts, and obligations receivable, accounts and obligations payable, and financial transactions pertaining to the County Road System for the preceding fiscal year, and report his or their findings to the Quorum Court, which report shall constitute a public record.

Article II. County Judge.

Section 1. Authority, Powers, and Duties.

This is new.

The County Judge, as presiding officer of the County Court, a one-judge holding court, shall exercise all the authority, powers, and duties granted to such Court by the constitutional or statutory law of Arkansas; and shall serve as ex-officio chairman of the County Road Commission.

Section 2. Salary.

22-610.1.

Balance of salary to be paid from other funds.

The County Quorum Court shall appropriate monies from the County Road Fund to cover one-half of the salary of the County Judge, the balance of salary to be paid from other funds.

Section 3. Expenses.

The County Quorum Court shall appropriate monies from the County Road Fund to cover the actual expenses incurred by the County Judge during performance of his duties in the administration of the County Road System; provided, that such expenses shall not exceed four thousand dollars ($4,000.00) per annum.

Article III. The County Quorum Court.

The County Judge sitting with a majority of the justices of the peace of the County, or, in the absence of the County Judge, a majority of the justices of the peace of the County sitting with one of their number duly elected to preside at such sitting, as the County Quorum Court under authority of Section 30 of Article 7 of the State Constitution, having levied the three-mill (3-mill) county road tax and the County Motor Vehicle Tax, shall make appropriations from the revenues accruing thereunder in the County Road Fund for the construction, reconstruction, improvement, repair, maintenance, and administration of the roads and bridges in the County Road System.

Article IV. County Road Commission. Act 379 of 1939

Section 1. County Road Commission Created - Members - Term.

There is hereby created in each County of this State a County Road Commission. This Commission shall be composed of the County Judge, who shall serve as chairman, and two (2) additional members who shall be qualified electors of the County from which they are chosen. The two (2) additional members shall be appointed by the County Court with the consent and approval of the County Quorum Court, given at its regular session for the levying of County taxes, for a term of two (2) years from the date of approval; provided, that at the time of its creation one (1) member shall be appointed for a term of one (1) year and the other for a term of two (2) years. In Counties having two judicial districts, one member shall be appointed from each district. 75-801

Section 2. Organization.

The County Judge shall be chairman of the County Road Commission and shall be a member thereof, with full powers of such membership, and shall preside at all meetings of the Commission and perform such other duties as usually devolve upon a chairman 75-803

under like circumstances. Each member shall serve till his successor shall have been appointed and approved. The Commission shall elect one of its number as secretary, and said secretary shall keep a complete record of all proceedings of said Commission, a copy of which shall be certified by the chairman and secretary and filed with the County Clerk.

Section 3. Vacancies Filled by County Court. 75-804

Vacancies in the membership of the Road Commission, except as to the County Judge, shall be filled by the County Court.

Section 4. Legal Status and General Powers of Commission. 75-803 & 75-810

The County Road Commission shall be an advisory adjunct of the County Court and shall not be a body politic and corporate; it shall have no power to contract or be contracted with, nor to sue or be sued; provided, as to actions in tort, that said Commission shall be considered as an agency of the County Court; and provided further, that no commissioner shall be liable individually for an act done by him as such commissioner, unless the damages caused thereby were the result of

said commissioner's malicious acts.

The County Road Commission shall be charged with the duty of advising the County Court on the laying out of, construction of, repair of, and maintenance of all county roads.

The County Road Commission shall have the power to do anything reasonably necessary to enable the Commission to carry on the work contemplated by this Article.

Section 5. Oath of Commissioners. 75-807

Each commissioner appointed by the County Court shall, before entering upon the duties of his office and within fifteen (15) days after such appointment, take the oath prescribed by the Constitution for County officers, and a copy of said oath shall be filed with the County Clerk to be kept as a part of the County's records. The regular oath taken by the County Judge upon his induction into the office as such judge shall be regarded as his oath as a member of the County Road Commission and shall be as binding on him as if specially taken as a member of the County Road Commission.

Section 6. Commissioner's Interest in Contracts Prohibited - Penalty. 76-808

No member of the County Road Commission shall be interested, either directly or indirectly, in any contract for road construction or materials, and a violation of this provision shall be deemed a felony and punished as in cases of larceny.

Section 7. Compensation of Commissioners - Limit as to Meetings and Annual Compensation. 76-809

Each member of the County Road Commission shall receive as compensation for performing the duties imposed upon him by this act the sum of $10.00 for each day the Commission is in session, same to be payable out of the County Road Fund as other road and bridge expenses are paid; provided, that the County Road Commission, as created herein, shall not be allowed to meet more than one (1) day in each calendar month of each year; and provided further, that no member of said County Road Commission shall receive as compensation for the duties imposed herein, more than $120.00 per year.

CHAPTER 4. ADMINISTRATION OF MUNICIPAL STREET SYSTEMS

Article 1. Authority 4-1
Section 1. Basic Authority 4-1
Section 2. Powers and Duties 4-1

Article II. MISCELLANEOUS PROVISIONS
Section 1. Reports 4-9
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Section 3. Personal Benefit 4-12

CHAPTER 4. ADMINISTRATION OF MUNICIPAL STREET SYSTEMS.

Article I. Authority — 19-3801

Section 1. Basic Authority. The administration, management, control, and operation of the Municipal Street System as defined in this Code shall be vested in the governing body of the municipal corporation.

Section 2. Powers and Duties. Subject to such ordinances pertaining to the Municipal Street System as may be enacted, and subject to such other limitations as may be provided herein, the governing body of the municipal corporation shall exercise and perform the following powers and functions and have the following duties: — 19-2303, 19-2304, 19-2305 & 19-2313

a. To administer, regulate, plan, direct, develop, maintain, operate, and control the Municipal Street System, and to do all things which may be necessary or desirable in connection therewith, except as limited herein or by other applicable laws.

b. To cooperate fully and coordinate its activities with the State Highway Commission, insofar as the plans and activities of the two bodies are interrelated, in order to achieve the most

effective and efficient development of the Municipal Street System lying within the corporate limits of the municipality and, if the municipality has established a continuing comprehensive transportation planning process, within the statutory planning zone designated beyond the corporate limits; and to contract with the County, the State Highway Commission, any other State or Federal agency, or any improvement district within or adjacent to the municipality or within the established planning zone of the municipality for the planning, constructing, repairing, maintenance, or benefit of the Municipal Street System, State Highway System, County Road System, or institutional roads within the planning jurisdiction of the municipality.

c. To cooperate fully with the state and/or federal government, its agencies or subdivisions, in connection with the planning, survey, construction, improvement, or maintenance of the Municipal Street System, or any part thereof, or any contracts in connection therewith; to accept and use federal and state funds and to comply fully with the provisions and requirements of all applicable federal or state aid or assistance acts; to submit any proposals or programs, as may be required, for planning, survey, construction, improvement, maintenance, or research, to the Bureau of Public Roads of the U.S.

Department of Commerce, or the Arkansas Highway Department, or as may be otherwise required by federal or state law; and to do all things necessary or proper to achieve and accomplish full cooperation with all federal or state agencies as may be required, provided, or contemplated by any federal or state enactment or administrative regulation of any kind.

d. To plan, construct, maintain, repair, open, establish, light, replace, vacate, close, re-route, widen, straighten, or alter any street, bridge, alley, overpass, underpass, or any other part of the Municipal Street System, including controlled access facilities, as defined in this Code, or any buildings or structures appurtenant thereto or in connection therewith, and to classify in accordance with the provisions of Chapter 5 of this Code all the streets of the Municipal Street System; provided, however, that this power shall be subject to any contrary ordinances of the municipality involved and cannot be exercised in derogation of such ordinances.

19-3803

e. To receive, control, administer, and disburse, through the city treasurer, all funds appropriated for the Municipal Street System by the municipal governing body or by any other agency or governing body whatsoever, whether federal, state, county, or otherwise; to utilize, disburse, and expend such funds

for and on behalf of the municipality in connection with the Municipal Street System, or any part thereof, and for any purpose in connection therewith which may be authorized herein or by city ordinance; provided, however, that the city treasurer shall act as treasurer for the municipal street authority, keeping such funds in a separate Municipal Street Fund or other named fund used by the city for street and road purposes with separate and accurate books, records, and accounts pertaining to the Municipal Street System, making such disbursements and expenditures from the Fund as said authority may direct, exercising no discretionary functions or powers in connection with said Fund, and cooperating fully with the auditor or auditors designated by the governing body of the municipality to examine the books, records, and accounts pertaining to the Municipal Street Fund.

f. To negotiate and enter into contracts and to incur obligations, subject to constitutional and statutory limitations relating thereto, for and on behalf of the municipality in connection with the construction, improvement, maintenance, administration, or operation of the Municipal Street System or any part thereof or in connection with or pursuant to any other powers and duties provided herein, and to obligate the municipality for payment of same; provided, however, that in addition to compliance

Constitutional limitations: Amendment No. 10 (Article 12, Sec. 4, amended).

with the constitutional limitations imposed upon municipalities, the governing body of the municipality shall under no circumstances incur obligations for a larger amount than will be available for the Municipal Street System from all sources, including bonds, during any fiscal year.

g. To assume, absorb, and accept within the Municipal Street System any streets, bridges, alleys, underpasses, overpasses, or other such ways, constructed or established by land developers or by improvement districts; provided, however, that any of the foregoing must be constructed in compliance with subdivision regulations and planning commission regulations and be free of indebtedness when accepted by the municipality as a part of the Municipal Street System; except that, subject to the limitations imposed by constitution, statute, or municipal ordinance, a municipality may assume a reasonable indebtedness if the assumption of said indebtedness by the municipality is first approved by a majority of those voting at a regular election or at a special election called for such purpose within the municipality, following reasonable and adequate notice of such election and the purpose thereof.

h. To acquire real property and any right or interest

therein through gift, devise, exchange, purchase, prescription dedication, eminent domain, federal grant or loan, or otherwise, for the uses and purposes of the Municipal Street System.

i. To exercise the right and power of eminent domain in condemning property and any and all rights or interest therein for present or future needs of the Municipal Street System, in accord with the procedures set out in Chapter 6, Article III, Section 3, of this Code.

j. To purchase, borrow, rent, lease, control, manage, receive, and make payment for all personal property, such as equipment, machinery, and vehicles, which may be needed in the operation of the Municipal Street System; and to sell or otherwise dispose of any personal property owned by the municipality and used in the operation of said Municipal Street System, which is no longer necessary or useful in connection with the operation of said System; and to execute such instruments as may be necessary in connection with the exercise of such powers.

k. To purchase all supplies, materials, furniture, or other items, and to employ, promote, or discharge personnel, as may be necessary for the operation of the Municipal Street

System, subject to the constitutional or statutory provisions or limitations pertaining thereto or pertaining to municipal purchasing procedures.

l. To create and supervise the operations and administration of a municipal street department if the same be deemed necessary; to promulgate and enforce rules and regulations governing the operation and administration of such department; to exercise complete authority and control over all employees of the street department and its supervisor, as well as responsibility for the actions of such employees or supervisor; and to formulate such policies, rules, and regulations as may be necessary for the operation of the Municipal Street System in general, subject to such limitations as may be imposed by the state or federal constitutions, by this Code, or by other applicable laws.

m. To administer, promulgate, and operate a program of present and future planning for the Municipal Street System, in cooperation with the planning Commission.

n. To adopt and enforce such rules and regulations as are deemed necessary or proper to implement its powers and duties or as may be necessary in connection with the regulation or control of traffic in use of the Municipal Street System, or in the

construction and development of the Municipal Street System; provided that such rules and regulations shall not be in derogation of any state statute of general application or any municipal ordinance.

o. To regulate the size, weight, and load of vehicles passing over the Municipal Street System, subject to state statutes of general application and acting with the advice and assistance of the State Highway Commission; to issue special permits as may be necessary in connection with the use of or travel over the Municipal Street System or any part thereof where the use thereof or movement over the streets would otherwise be prohibited; and to vary upward or downward or temporarily suspend the load limit on any part of the Municipal Street System based upon conditions reasonably necessitating same.

p. To authorize and permit excavation of portions of the Municipal Street System for legitimate public or quasi-public purposes such as the laying of pipelines, sewers, poles, wires, ditches, drains, conduits, and other such structures or objects, upon such conditions as would reasonably protect the public interest and not result in loss to the municipality.

q. To determine speed limits over any portion of the

Municipal Street System and to erect and post signs showing such speed limits and to post warning signals, traffic lights, or traffic control devices of the uniform type specified by the State Highway Commission, subject to state statutes or municipal ordinances pertaining thereto. Cities of the first and second class are hereby authorized by the passage of a municipal ordinance to install parking meters on the streets and other municipally owned property of such city.

19-3533 & 19-3534

Any municipal ordinance authorizing the installation of Parking Meters shall not be subject to an emergency clause; and nothing in this act shall limit the rights of the people under the Initiated and Referendum Amendment to the Constitution

Article II. Miscellaneous Provisions

Section 1. Reports

c/r Chapter 5, Subsec. 4c.-

The governing body of every municipal corporation shall prepare or cause to be prepared, on or before the fifteenth (15th) day of May, a written report of the actions and operations for the preceding calendar year relating to the Municipal Street System and the plans for the current calendar year. This report shall be in addition to any reports now or hereafter required by law, and a copy shall be filed with the State Highway Commission. These reports shall be compiled by the State Highway Department and a copy shall be furnished to any Municipality upon request and the compilation shall be kept on file in the office of

the State Highway Commission and shall be open to inspection by any interested person. In stating the actions and operations pertaining to the Municipal Street System during the preceding year, this report shall describe briefly any new streets, alleys, or bridges, overpasses, underpasses, or any other part of the System constructed during the preceding year; the resurfacing, repair, or maintenance of the existing Municipal Street System during the

preceding year; the vacation, closing, or re-routing of any portion of the System during the preceding year; and other activities pertinent thereto; such report shall also show the cost involved and funds expended on all such projects, the source of funds expended, and the manner and method of financing such projects. Said report shall show information similar to the foregoing in its statement of plans for the current year; provided, however, that failure to include a project in its statement of plans shall not preclude execution and completion of such project.

Section 2. Municipal Street Department.

In municipalities which appropriate sufficient funds for the creation and operation of a street department and the employment of personnel in connection therewith, such department shall exercise those powers and duties in connection with the administration and operation of the Municipal Street System which may be delegated to it by the governing body of the municipal corporation. All actions taken or performed by said department shall be subject to the control of and policies adopted by the governing body.

Section 3 Personal Benefit.

No employee of Municipal Street Department shall be a party to or be beneficially or financially interested in any contract, purchase, or sale to which the governing body of the municipal corporation or the department is a party, nor shall any member of such governing body be beneficially interested in such transactions.

CHAPTER 5. HIGHWAY, ROAD, AND STREET CLASSIFICATION AND DESIGNATION OF JURISDICTIONAL SYSTEMS.

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CHAPTER 5. HIGHWAY, ROAD, AND STREET CLASSIFICATION AND DESIGNATION OF JURISDICTIONAL SYSTEMS.

Section 1. Declaration of Legislative Intent.

This section is new.

It is hereby declared to be the policy of the General Assembly to encourage sound, modern planning methods, procedures, and techniques for the proper administration, management, and improvement of the State Highway, County Road, and Municipal Street Systems of the State.

Efficiency in the highway plant and economy in the utilization of highway revenues are dependent upon an orderly classification of the highways, roads, and streets in the State; therefore, the General Assembly finds that an adequate and integrated public highway, road, and street network is essential to the general welfare of the State. The provision of such facilities, properly grouped, together with their maintenance and operation, is the intent of this legislation; and the policy of the State of Arkansas is declared to be:

a. To group the public highways, roads, and streets of Arkansas into complete functional systems and to integrate these systems into a comprehensive network for optimum service in the motor vehicular transportation needs of the State of Arkansas,

its counties, and its municipalities;

b. To consolidate in a single system those public highways, roads, and streets which are in the same functional grouping because of the character and volume of demand for their transportation service;

c. To identify those public highways, roads, and streets offering the same level of service, so that design, construction, and operational requirements can be established and standardized;

d. To group public highways, roads, and streets by their basic functions, so that they can be readily classified to evaluate and determine user needs;

e. To assist the State Highway, County Road, and Municipal Street administrators in carrying out their responsibilities to the road users; and

f. To achieve coordinated and systematic planning for and orderly development of highways, roads, and streets in accordance with actual needs.

It is further intended that the Arkansas State Highway Commission shall provide leadership in the total highway transportation planning for the State. The Department and the local governments shall cooperate fully to provide the greatest possible

benefits to the people and the economy of the State. The division of responsibility among jurisdictions is technically and politically desirable and necessary. The fullest utilization of the leadership and coordination services of the Highway Department is essential to the welfare of the State and for optimum service to motorists on the complete highway, road, and street network.

Section 2. Functional Classification.

The integration of the major systems of public highways, roads, and streets into complete functional systems is a prerequisite to optimum service for the motor vehicular transportation needs of Arkansas. To this end, the State Highway Department, and the County Court or the governing body of the municipal corporation in cooperation with the State Highway Department, are urged to classify all public ways within their respective jurisdictional systems in appropriate functional categories and then establish policies and regulations with respect to the use of the public ways so classified. Such policies and regulations shall, when published in the manner provided in this Act, have the force and effect of law. Functional groupings shall be based on the classifications recommended by the American Association of State Highway Officials for state highways, the National Association of County Engineers for county roads, and the National League of Cities for municipal streets.

76-122, 76-1020, 76-101, 76-102, 76-103, 76-104, 76-105, & 76-106.

The State Highway Department, under a mandate from the General Assembly, as expressed in HCR No. 14 of the First Extraordinary Session of 1965, conducted a functional classification study in cooperation with the County Judges and municipal officials of the State.

Section 3. Jurisdictional Classification.

The highways, roads, streets, and other vehicular ways of the State of Arkansas shall be grouped and administered in jurisdictional systems as follows:

76-1020, 76-104; 76-101 thru 76-106.

a. The State Highway System shall comprise the principal arterial routes in the State, including connecting highway arteries and extensions through the cities and towns, and shall include a route into or through each county seat in the State. The State Highway Commission shall consider and be guided by the importance of each highway to cities and towns, business, industry, and agriculture and to the development of natural resources in determining which highways or sections thereof shall in the public interest be a part of the State Highway System. In so doing, the Commission shall be guided by the existing and anticipated traffic characteristics and volumes and the functional services demanded by the users of the road. The State Highway System shall be under the sole jurisdiction of the State Highway Commission, in accord with Amendment No. 42 to the Constitution.

b. The County Road System shall be that system of public roads and streets in each County, including all public roadways, bridges, underpasses, overpasses, ferries, tunnels, off-street parking facilities, and other such public ways or structures which

76-1509, 76-1020, 76-918, 76-122/125, 76-101/109

are outside the corporate boundaries of any incorporated city or town and are not a part of the State Highway System, which are not privately owned, and which are not owned by any Federal, State, or local public institution or agency. Such County Road System shall be dedicated to the public use as an inherent characteristic regardless of the methods by which rights-of-way were acquired.

Each County Road System shall be under the sole jurisdiction of the County Court of the County in which such System lies, in accord with Article 7, Section 28, of the Constitution.

c. The Municipal Street System shall be that system of public roads and streets in each municipality, including all public streets, roadways, parkways, expressways, freeways, park drives, alleys, off-street parking facilities, bridges, underpasses, overpasses, and other such public ways or structures which are within the corporate limits of such incorporated city or town and are not a part of the State Highway System, which are not privately owned and which are not owned by any Federal, State, or local public institution or agency. Such Municipal Street Systems shall be dedicated to the public use as an inherent characteristic, regardless of the methods by which rights-of-way were acquired. Each Municipal Street System shall be under the sole jurisdiction of the governing body of the municipal corporation in which such System lies, in accord with law.

76-108, 19-3801, 19-3802

d. State Park Roads shall be those principal vehicular roads within the boundaries of State Parks, other than those principal roads that have been expressly designated by the State Highway Commission as State Highways.

76-502, 76-503, 76-503.1 & 76-503.2

e. Institutional Roads shall be those public roads, drives, or streets within the boundaries of institutions, other than those that have been expressly designated by the State Highway Commission as part of the State Highway System.

f. Federal Lands Roads shall be those public highways, parkways, roads, trails, drives, or streets existing within the boundaries of Federal lands or reservations, including but not limited to national forests, national parks or monuments, Indian lands, unappropriated or unreserved public lands, other lands owned, operated, and controlled by other Federal agencies, and Federal military, defense, or other installations, which are not specifically designated as a part of the jurisdictional systems described in sub-sections a through e of this Section 2.

The provisions on Federal lands Roads are new and help in accounting for the total highway, road, and street mileage within areas controlled by the Federal Government. They conform to Section 101, Chapter I, Title 23, United States Code - Highways.

76-108, 76-110, 76-111, & 76-112.

g. Private Roads or Streets shall be those non-public roads or streets constructed, owned, operated, and controlled by the landowner upon whose lands they lie and which have not, through

Section 4. Designation of Jurisdictional Systems.

The orderly grouping of the public highways, roads, and streets into jurisdictional systems is not complete until the inventory or log of each jurisdictional group is recorded in some central and easily accessible repository of public information where the data can be maintained in a reasonably current status and be made readily available to the legislature, state and local governmental agencies, planning groups, and other interested persons. To this end, the following records are to be filed with the Secretary of State.

a. The State Highway Commission shall file with the Secretary of State an official, certified map of the State Highway System. Revisions of the official map may be filed at the discretion of the Commission, but in no event shall the interval between filings exceed two (2) years. In addition thereto, duplicate copies of the official maps shall be kept in the office of the State Highway Commission, along with documents describing current changes in or additions to the Highway System. Any public highway, road, street, expressway, freeway, parkway, or other public way which

cannot be shown on the official maps, but which constitutes a part of the State Highway System, shall be described in a separate document to be kept on file in the office of the State Highway Commission.

b. Each County Court, with the assistance and cooperation of the State Highway Department, and based on a uniform numbering system, shall file with the Secretary of State an official, certified map of the County Road System. In addition thereto, duplicate copies of these maps shall be filed with the County Clerk and the State Highway Department. When changes or additions are made in a County Road System, documents describing such changes or additions shall be filed with the Secretary of State, the County Clerk, and the State Highway Department within a reasonable time after they are effected and in no event later than sixty (60) calendar days thereafter. A complete revision of the official map shall be made, certified, and filed as above at intervals not to exceed two (2) years.

c. Each municipality, with the assistance and cooperation of the State Highway Department, shall file with the Secretary of State an official, certified map of the municipal limits, and the Municipal Street System. In addition thereto, duplicate copies of these maps shall be filed with the Municipal Clerk and the State Highway Department. When changes or additions are made in a Municipal Street System, documents describing such changes or additions shall be filed with the Secretary of State, the Municipal Clerk, and the State Highway Department within a reasonable time after they are effected and in no event later than sixty (60) calendar days thereafter. A complete revision of the official map shall be made, certified, and filed as above at intervals not to exceed two (2) years.

d. These certified, official maps shall constitute public documents and shall be open to public inspection during the regular office hours of the Secretary of State, the State Highway Department, the County Clerks, and the Municipal Clerks.

Section 5. Federal Highway and Road Systems.

See Chapter 12, Federal Aid, in this Code for the classes of Federal Systems.

CHAPTER 6. REAL PROPERTY ACQUISITION AND DISPOSITION

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Affected Sections and Comments

CHAPTER 6. REAL PROPERTY ACQUISITION AND DISPOSITION.

Article I. By State Highway Commission.

Section 1. Right to Acquire Lands, Tenements, and Hereditaments.

Real property and any interest or right therein, including rights of access, air, view, and light, may be acquired by the State Highway Commission, hereinafter called the Commission, through gift, devise, exchange, purchase, prescription, dedication, eminent domain, call upon any county, or otherwise, in fee simple or in any lesser interest. Such property may be acquired for present or for future purposes, needs, or uses of the State Highway System, hereinafter called the System, or of the administration of such System, including but not limited to right-of-way, bridges, bridge approaches, ferries, ferry landings, overpasses, underpasses, tunnels, urban extensions, rock quarries, gravel pits, borrow pits, offices, shops, depots, storage yards, buildings, and physical facilities of all types, roadside parks and recreational areas, scenic easements and other aesthetic uses or purposes, the growth of trees and shrubbery along rights-of-way,

We have attempted to make this Section as broad as is legally possible. Originally, we did not feel that any "needs or purposes" should be listed by name. The Committee concurred in this and recommended a broad, general statement. However, we have enumerated certain purposes and needs, trying to leave room for needs which have not been mentioned, in order to reduce litigation over what constitutes legitimate highway needs and purposes. While this is not the preferred method of statutory draftsmanship, we have allowed pragmatic considerations to control.

drainage, maintenance, or safety purposes, stock trails or passes, the elimination of encroachments, the elimination of private or public crossings or intersections, the establishment of controlled-access highways or streets, and any and all other needs, uses, or purposes which may be reasonably related to the development, growth, or enhancement of such System.

Note the inclusion of several new items, which are not listed in Ark. Stat. Sec. 76-532 (which this Section supersedes). Included in this Section are "scenic easements and other aesthetic purposes", for example. Also other items listed in 76-532 have been broadened in many instances by the elimination of qualifying language. Note the last very general phrase: "and any and all other needs, uses, or purposes which may be reasonably related to the development, growth, or enhancement of such System". This Section will also replace and supersede Ark. Stat. Secs. 76-628 and 76-614.

Section 2. Acquisition Procedures.

All acquisition of real property allowable under this Code

The 1967 Legislature passed 76-2520 and 76-2521 providing for the acquisiti

shall proceed under one of the methods set out herein for the acquisition of real property by the Commission. The instruments which convey such real property to the Commission shall be recorded in each County wherein the real property may lie, then deposited in the archives of the State Highway Department.

a. By Gift, Donation, or Transfer. The Commission is authorized to accept gifts, donations, or transfers of land from private persons or agencies of government, provided such land is suitable for present or future needs or purposes of the System. Such donations of land when made for rights-of-way purposes may be in fee simple or any lesser interest, but such donations of land when made for purposes incidental or collateral to the actual roadway facility, such as roadside parks, rest areas, or materials yards, must convey an interest of sufficient duration to ensure reasonable and prudent protection of the public investment which may be made in such land. The instruments which convey such gifts, donations, or transfers of real property to the Commission shall be recorded in the County where said lands lie, then deposited in the archives of the State Highway Department. When a gift or

of land adjacent to the Highway System for scenic purposes. Since the 1967 Act does not conflict with Article I, Section 1 of this code, it should not be repealed.

donation of land lies in more than one County, separate instruments shall be executed for that portion lying in each County.

b. By Devise. The Commission is authorized to accept real property by devise when the possession of such lands would be of benefit to the System and in the best interests of the public. If these conditions do not prevail, such devise shall escheat to the Public Lands of the State.

c. By Exchange. The Commission is authorized to enter into agreements with the proper officials of other State Agencies, counties, municipalities, and private persons to exchange real property held by the other party to the agreement. Such exchanges shall not be consummated until the State Highway Department has certified that such exchange is fair and equitable and best serves the public interest.

d. By Call upon County Court. The Commission may call upon the 76-510
County Court to provide additional right-of-way for any State Highway in the County where the Commission deems it necessary for the purpose of constructing, improving, or maintaining the highway. In the event the County Court should refuse to provide the additional right-of-way for the highway as requested, the Commission may refuse 76-511

to construct, improve, or maintain that portion of the highway until a suitable right of way is provided. Where the Commission petitions any County Court asking for right of way for any State Highway and where the County Court fails to grant such petition and made a Court Order procuring such right of way within sixty (60) days after such petition is presented, then the Commission may take such steps as they deem expedient to acquire such right of way, either by purchase, exercise of their right of eminent domain, or otherwise; and in any such event, one-half (1/2) of the cost of acquiring such right of way shall be deducted from the next payment due such County out of the special revenues in the County Aid Fund or other State Revenue from motor vehicle fuel or auto license tax to the County or County Road Fund of such County.

e. By Purchase. The Commission is authorized to appraise, negotiate for, and purchase real estate when the acquisition of such real estate will serve the best interests of the public.

f. By Prescription. The Commission is authorized to acquire and incorporate into the System the right of way of any highway, road, or street on any land which has by exercise of unlimited public use for the preceding seven or more years come to be a public way.

g. By Dedication. The Commission is authorized to accept rights of way or other real property dedicated, provided that the dedicated land is adequate for its intended purposes and the acceptance of such dedicated real estate serves the best interests of the public.

Section 3. By Exercise of Eminent Domain.

The right of eminent domain is granted to the Commission to be exercised in the acquisition of real property which is considered essential in the operation and maintenance of the System.

a. Venue.

(1) All actions instituted hereunder for the condemnation of property shall be brought in the Circuit Court of the County in which the property being condemned is situated.

(2) Actions by private persons seeking injunctive relief involving real property may be brought in the Chancery Court of the County in which the real property is situated or in the County where the seat of state government is located.

(3) Where the property in controversy lies in more than one (1) County, the action may be brought in either County.

This replaces Ark. Stat. Sec. 76-237. As in the past, it makes all condemnation actions lie in the County where the land is located. All actions would be brought in Circuit Court, except those involving injunctive relief.

b. Institution and Trial.

Any condemnation action allowable under this Code may be instituted and may proceed in this manner:

(1) This Commission shall file a petition for condemnation setting forth therein; an adequate legal description of the property being condemned; the extent of the interest, estate, or right being condemned or sought to be acquired through condemnation; the purpose for which said property is being condemned; and any other appropriate provisions.

(2) All persons listed in the petition as owning said property or as holding any right, title, estate, or interest therein, shall be served with a copy of the petition, as in other civil actions.

(3) Within twenty (20) days from the date of service of the petition, the individual or individuals so served shall answer and assert any defenses which he or they may have to said condemnation; and failure to answer within the period provided herein shall bar any affirmative defenses which such defaulting party may have to the action; provided, however, that failure to answer within the period provided shall in no manner prevent said defaulting party from appearing and participating fully in the adjudication of compensation to be awarded, nor shall failure to

76-533. Most of the modifications are based on discussions and recommendations of the particular highway committee reviewing the existing law. The main thing this Sub-Section does is to provide an orderly procedure for the processing of these actions.

See Title 27, Ark. Stats.

answer bar or prevent in any manner the granting of just compensation for such taking or damage. Unless waived by the parties to the action, the court shall impanel a jury and the matter shall proceed and be determined as in other civil actions.

c. Declaration of Taking.

(1) In any condemnation action, the Commission may file with the petition, or at any time thereafter, a declaration of taking stating that said property, or such right, title, estate, or interest therein as is being condemned, is thereby taken for the use of the Commission.

(2) The said declaration of taking shall contain a statement of the authority under which the property or any interest therein is taken; a statement of the public use for which the property or the interest therein is taken; a description of the property sufficient to legally identify it and the interest of each person therein; a plat showing the property involved; and a statement of the amount of money estimated by the condemnor to constitute just compensation for the property or interest therein so taken.

(3) The said declaration of taking may be combined with the condemnation and filed at the same time, and the contents

The first part is essentially the same as Ark. Stat. Sec. 76-534.

The second part is essentially the same as Ark. Stat. Sec. 76-535, although it has been reworded somewhat. The third paragraph is new only in the wording. The fourth paragraph (service) is new and provides for service.

and allegations of the two instruments may be combined.

(4) Service on the declaration of taking shall be as in other civil actions.

d. Deposit and Vesting of Title.

Upon the deposit with the clerk of the Circuit Court of the amount of money estimated in the declaration of taking as just compensation for the property, or interest therein taken, title to property in fee simple or in any lesser interest taken as specified in the declaration shall immediately vest in the Commission; and compensation therefor shall be ascertained and awarded; and the judgment when entered shall include, in addition to the award, interest at the rate of six percent (6%) per annum on any excess awarded over and above the sum deposited in the registry of the Court, and such interest shall run from the date of surrender of possession until the date of payment of the balance due on the award.

This provision is essentially the same as Ark. Stat. Sec. 76-536, although it has been reworded slightly. The content is the same.

e. Right of Entry.

(1) Upon the filing of the deposit in the registry of the Court in the manner stated herein, the Commission shall have an immediate right of entry upon the premises involved to the extent of the interest being condemned; and within twenty (20)

This is Ark. Stat. Sec. 76-538, as reworded. (We felt that this should precede 76-537, since it is so intimately related to 76-536,

days after the service of the declaration of taking upon the landowner and such other persons as may occupy the premises, the landowner and such other persons shall quit the premises being condemned and shall surrender possession thereof to the Commission; provided, however, that upon a showing that special circumstances exist which would reasonably justify a delay in surrender of possession of the premises by the landowner or other occupants thereof, the Court may order that the landowner or other occupants thereof shall have a period not to exceed sixty (60) days from the date of service of declaration of taking prior to surrender of possession of premises.

(2) A respondent challenging the validity of the taking must do so by filing a motion to strike the declaration of taking and to dismiss the petition for condemnation. The motion shall be filed on or before twenty (20) days from the date of the service upon him of a copy of the declaration of taking. Failure to file the motion within the time herein provided shall constitute a waiver of the right of any respondent to challenge the validity of the taking. In the event the motion is filed, the court shall issue an order restraining the Commission from taking possession of the premises; provided, however, that a hearing

which is our par. d.) The existing statute has been modified by the provision requiring vacation of the premises within 20 days, and an extension under justifiable circumstances up to 60 days. This modification was recommended by the committee. It removes some of the discretion previously exercised (and in some instances, abused) by courts.

The "(2)" part is the replacement for Ark. Stat. Sec. 76-540, and the changes are based largely on committee recommendations. Under the new provision, the 20-day period runs (as in the case of the petition) from the day of service, rather than from the filing of the declaration or the "return day" as in the old statute. We believe the new

shall be held upon the motion on or before sixty (60) days from the date of service of the declaration of taking, and the temporary restraining order shall in any event expire at the end of the sixty (60) day period.

(3) If, for any reason, the right of entry is postponed by court order or the surrender of possession is delayed by court order beyond the twenty (20) day period provided for in Sub-section (1), and the landowner or the party in possession has withdrawn any part of the deposit or award, the court may fix a reasonable rental for the premises to be paid by such person to the Commission during such occupancy.

provision to be fairer from the standpoint of due process. Note that under this provision, there can be no stay with respect to taking possession beyond the 60-day period set forth in the preceding part.

This provision for a reasonable rental is essentially the same as that contained in 76-538, although it has been tied to delay beyond the 20-day period provided for in Sub-section "(1)". In our comments we advised that this provision be deleted, but we have no strong opinion in connection with it. It is probably not very effective. The second paragraph in 76-538 will appear as (f)(3). The last paragraph in 76-538 is not necessary; it was inserted because this statute

was enacted separately from the regular condemnation statute.

f. Payment of Deposit.

(1) Upon petition of a party in interest, and after due notice to all parties, the court may order that the funds deposited in the registry of the court, or any part thereof, be paid to the person or persons entitled thereto. If the compensation finally awarded shall exceed the amount of the deposit, the court shall enter judgment against the Commission and in favor of the parties entitled thereto for the amount of the deficiency. If the compensation finally awarded shall be less than the amount of the deposit and the person or persons entitled thereto shall have withdrawn such deposit, the court shall enter judgment in favor of the Commission and against the proper persons for the amount of the excess.

This is essentially Ark. Stat. Sec. 76-536. It has been reworded, and we believe it has been improved. The last sentence of 76-536 has been omitted because it is not necessary.

(2) If an interested party believes that the amount of estimated compensation deposited by the Commission in the registry of the court is inadequate, such party may file a motion seeking an increase in the amount of such deposit and shall deliver a copy of the motion to the Commission along with reasonable notice as to the date, time, and place of hearing on the motion. Following a hearing

This is essentially Ark. Stat. Sec. 76-541, with some changes. The primary changes are: Notice provision has been added which requires the person filing the motion to give adequate notice

and the presentation by said interested party of such evidence as he may wish to present in support of such motion and the presentation by the Commission of evidence, if any, which it may wish to present in opposition thereto, the court shall in its discretion determine whether the present deposit is adequate, and if not, shall determine what additional amount the Commission should deposit, and shall require such additional deposit; provided, however, that such additional amount deposited shall remain in the registry of the court without withdrawal until final adjudication of just compensation, but such additional deposit shall prevent the running of interest on the difference in the amount of the original deposit and the compensation awarded as provided in Subsection "(1)", unless the amount of the compensation awarded exceeds the amount of both deposits, in which case interest shall run only on the excess from the date of the first deposit; and should the amount of compensation awarded fail to exceed the total of both deposits, then the amount by which it falls short shall bear interest thereon at the rate of ten percent (10%) per annum from the date of its deposit, and such interest shall be deducted from the compensation awarded and shall be retained by the Commission. This hearing and determination shall in no way interfere thereof and of the hearing thereon to the Commission. In the manner in which this has been drawn, the Commission does not have to present any evidence at this hearing if it does not wish to do so. The additional deposit, if ordered by the court, cannot be withdrawn, and if it is excessive, it will bear interest (on the excessive portion) from the date of deposit at the rate of 10% per annum. Moreover, unlike the old provision which said that this deposit would not prevent the running of interest on the difference in the amount of the original deposit and the compensation awarded, this provision does prevent the running of interest unless the final award exceeds the total of both deposits, in which event

with the possession, vesting of title, or right of entry by the Commission.

(3) If at the time of the filing of the petition or declaration of taking, the Commission shall state therein, or shall otherwise notify the court in writing prior to the withdrawal of the deposit, that the property being condemned is subject to delinquent taxes, delinquent special assessments, encumbrances, liens, rents, insurance, or other charges, the interest runs only on the excess.

This is essentially the same as the second paragraph of 76-538, but it has been rewritten and possibly broadened. The court may withhold funds sufficient to take care of the enumerated items and may order

court shall have the power to direct the payment of any of the foregoing out of the amount deposited or to withhold from withdrawal and maintain in the registry of the court an amount sufficient to make payment of any of the foregoing items. The court may also exercise such power upon the written request of any interested party. The court may also deny withdrawal of the deposit if informed by any interested party or by the Commission that a dispute exists as to the title or ownership of the real property.

the payment of any of them, and it may act upon the request of any interested party. This protects, or helps protect, interested parties against withdrawal of the funds before they can assert their interest. The last sentence (title disputes) is new.

g. Appeal Not to Delay Vesting of Title.

No appeal in any case arising under these provisions, nor any bond or undertaking, shall operate to prevent or delay the vesting of title to real property or interest therein, in the Commission. The Commission shall be divested of title to real property, or interest therein, only upon failure to pay the award or make deposit thereof as provided herein or upon finding that said property, or interest therein, was not taken for public use. In the event of such finding, the court shall enter judgment (1) to compensate the persons entitled thereto for the period during which the property was in the possession of the Commission or during which title was vested in the Commission, and (2) to recover

This is essentially the same as Ark. Stat. Sec. 76-539. It provides for compensation not only while the property was in the Commission's possession, but also while "title was vested in the Commission". These are two different things.

for the Commission any deposit or funds paid to any person.

h. Precedence Accorded Certain Condemnation Proceedings.

Whenever in condemnation proceedings the landowner or others having any right, estate, or interest in the property involved shall challenge the right or power of the Commission to take said property, or seek injunctive relief, or question the title of the condemnee or the title being acquired by the Commission, such cases shall take precedence over all other cases not involving the public interest.

The committee agreed that the multitude of statutes giving "precedence" to highway cases over other cases pending in court are for the most part worthless. (There are many other statutes giving "precedence" to other types of actions -- e.g., workmen's compensation cases. The net result is that such provisions are largely ineffective.) This section, therefore, replaces Ark. Stat. Sec. 76-542. The committee felt that the circumstances mentioned in this Code section should be heard at an early date.

i. Particular Procedural and Evidentiary Matters.

In the trial of condemnation cases, although it is not intended to codify all procedural and evidentiary rules nor to affect any rules not provided for or modified herein, the

This is an omnibus section which either changes or codifies certain existing rules in line with either committee recommendations or the

following particular procedural and evidentiary rules shall be observed and followed by the court:

(1) Where evidence as to the assessed value of property being taken or damaged is introduced, the court shall instruct the jury that all real estate in Arkansas is assessed at approximately twenty percent (20%) of its true value, and if the actual assessment figure in the county in which the

recommendations of the Research Director in his analysis. This subsection, in line with the view of both the committee and the Director, changes the rule established in Arkansas State Highway Commission vs. Johns, 236 Ark. 585, 367 S.W. 2d 436 (1963). (See page 162 Arkansas Eminent Domain Digest.) This new provision would require the expert witness to state the basis of his opinion on direct examination as a predicate to the expression of an opinion. This paragraph takes the place of Ark. Stat. Sec. 76-521, which refers to assessment of lands "at 50% of their true value." The change was based

property lies be established in evidence, and if such assessment percentage varies upward or downward from the twenty percent (20%) figure, then the court shall use such actual figure in so instructing the jury.

(2) Those entitled to compensation for condemnation of property owned by them, or in which they have an interest, shall be entitled to recover on the basis of the highest and best use for which such property is suited, but if such property is not presently being used for such purpose, it must first be shown: (1) that the property in question is adaptable to such use; (2) that it is reasonably probable that it will be put to such other use within a reasonable period of time; (3) that the market value of the property has been enhanced by such use for which it is adaptable; and (4) that such highest and best use existed prior to the taking and was not created by the taking.

on committee recommendation.

This paragraph represents an attempt on our part to confine the "highest and best use" rule within reasonable bounds. Thus, in order to show a higher use, the four requirements listed in the subsection must be met; and if a condemnee can meet these requirements, it is our belief that at least some of the fakery will be removed. These requirements, incidentally, are based on Nichols and various American cases and represent what should be required in order to show a higher use.

(3) Subject to regulations, but not denial, thereof by the court, the jury shall be permitted to view the property being condemned for the purpose of observing such conditions as may affect the value of the land being taken, if such view of the property by the jury is requested by any party to the case; provided, however, that due to natural factors, such as the terrain, the elements, the inaccessibility of the property involved, or other such reasons, the court may in its discretion deny such request; and provided, further, that if any juror be physically or otherwise unable to view the property involved, such juror may be excused therefrom by the court without prejudice to any party and such juror shall not be disqualified and may continue to participate as a juror in the determination of the case.

This paragraph was recommended by the Director in his analysis. This is generally thought to be the "better view" by Nichols and other authorities. The jury should be permitted to view the premises and surrounding property, subject to regulation by the court. On the other hand, the court should not be permitted to deny this privilege arbitrarily. This has been limited to situations in which one of the parties requests a viewing of the premises, and the court may refuse to permit a view where the property is inaccessible. The last limitation provided in this sub-section would permit the court to excuse an elderly or infirm juror from viewing the property without disqualifying the juror

(4) A landowner may be permitted to testify regarding the value of his own property if his testimony first demonstrates that he is familiar with the value of property in the immediate vicinity thereof based on his experience or knowledge and if he shall first state the facts upon which his opinion is based. In the event a landowner is permitted to testify after having qualified under this provision, the court shall instruct the jury that it must weigh the testimony of the landowner in the light of the fact that he is beneficially and financially interested in the amount of compensation to be awarded.

or causing a mistrial. This subsection permits testimony by a landowner, as the committee recommended, but only if he has some knowledge of land values in the area and first states the basis for his opinion. Moreover, it provides for an instruction to the jury by the court calling attention to the landowner's interest in the lawsuit. This subsection is somewhat stricter than prevailing Arkansas law, but the privilege of testimony by landowners was abused in a recent Arkansas case. We feel that the statute is reasonable and proper.

(5) Testimony by any witness as to the amount of any deposit filed in the registry of the court by the Commission, or as to the amount of any additional deposit which may have been required by the court, shall not be admissible in evidence either on direct examination or on cross examination; nor shall such deposit or deposits in any manner be revealed to the jury, and the revealing of such sum or sums to the jury, or any individual juror, or the knowledge thereof by the jury or by any juror, prior to the determination of the award by the jury shall constitute reversible error and shall necessitate a new trial if such be established.

This subsection codified the existing Arkansas case law. We do this in order to prevent this type of testimony from ever being admissible. It would cause much abuse if it were permitted. This subsection is an attempt to make information as to the deposit inadmissible and to provide rather strong sanctions in the event this information is known by or revealed to jurors.

(6) In any case in which there is a partial taking of a tract of land, benefits which accrue to the remainder thereof as a result of the taking and which are special, peculiar, and local thereto and are not in common with benefits accruing generally to land in the particular area involved, shall be an element to be considered in determining the market value

This subsection is necessitated by the requirement that the "before and after" rule will be used in all cases involving a partial taking.

of the remainder after the taking, and the amount of such special, local, and peculiar benefits shall be added to market value of the remainder after the taking in arriving at the final award.

Special benefits to the remainder of a tract could be shown, under this section in order to reduce the recovery. This section is in line with existing Arkansas law.

j. Necessary and Proper Parties--Joinder of Actions.

(1) All persons having any right, title, estate, or legal or equitable interest in property being condemned are proper parties to the condemnation action and should be made parties thereto; however, if the whereabouts of any such person or the existence of his right, title, estate, or legal or equitable interest be unknown to the Commission after a reasonable effort to ascertain same, the failure to join such person as a party or obtain service on him shall not invalidate or affect the judgment, nor provide or create a separate cause of action against the Commission, but such person shall have the right to share in the award to the extent of his right, title, estate, or interest, and to proceed against the award or to maintain a cause of

This is new but is based on recommendations of the Director in the analysis. The first sentence is perhaps somewhat redundant, since the Commission is required to list in its petition the names and addresses of the landowners or anyone having any right, title, estate, or interest. The main purpose, however, is to provide that if a party

action against any person who wrongfully appropriates his share thereof if such action be brought within a period of five (5) years from the date of entry of the judgment.

is not joined (because the Commission could not find him, or did not know about him, etc.), the judgment is not invalidated and such person can assert his claim against the award within a five-year period. This provision protects the Commission, but it also protects within reasonable limits those holding obscure interests, heirs who could not be located, and the like.

Section 4. Quantity of Real Property Acquired.

Although the acquisition of real property or any interest therein, must in all other respects be for present needs or purposes or for presently contemplated future needs or purposes, if in the opinion of the Commission excessive damages would result from the partial taking of a lot, block, or tract of real property, the Commission may in its discretion acquire the entire lot, block, or tract of land involved or any interest therein, even though said entire lot, block, or tract is not immediately needed for present purposes or for presently contemplated future purposes or needs, but only if by so doing the interests of the public will be best served.

This has been reworded, but it provides the same authority and serves the same purpose as Ark. Stat. Sec. 76-543. The committee stated that the purpose of this statute was to avoid excessive damages on a partial taking. The normal rule is that a taking must have some relationship to present or planned future needs. The statute was reworded to show that this is an exception to that rule, but that the exception is limited in nature.

Section 5. Lease or Rental Agreements.

In lieu of acquiring real property or an interest therein, the Commission may enter into and execute, as lessees or renters, lease or rental agreements covering real property owned by others; or may enter into and execute, as lessors or owners, lease or rental agreements covering real property owned by the Commission. Such lease or rental agreements, except as otherwise provided by law, shall be upon such terms and conditions as may under the circumstances be reasonable; provided, however, that no real property owned by the Commission shall be leased or rented to others if its use is contemplated in the immediate or near future; or if such leasing or renting would be contrary to the public interest.

Section 5 replaces Ark. Stat. 76-547, which permitted leases on property owned by the AHC. This broadens that provision to apply to the leasing of non-owned property. The last sentence in 76-547 has been omitted. Ark. Stat. 76-137 (Act. 405 of 1967) provides that the Arkansas State Highway Commission, Counties, Towns and Cities may enter into leases, contracts, and other agreements with owners of real property for the use of air rights over a Highway, Road or Street. 76-137 is repealed by this section of the code.

Section 6. Rights-of-Way for State Highways to be held inviolate.

The rights-of-way provided for the System shall be held inviolate for their essential purposes, except as hereinafter provided, and no physical or functional encroachments, installations, signs other than uniform traffic control signs and devices, posters, billboards, roadside stands, motor fuels pumps, or other structures or uses shall be permitted within the right-of-way limits; except that political subdivisions, rural electric cooperatives, rural telephone cooperatives, public utilities, and private utilities of the State may use any right-of-way or land, property, or interest therein for the purpose of laying, constructing, or erecting pipelines, sewers, wires, poles, ditches, railways, or any other purpose in accord with the provisions of Chapter 11, hereof, under existing agreements or permits or such agreements or permits hereinafter made or under existing laws, provided such use does not interfere with the public use of such property for its basic highway purpose.

c/r Chapter 11, Access and Land Use Control; Article II, Control of Rights-Of-Way; Section 1, Limitation on Use of Rights-of-way.

Section 7. Adverse Possession.

No title nor right to possession of any highway, road, street, bridge, viaduct, overpass, underpass, alley, right of way, or any property forming a part of the System may be obtained or acquired by adverse possession or occupancy thereof, nor may such property be disposed of by the Commission on the basis that such property has been acquired by the recipient or by some other person through adverse possession.

Ark. Stat. Sec. 19-3831 and 37-109 and 37-110 deal with this problem, and these statutes will be left intact, outside the Code. However, we deem it appropriate to have an adverse possession statute in the Code.

Section 8. Right to Dispose of Lands, Tenements, and Hereditaments.

Real property or any interest therein, including rights of access, air, view, and light, may be disposed of by the Commission, whenever such disposition is in the best interests of the System and the public. Such disposition may be accomplished by transfer, donation, exchange, sale, vacation, or abandonment in fee simple or in any lesser interest.

This is the exposition of the "powers and duties" covering acquisition and disposition of property in Chapter 2. It is largely a compilation of existing law scattered through the statutes.

Section 9. Disposition Procedures.

All disposition of real property allowable under this Code shall proceed under one of the methods set out herein for the disposition of real property by the Commission. The instruments which convey such real property from the Commission shall be recorded in each County wherein the real property may lie, then deposited in the archives of the State Highway Department.

a. Transfer by Donation or Exchange. The Commission is authorized to transfer land to other agencies of government, including counties and municipalities, provided such transfer of land is not detrimental to the best interests of the System. Such transfer may be an element of an exchange of real property

or an outright donation of real property, provided that in either situation the consummation of the transaction shall be contingent upon the prior review by the State Highway Department of the proposed disposition of real property and its certification that such transfer is fair and equitable and in the best interests of the public.

b. Sale. The Commission is authorized to appraise, advertise, and sell real property when the disposition of such real estate serves the best interest of the System.

This provision replaces Ark. Stat. 76-226 and 76-227 in line with recommendations of the committee. In connection with sales at public aution as compared to private sales, the Commission should be permitted to decide which method will produce the most money. As a general rule, it is our belief that you can obtain more at private sales. The only limitation is in connection with prior appraisal of the property, and this provision is based on

(1) Declared Surplus. Whenever the Commission shall find that any real property among its holdings is not needed for present or future highway, road, or street purposes or in the operation of the State Highway Department, such unneeded real property shall be declared surplus by the Commission and shall be offered for sale. The owner from whom such property was acquired, his heirs, successors, or assigns, shall be furnished a copy of the Commission's declaration and intent with the notification that they shall have a ninety (90) day option to reacquire the real property at an equitable price prior to its being put up for sale. When an entire parcel is declared surplus, it may be reacquired under such option by a refund of the price paid by the Commission in its acquisition. If such option is not exercised in the ninety (90) day period, the Commission shall have the property appraised and advertised for sale at public auction or private sale for the best possible price, provided that,

committee recommendations. Ark. Stat. Sec. 76-226, 227, and 76-548 will be repealed by and replaced by this Section. Ark. Stat. 76-552 (Act 394 of 1967) provides that a City or Incorporated Towm may purchase property which the Highway Commission no longer desires to utilize at the same price th Highway Commission paid the City or Town for the property in its original acquisition. The price to be paid by the City or Town would be the same price which the Highway Commissior ha paid them for the property. Ar Stat. 76-552 will be repealed by this code.

unless such price shall equal or exceed the appraisal valuation, the purchase offer will be rejected. The proceeds accruing from such sales shall be paid to the Cashier of the State Highway Department.

(2) Appraised. The appraised value of the property to be sold shall be determined by an appraiser who is qualified by knowledge and experience to appraise the particular type of property being sold; and such appraisal shall be submitted in writing to the Commission prior to advertising the sale thereof.

(3) Public Auction. The terms, time and place of sales conducted at public auction, and the advertising and notice of such sales shall be determined by the Commission, who shall set such terms as are reasonably necessary to obtain the highest and best bid; provided, however, that such property shall not be sold for less than its appraised value.

c. Personal Benefit. No member of the Commission nor any official or employee of the State Highway Department, nor the agent, employee, or representative of such member, official, or employee, shall be a purchaser at such sales nor shall such persons obtain financial or personal benefit from such sales.

ADDITIONAL COMMENTS PERTAINING TO LAND ACQUISITION AND DISPOSITION

Ark. Stat. Sec. 76-545 will be repealed. Provision has been made for the condemnation and acquisition of any and all interests in land, and this is no longer necessary.

In addition, the following statutes will be repealed outright: Ark. Stat. Secs. 76-510, 76-511, 76-512, 76-607, 76-608, 76-628, 76-919, 76-920, 76-922, 76-923, 76-924, 76-1605.

Ark. Stat. Sec. 76-546, which deals with payment for property acquired (and division of payment with the counties with respect to highways in the secondary system) will be covered in the Chapter on Finance. Actually, there is no need to authorize payment, since under the "powers and duties" section of the Chapter on Administration, the Arkansas Highway Commission is given the power to condemn, purchase, and otherwise acquire land, and the power to pay for it. The last paragraph of 76-546, which provides for the cost of removal of obstructions from rights-of-way, has been taken care of in this Chapter.

Ark. Stat. Secs. 76-1801 and 76-1808 will be left outside the Code. Both of these are part of the Chapter on the Mississippi River Parkway, and it was agreed to leave that Chapter intact, outside the Code.

Scenic easements or zoning for scenic or aesthetic purposes will be covered, to conform to the Federal Beautification Act of 1965, in the Chapter on land use.

Ark. Stat. Sec. 19-3802, re-dedication of streets, will be repealed and replaced by Section 4 in the Chapter on highway, road, and street classification.

Ark. Stat. Secs. 19-3015, 19-4908, 19-2710, and 19-2745 should be amended to the effect that the

condemnation procedure provided for in the Code will be followed. These statutes deal with housing authorities, parking authorities, ports and harbors, and will be left intact outside the Code, except for this amendment. The amendment should read to the effect that: "Such power as is provided herein shall be exercised in the same manner and under the same procedure as provided in the Arkansas Highway Code for the State Highway Commission."

Ark. Stat. Secs. 76-1401 through 76-1421 will be repealed and replaced by the Chapter on Improvement Districts.

The portion of Ark. Stat. Sec. 35-902 which the Committee objected to will be superseded by the Code insofar as it applies to streets, highways, bridges, or obstructions on rights-of-way.

The Committee advised placing Ark. Stat. Sec. 7-107 (Sec. 352 of the compilation, in the Chapter on Land Acquisition) in the Code. This refers to highways in that it allows the donation of land by other agencies such as correctional institutions for highway purposes. The purpose of the statute is to empower these outside agencies to so act, and thus it pertains to those agencies. The Code already provides under "powers and duties" for the AHC to receive such donations.

CHAPTER 6. REAL PROPERTY ACQUISITION AND DISPOSITION.

Article II. By Counties.

Section 1. Right to Acquire Lands, Tenements, and Hereditaments.
Section 2. Acquisition Procedures.
- a. By Gift, Donation, or Transfer.
- b. By Devise.
- c. By Exchange.
- d. By Purchase.
- e. By Prescription.
- f. By Dedication.

Section 3. Acquisition by Exercise of Eminent Domain.
Section 4. Quantity of Real Property Acquired.
Section 5. Lease or Rental Agreements.
Section 6. Rights-of-Way for County Roads to be Held Inviolate.
Section 7. Adverse Possession.
Section 8. Right to Dispose of Lands, Tenaments, and Hereditaments.
Section 9. Disposition Procedures.
- a. Transfer by Donation or Exchange.
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- e. Personal Benefit.

Article II. By Counties.

Section 1. Right to Acquire Lands, Tenements, and Hereditaments.

This parallels the provisions for the State Highway Commission.

Real property and any interest or right therein, including rights of access, air, view, and light, may be acquired by the Counties through gift, devise, exchange, purchase, prescription, dedication, eminent domain, or otherwise, in fee simple or in any lesser interest. Such property may be acquired for present or for future purposes, needs, or uses of the County System, hereinafter called the System, or of the administration of such System, including but not limited to right-of-way, bridges, bridge approaches, ferries, ferry landings, overpasses, underpasses, tunnels, urban extensions, rock quarries, gravel pits, borrow pits, offices, shops, depots, storage yards, buildings, and physical facilities of all types, roadside parks and recreational areas, scenic easements and other aesthetic uses or purposes, the growth of trees and shrubbery along rights-of-way, drainage, maintenance, or safety purposes, stock trails or passes, the elimination of encroachments, the elimination of private or public crossings or intersections, the establishment of controlled-access highways or streets, and any and all other needs, uses, or purposes which may be reasonably

related to the development, growth, or enhancement of such System. No County may acquire for road purposes any real property or any right in real property lying beyond the boundaries of that County.

Section 2. Acquisition Procedures.

All acquisition of real property allowable under this Code shall proceed under one of the methods set out herein for the acquisition of real property by the County Court, or at their election in the case of eminent domain, the procedure outlined for the State Highway Commission in Section 3, Article I, of this Chapter. The instruments which convey such real property to the County shall be recorded by the County Clerk along with the County Court Order pertaining thereto.

a. By Gift, Donation, or Transfer. Each County is authorized to accept gifts, donations, or transfers of land from private persons or agencies of government, provided such land is suitable for present or future needs or purposes of the System. Such donations of land when made for rights-of-way purposes may be in fee simple or any lesser interest, but such donations of land when made for purposes incidental or collateral to the actual roadway facility, such as roadside parks, rest areas, or materials yards, must convey an interest of sufficient duration to ensure

reasonable and prudent protection of the public investment which may be made in such land.

b. By Devise. Each County is authorized to accept real property by devise when the possession of such lands would be of benefit to the System and in the best interests of the public. If these conditions do not prevail, such devise shall escheat to the Public Lands of the State.

c. By Exchange. Each County is authorized to enter into agreements with the proper officials of State agencies, municipalities within the County, and private persons to exchange real estate held by the County for real property held by the other party to the agreement. Such exchanges shall not be consummated until the County Court has certified that such exchange is fair and equitable and best serves the public interest.

d. By Purchase. Each County is authorized to appraise, negotiate for, and purchase real estate when the acquisition of such real estate will serve the best interests of the public.

e. By Prescription. Each County is authorized to acquire and incorporate into the System the right of way of any highway, road, or street on other land which has by exercise of unlimited public use for the preceding seven or more years come to be a

public way.

f. By Dedication. Each County is authorized to accept rights of way or other real property dedicated, provided that the dedicated land is adequate for its intended purposes and the acceptance of such dedicated real estate serves the best interests of the public.

Section 3. Acquisition by the Exercise of Eminent Domain.

The right of eminent domain is granted to the Counties to be exercised in the acquisition of real property which is considered essential in the operation and maintenance of the County Road Systems. The County Court in its exercise of the power of eminent domain for road purposes may elect to pursue those procedures outlined in Article I of this Chapter for the State Highway Commission through a condemnation action filed in the circuit court of competent jurisdiction or it may elect to proceed through its own court order under authority of Section 28, Article 7, of the State Constitution. If the latter election is made, the procedure to be followed shall be as set out in Chapter 9, Title 35, of the Arkansas Statutes of 1947 Annotated, as since amended.

and execute, as lessors or owners, lease or rental agreements covering real property owned by the County. Such lease or rental agreements, except as otherwise provided by law, shall be upon such terms and conditions as may under the circumstances be reasonable; provided, however, that no real property owned by the County shall be leased or rented to others if its use is contemplated in the immediate or near future; or if such leasing or renting would be contrary to the public interest.

Section 6. Rights-of-Way for County Roads to be Held Inviolate.

c/r Chapter 12, Land Use Control, Article I, Use of Rights-of-Way for Other Purposes, Section 1, Limitation on Use of Rights-of-Way.

The rights-of-way provided for the County Road system shall be held inviolate for their essential purposes, except as hereinafter provided, and no physical or functional encroachments, installations, signs other than uniform traffic control signs and devices, posters, billboards, roadside stands, motor fuels pumps, or other structures or uses shall be permitted within the right-of-way limits; except that political subdivisions, rural electric cooperatives, rural telephone cooperatives, and public utilities of the State may use any right-of-way or land, property, or interest therein for the purpose of laying,constructing, or erecting pipelines, sewers, wires, poles, ditches, railways, or

any other purpose in accord with the provisions of Article I, Chapter 11 of this Code, under existing agreements or permits or such agreements or permits hereinafter made or under existing laws, except that such permits shall be issued by the County Court of the County involved, provided such use does not interfere with the public use of such property for its basic road purpose.

Section 7. Adverse Possession.

No title nor right to possession of any highway, road, street, bridge, overpass, underpass, alley, right of way, or any property forming a part of the County Road System may be obtained or acquired by adverse possession or occupancy thereof, nor may such property be disposed of by the County on the basis that such property has been acquired by the recipient or by some other person through adverse possession.

Ark. Stat. Sec. 19-3831 and 37-109 and 37-110 deal with this problem, and these statutes will be left intact, outside the Code. However, we deem it appropriate to have an adverse possession statute in the Code.

Section 8. Right to Dispose of Lands, Tenements, and Hereditaments.

Real property or any interest therein, constituting a part of the County Road System or any appurtenance thereto, including rights of access, air, view, and light, may be disposed of by the County Court, whenever such disposition is in the best interests of the System and the public. Such disposition may be accomplished by transfer, donation, exchange, sale, vacation, or abandonment in fee

simple or in any lesser interest.

Section 9. Disposition Procedures.

All disposition of real property allowable under this Code shall proceed under one of the methods set out herein for the disposition of real property by a County. The instruments which convey such real property from the County shall be recorded by the County Clerk along with the County Court Order authorizing such disposition.

a. Transfer by Donation or Exchange. Each County is authorized to transfer land to other agencies of government, including the Federal government, the State, and any municipal corporation, and to private persons. Such transfer may be an element of an exchange of real property or an outright donation of real property.

b. Sale. The County Court is authorized to appraise, advertise, and sell real property belonging to the County Road System when the disposition of such real estate serves the best interests of the public.

This parallels the provisions for the State Highway Commission. In connection with sales at public auction as compared to private sales, the County Court should be permitted to decide which method will produce the most money. As a general rule,

it is our belief that you can obtain more at private sales. The only limitation is in connection with prior appraisal of the property, and this provision is based on committee recommendations.

(1) Declared Surplus. Whenever the County Court shall find that any real property among its holdings is not needed for highway, road, or street purposes or in the operation of the County Road System, such unneeded real property shall be declared surplus and offered for sale. The owner from whom such property was acquired, his heirs, successors, or assigns, shall be furnished a copy of the Court Order covering such declaration and intent with the notification that they shall have a ninety (90) day option to reacquire the real property at an equitable price prior to its being put up for sale. When an entire parcel is declared surplus, it may be reacquired under such option by a refund of the price paid by the County in its acquisition. If such option is not exercised in the ninety (90) day period, the County Court shall have the property appraised and advertised for sale at public auction or private sale for the best possible price,

provided that, unless such price shall equal or exceed the appraisal valuation, the purchase offer will be rejected. The proceeds accruing from such sales shall be deposited to the credit of the County Road Fund.

(2) Appraised. The appraised value of the property to be sold shall be determined by an appraiser who is qualified by knowledge and experience to appraise the particular type of property being sold; and such appraisal shall be submitted in writing to the County Court prior to advertising the sale thereof.

(3) Public Auction. The terms, time and place of sales conducted at public auction, and the advertising and notice of such sales shall be determined by the County Court, who shall set such terms as are reasonably necessary to obtain the highest and best bid; provided, however, that such property shall not be sold for less than its appraised value.

c. Vacation, Closing, or Abandonment. Action to vacate, close, or abandon any element of the County Road System may be initiated by action of the County Court or by petition of any ten (10) citizens residing in that part of the County where the road proposed for vacation, closing, or abandonment lies.

This provides a method for the vacation or closing of any highway, street, road, alley, or public way by the County Court. The chief limitation (which

Whenever it shall be necessary or of benefit to the County Road System to close or permanently vacate a highway, road, street, alley, or other public way, which is a part of the System, the County Court shall proceed in the manner herein set forth:

(1) The County Court shall publish in a newspaper having a general circulation in the county in which the relevant highway, road, street, alley, or other public way is located, a notice, which shall be published once each week for a period of two weeks, stating that such highway, road, street, alley, or other public way will be closed, abandoned, or vacated, the date such action will be taken, and describing the highway, road, street, alley, or other public way, or the portion thereof, which will be closed, abandoned, or vacated, with sufficient accuracy and clarity as to identify its location. The final insertion of the publication will appear not less than thirty (30) days nor more than forty-five (45) days prior to the date of the closing, abandonment, or vacation of the highway, road, street, alley, or other public way. Provided that, whenever any landowner would lose access to his property or lose ingress or egress thereto as would be necessitated as a matter of law anyway) is that any landowner who would lose his access must be compensated or the process for compensation must have begun before the closing.

a result of such vacation, abandonment, or closing, the County Court shall file with the County Clerk a verified statement from such affected landowner consenting to such vacation, abandonment, or closure and stating that he has received compensation for such loss of access, ingress, or egress; provided, however, that such statement shall not be required if a legal action to establish just compensation is then pending and if such action shall subsequently result in adjudication of the rights, if any, of such landowner and in payment of such just compensation as may be determined to be due him. Failure to complete adjudication of such action or make payment of such just compensation, if any is due, as may be awarded within the period provided by this Code shall result in the setting aside of such vacation, abandonment, or closure by order of the County Court, upon the petition of the landowner in interest.

(2) At such time as the foregoing requirements have been fully complied with, the County Court of the county in which said highway, road, street, alley, or other public way, or the affected portion thereof, is located shall enter an Order vacating or closing same as of the date stated in the notice. A copy of the Court Order shall be filed with the County Clerk.

(3) This section does not apply to the temporary vacation or closing of any highways, roads, streets, alleys, or other public ways, or any portion thereof, and the power of the County Court to close same temporarily or vacate same temporarily and without notice shall continue inviolate.

d. Vacation and Abandonment of Unopened or Unused Highways, Roads, Streets, Alleys, or Other Such Public Ways. Where any strip of land has been dedicated as a highway, road, street, alley, or other such public way by platting the area within which it lies into lots and blocks and filing such plat of record in the appropriate county, and any such highway, road, street, alley, or other such public way has not been opened or actually used for a period of five (5) years from the date of the filing of the plat, or where any strip of land over such platted lands although not dedicated or intended for use as a highway, road, street, alley, or other such public way, has been used as such, the County Court shall have the power and authority to order the vacation and abandonment of such strip of land so dedicated as a highway, road, street, alley, or other such public way, but not used as such, or such strip of land improperly used as a highway, road, street, alley, or other such public way.

This replaces Ark. Stat. Secs. 17-1205 thru 17-1209, Act 129/65. These existing statutes provide for vacation or closing of unused or unopened public ways upon petition of the landowners involved or by any of the three commissions. The procedure outlined in these existing statutes has been followed to a certain extent, but it has been simplified and broadened. Ark. Stat. Sec. 17-1210, which is a curative statute, will be left outside the Code and unrepealed.

(1) A petition to vacate or abandon said strip of land must be filed in the County Court by either the owner or owners of all lots abutting on the strip of land in question, or by the County Court, requesting vacation or abandonment thereof. Such petition shall describe the strip of land to be vacated or abandoned, state the name of the area, addition, or subdivision in which the same is located, provide information as to the date of filing of the plat, attaching thereto a certified copy of such plat, and state such other facts as are necessary or pertinent. Upon the filing of such petition, the County Clerk shall give notice thereof by publication once a week for two (2) consecutive weeks in some newspaper having a general circulation in the county in which such strip of land is located, describing in detail the location of the strip of land in question and stating in summary the contents of the petition and stating the date set for a hearing thereon, which date shall in no event be more than thirty (30) days nor less than ten (10) days from the date of the second publication of such notice. If such petition be filed by the property owners, a copy thereof shall in addition to such publication of notice be served by certified mail upon the County Court. If such petition be filed by the County Court, a copy of such

petition shall in addition to such publication of notice be served by certified mail upon all landowners whose property adjoins the strip of land involved.

(2) At the hearing thereon, the County Clerk shall enter an Order vacating or abandoning said strip of land if it determines that such vacation or abandonment would be in the public interest and would not seriously harm or affect adjoining landowners or other landowners in the immediate area; provided, however, that no highway, road, street, alley, or other public way, or any portion thereof, shall be vacated if the court finds that adjoining landowners or owners of other lands in the area would be deprived of any means of ingress or egress, unless all landowners affected thereby shall consent thereto in writing.

(3) Appeals from the County Court to the Supreme Court of Arkansas may proceed as in civil cases. A certified copy of the County Court Order, if not appealed, shall be filed in the office of the County Clerk and shall be deposited by him in the appropriate county records.

(4) If any such highway, road, street, alley, or other such public way, or any portion thereof, be vacated or abandoned in the manner herein provided, the abutting landowners on either

side thereof shall take title to that portion of the abandoned or vacated land which adjoins their property by projecting their property lines to the center thereof.

e. Personal Benefit. No official or employee of the County, nor the agent, employee, or representative of such official, or employee, shall be a purchaser at such sales nor shall obtain financial or personal benefit from such sales.

CHAPTER 6. REAL PROPERTY ACQUISITION AND DISPOSITION.

Article III. By Municipalities.

Section 1. Right to Acquire Lands, Tenements, and Hereditaments.
Section 2. Acquisition Procedures.
- a. By Gift, Donation, or Transfer.
- b. By Devise.
- c. By Exchange.
- d. By Purchase.
- e. By Prescription.
- f. By Dedication.

Section 3. Acquisition by Exercise of Eminent Domain.
Section 4. Quantity of Real Property Acquired.
Section 5. Lease or Rental Agreements.
Section 6. Rights-of-Way for Municipal Streets to be Held Inviolate.
Section 7. Adverse Possession.
Section 8. Right to Dispose of Lands, Tenements, and Hereditaments.
Section 9. Disposition Procedures.
- a. Transfer by Donation or Exchange.
- b. Sale.
  - (1) Declared Surplus.
  - (2) Appraised.
  - (3) Public Auction.
- c. Vacation, Closing, or Abandonment.
- d. Vacation and Abandonment of Unopened or Unused Highways, Roads, Streets, Alleys, or Other Such Public Ways.

Article III. By Municipalities.

Section 1. Right to Acquire Lands, Tenements, and Hereditaments.

Real property and any interest or right therein, including rights of access, air, view, and light, may be acquired by any municipal corporation organized under Article 12, Section 3, of the Constitution and Title 19, Chapter 1, of the Arkansas Statutes of 1947 -- hereinafter called the Municipality -- through gift, devise, exchange, purchase, prescription, dedication, eminent domain, call upon any county, or otherwise, in fee simple or in any lesser interest. Such property may be acquired for present or for future purposes, needs, or uses of the Municipal Street System, hereinafter called the System, or of the administration of such System, including but not limited to right-of-way, bridges, bridge approaches, ferries, ferry landings, overpasses, underpasses, tunnels, urban extensions, rock quarries, gravel pits, borrow pits, offices, shops, depots, storage yards, buildings, and physical facilities of all types, roadside parks and recreational areas, scenic easements and other aesthetic uses or purposes, the growth of trees and shrubbery along rights-of-way, drainage, maintenance, or safety purposes, stock trails or

This parallels the provisions for the State Highway Commission and the Counties. The last sentence covers the provisions of 35-901.

passes, the elimination of encroachments, the elimination of private or public crossings or intersections, the establishment of controlled-access highways or streets, and any and all other needs, uses, or purposes which may be reasonably related to the development, growth, or enhancement of such System. No Municipality may acquire for street purposes any real property or any right in real property lying more than five miles beyond the corporate limits of that Municipality; provided, however, that the acquisition of real property or any interest therein beyond the corporate limits of the Municipality must be in furtherance of an established continuous comprehensive transportation planning process, and within a designated statutory planning zone.

Section 2. Acquisition Procedures.

All acquisition of real property allowable under this Code shall proceed under one of the methods set out therein for the acquisition of real property by the Municipality, or, at the election of the governing body of the Municipality in the case of eminent domain, the procedure outlined for the State Highway Commission in Section 3, Article I, of this Chapter. The instruments which convey such real property to the Municipality

shall be recorded in each County wherein the real property may lie, along with the Municipal Ordinance authorizing its acquisition.

a. By Gift, Donation, or Transfer. Each Municipality is authorized to accept gifts, donations, or transfers of land from private persons or agencies of government, provided such land is suitable for present or future needs or purposes of the System. Such donations of land when made for rights-of-way purposes may be in fee simple or any lesser interest, but such donations of land when made for purposes incidental or collateral to the actual street facility, such as off-street parking facilities, roadside parks, rest areas, or materials yards, must convey an interest of sufficient duration to ensure reasonable and prudent protection of the public investment which may be made in such land.

b. By Devise. Each Municipality is authorized to accept real property by devise when the possession of such lands would be of benefit to the System and in the best interests of the public. If these conditions do not prevail, such devise shall escheat to the Public Lands of the State.

c. By Exchange. Each Municipality is authorized to enter

into agreements with the proper officials of Federal or State agencies or the County in which the Municipality lies, and private persons, to exchange real estate held by the Municipality for real property held by the other party to the agreement. Such exchanges shall not be consummated until the municipal government has certified that such exchange is fair and equitable and best serves the public interest.

d. By Purchase. Each Municipality is authorized to appraise, negotiate for, and purchase real estate when the acquisition of such real estate will serve the best interests of the public.

e. By Prescription. Each Municipality is authorized to acquire and incorporate into the System the right of way of any highway, road, or street on other land which has by exercise of unlimited public use for the preceding seven or more years come to be a public way.

f. By Dedication. Each Municipality is authorized to accept rights of way or other real property dedicated, provided that the dedicated land is adequate for its intended purposes and the acceptance of such dedicated real estate serves the best interests of the public.

Section 3. Acquisition by Exercise of Eminent Domain.

The right of eminent domain is granted to the municipal corporations to be exercised in the acquisition of real property which is considered essential in the operation and maintenance of the Municipal Street System.

The governing body of a Municipality in its exercise of the power of eminent domain for street purposes may elect to pursue those procedures outlined in Article I of this Chapter for the State Highway Commission through a condemnation action filed in the Circuit Court of competent jurisdiction, or it may elect to proceed under Chapter 9, Title 35, of the Arkansas Statutes of 1947 Annotated, as since amended.

Section 4. Quantity of Real Property Acquired.

Although the acquisition of real property, or any interest therein, must in all other respects be for present needs or purposes or for presently contemplated future needs or purposes of the Municipal Street System, if in the opinion of the governing body of the Municipality excessive damages would result from the partial taking of a lot, block, or tract of real property, such governing body may in its discretion acquire the entire

This provides the same authority and serves the same purpose as the provision in Article I for the State Highway Commission. The committee stated that the purpose of Sec. 76-543 for the State Highway Commission was to avoid excessive damages on a partial

lot, block, or tract of land involved or any interest therein, even though said entire lot, block, or tract is not immediately needed for present purposes or for presently contemplated future purposes or needs, but only if by so doing the interests of the public will be best served.

taking. The normal rule is that a taking must have some relationship to present or planned future needs. The statute was reworded to show that this is an exception to that rule, but that the exception is limited in nature. This extends the provision to municipal street administration.

Section 5. Lease or Rental Agreements.

In lieu of acquiring real property or an interest therein, the governing body of a Municipality may enter into and execute, as lessees or renters, lease or rental agreements covering real property; or may enter into and execute, as lessors or owners, lease or rental agreements covering real property owned by the Municipality. Such lease or rental agreements, except as otherwise provided by law, shall be upon such terms and conditions as may under the circumstances be reasonable; provided, however, that no real property owned by the Municipality shall be leased or rented to others if its use is contemplated in the immediate

This parallels the provision for the State Highway Commission and the Counties.

or near future; or if such leasing or renting would be contrary to the public interest.

Section 6. Rights-of-Way for Municipal Streets to be Held Inviolate.

c/r Chapter 11, Land Use Control; Article I, Use of Rights-of-Way for Other Purposes; Section 1, Limitation on Use of Rights-of-Way.

The rights-of-way provided for the Municipal Street System shall be held inviolate for their essential purposes, except as hereinafter provided, and no physical or functional encroachments, installations, signs other than uniform traffic control signs and devices, posters, billboards, roadside stands, motor fuels pumps, or other structures or uses shall be permitted within the right-of-way limits; except that political subdivision, rural electrical cooperatives, rural electrification administrations, rural telephone cooperatives, and public utilities of the State may use any right-of-way or land, property, or interest therein for the purpose of laying, constructing, or erecting pipelines, sewers, wires, poles, ditches, railways, or any other purpose in accord with the provisions of Article I, Chapter 11 of this Code, under existing agreements or permits or such agreements or permits hereinafter made or under existing laws, except that such permits shall be issued by the governing body of the municipality involved, provided such use does not interfere with the public use of such property for its basic street purpose.

Section 7. Adverse Possession.

No person, firm or corporation shall acquire any title or right to possession of any highway, road, street, bridge, overpass, underpass, alley, right of way, or any property forming a part of the Municipal Street System by adverse possession or occupancy thereof.

Ark. Stat. Sec. 19-3831 and 37-109 and 37-110 deal with this problem, and these statutes will be left intact, outside the Code. However, we deem it appropriate to have an adverse possession statute in the Code.

Section 8: Right to Dispose of Lands, Tenements, and Hereditaments.

Real property or any interest therein constituting a part of the Municipal Street System or any appurtenance thereto, including rights of access, air, view, and light, may be disposed of by the governing body of a municipal corporation whenever such disposition is in the best interests of the System and the public. Such disposition may be accomplished by transfer, donation, exchange, sale, vacation, or abandonment in fee simple or in any lesser interest.

Section 9. Disposition Procedures.

All disposition of real property allowable under this Code shall proceed under one of the methods set out herein for the disposition of real property by a municipal corporation. The

instruments which convey such real property from the Municipality shall be recorded by the County Clerk along with the municipal ordinance authorizing such disposition.

a. Transfer by Donation or Exchange. The governing body of a Municipality is authorized to transfer land to other agencies of government, including the Federal government, the State, and the counties, and to private persons, provided such transfer of land is not detrimental to the best interests of the System. Such transfer may be an element of an exchange of real property or an outright donation of real property.

b. Sale. The governing body of a Municipality is authorized to appraise, advertise, and sell real property belonging to the Municipal Street System when the disposition of such real estate serves the best interests of the public.

This parallels the provisions for the State Highway Commission and the Counties. In connection with sales at public auction as compared to private sales, the municipal government should be permitted to decide which method will produce the most money. As a general rule, it is our belief that you can obtain more at private sales. The only limitation is in connection

with prior appraisal of the property, and this provision is based on committee recommendations.

(1) Declared Surplus. Whenever the governing body of a Municipality shall find that any real property among its holdings is not needed for highway, road, or street purposes or in the operation of the Municipal Street System, such unneeded real property shall be declared surplus by municipal ordinance and offered for sale. The owner from whom such property was acquired, his heirs, successors, or assigns, shall be furnished a copy of the municipal ordinance covering such declaration and intent with the notification that they shall have a ninety (90) day option to reacquire the real property at an equitable price prior to its being put up for sale. When an entire parcel is declared surplus, it may be reacquired under such option by a refund of the price paid by the Municipality in its acquisition. If such option is not exercised in the ninety (90) day period, the governing body of the Municipality shall have the property appraised and advertised for sale at public auction or private sale for the best possible price, provided that, unless such price shall equal or exceed the appraisal valuation, the purchase offer will be

rejected. The proceeds accruing from such sales shall be deposited to the credit of the Municipal Street Fund, or other named fund.

(2) Appraised. The appraised value of the property to be sold shall be determined by an appraiser who is qualified by knowledge and experience to appraise the particular type of property being sold; and such appraisal shall be submitted in writing to the governing body of the Municipality prior to advertising the sale thereof.

(3) Public Auction. The terms, time and place of sales conducted at public auction, and the advertising and notice of such sales shall be determined by the governing body of the Municipality, who shall set such terms as are reasonably necessary to obtain the highest and best bid; provided, however, that such property shall not be sold for less than its appraised value.

c. Vacation, Closing, or Abandonment. Action to create, close, or abandon any element of the Municipal Street System may be initiated by action of the governing body of the Municipality or by petition of the owners of property abutting street, alley, drive, or element of the System proposed for vacation, closure, or abandonment.

This provides a method for the vacation or closing of any highway, street, road, alley, or public way by the Municipality. The chief limitation (which would be necessitated as a matter of law anyway) is that any landowner

who would lose his access must be compensated or the process for compensation must have begun before its closing.

(1) The governing body of the Municipality shall publish in a newspaper having a general circulation in the Municipality in which the relevant highway, road, street, alley, or other public way is located, a notice, which shall be published once each week for a period of two weeks, stating that such highway, road, street, alley, or other public way will be closed, abandoned, or vacated, the date such action will be taken, and describing the highway, road, street, alley, or other public way, or the portion thereof, which will be closed, abandoned, or vacated, with sufficient accuracy and clarity as to identify its location. The final insertion of the publication will appear not less than thirty (30) days nor more than forty-five (45) days prior to the date of the closing, abandonment, or vacation of the highway, road, street, alley, or other public way. Provided, that whenever any landowner would lose access to his property or lose ingress or egress thereto as a result of such vacation, abandonment, or closing, the governing body of the

Municipality shall file with the City Clerk a verified written statement from such affected landowner consenting to such vacation, abandonment, or closure and stating that he has received compensation for such loss of access, ingress, or egress; provided, however, that such statement shall not be required if a legal action to establish just compensation is then pending and if such action shall subsequently result in adjudication of the rights, if any, of such landowner and in payment of such just compensation as may be determined to be due him. Failure to complete adjudication of such action or make payment of such just compensation, if any is due, as may be awarded within the period provided by this Code shall result in the setting aside of such vacation, abandonment, or closure by order of the chancery court in the county in which the highway, road, street, alley, or other such public way is located, upon the petition of the landowner in interest.

(2) At such time as the foregoing requirements have been fully complied with, the governing body of the Municipality in which said highway, road, street, alley, or other public way, or the affected portion thereof, is located shall adopt an ordinance vacating or closing same as of the date stated in the notice,

and the ordinance shall be filed of record in the customary manner.

(3) This section does not apply to the temporary vacation or closing of any highways, roads, streets, alleys, or other public ways, or any portion thereof, and the power of the Municipality to close same temporarily or vacate same temporarily and without notice shall continue inviolate.

d. Vacation and Abandonment of Unopened or Unused Highways, Roads, Streets, Alleys, or Other Such Public Ways. Where any strip of land has been dedicated as a highway, road, street, alley, or other such public way by platting the area within which it lies into lots and blocks and filing such plat of record in the appropriate county, and any such highway, road, street, alley, or other such public way has not been opened or actually used for a period of five (5) years from the date of the filing of the plat, or where any strip over such platted lands although not dedicated or intended for use as a highway, road, street, alley, or other such public way, has been used as such, the governing body of the Municipality shall have the power and authority to order the vacation and abandonment of such strip of land so dedicated as a highway, road, street, alley, or other such public way, but not

This replaces Ark. Stat. Secs. 17-1205 thru 17-1209. These existing statutes provide for vacation or closing of unused or unopened public ways upon petition of the landowners involved or by any of the three commissions. The procedure outlined in these existing statutes has been followed to a certain extent, but it has been simplified and broadened. Ark. Stat. Sec. 17-1210, which is a curative statute, will be left outside the

used as such, or such strip of land improperly used as a highway, road, street, alley, or other such public way, under the circumstances and in the manner hereinafter provided.

Code and unrepealed.

(1) A petition to vacate or abandon said strip of land must be filed with the governing body of the Municipality by either the owner or owners of all lots abutting on the strip of land in question, or by the Municipality, requesting vacation or abandonment thereof. Such petition shall describe the strip of land to be vacated or abandoned, state the name of the area, addition, or subdivision in which the same is located, provide information as to the date of filing of the plat, attaching thereto a certified copy of such plat, and state such other facts as are necessary or pertinent. Upon the filing of such petition, the City Clerk or Recorder, as the case may be, shall give notice thereof by publication once a week for two (2) consecutive weeks in some newspaper having a general circulation in the Municipality in which such strip of land is located, describing in detail the location of the strip of land in question and stating in summary the contents of the petition and stating the date set for a hearing thereon, which date shall in no event be more than thirty (30)

days nor less than ten (10) days from the date of the second publication of such notice. If such petition be filed by the property owners, a copy thereof shall in addition to such publication of notice be served by certified mail upon the Municipality.

(2) At the hearing thereon, the governing body of the Municipality shall adopt the ordinance to vacate or abandon said strip of land if it determines that such vacation or abandonment would be in the public interest and would not seriously harm or affect adjoining landowners or other landowners in the immediate area; provided, however, that no highway, road, street, alley, or other public way, or any portion thereof, shall be vacated if the court finds that adjoining landowners or owners of other lots in the area would be derprived of any means of ingress or egress, unless all landowners affected thereby shall consent thereto in writing.

(3) Appeals from the determinations of the governing body of the Municipality may be pursued through the chancery court to the Supreme Court of Arkansas as in other civil cases. A certified copy of the Municipal Ordinance, if not appealed, shall be filed in the office of the City Clerk or Recorder and shall also

be filed by him in the appropriate county records.

(4) If any such highway, road, street, alley, or other such public way, or any portion thereof, be vacated or abandoned in the manner herein provided, the abutting landowners on either side thereof shall take title to that portion of the abandoned or vacated land which adjoins their property by projecting their property lines to the center thereof.

CHAPTER 6. REAL PROPERTY ACQUISITION AND DISPOSITION.

Article IV. By Highway, Road, Street, and Bridge Improvement Districts.

Section 1. Right to Acquire Lands, Tenements, and Hereditaments.
Section 2. Acquisition Procedures.
- a. By Gift, Donation, or Transfer.
- b. By Devise.
- c. By Exchange.
- d. By Purchase.
- e. By Prescription.
- f. By Dedication.
- g. By Forfeit or Foreclosure.

Section 3. By Exercise of Eminent Domain.
Section 4. Quantity of Real Property Acquired.
Section 5. Lease or Rental Agreements.
Section 6. Rights-of-Way to be Held Inviolate.
Section 7. Adverse Possession.
Section 8. Right to Dispose of Lands, Tenements, and Hereditaments.
Section 9. Disposition Procedures.
- a. Transfer by Donation or Exchange.
- b. Sale.
- c. Vacation, Closing, or Abandonment.

Article IV. By Improvement Districts.

Section 1. Right to Acquire Lands, Tenements, and Hereditaments.

Real property and any interest or right therein, including rights of access, air, view, and light, may be acquired by the Board of Improvement or Board of Commissioners of any highway, road, street, or bridge improvement district organized under the provisions of Chapter 13 of this Code--hereinafter called the Board--through gift, devise, exchange, purchase, prescription, dedication, eminent domain, forfeit or foreclosure, or otherwise, in fee simple or in any lesser interest. Such property may be acquired for present or for future purposes, needs, or uses of the district, including but not limited to rights-of-way, bridges, bridge approaches, ferries, ferry landings, underpasses, tunnels, urban extensions, rock quarries, gravel pits, borrow pits, offices, shops, depots, storage yards, buildings, and physical facilities of all types, roadside parks and recreational areas, scenic easements and other aesthetic uses or purposes, the growth of trees and shrubbery along rights-of-way, drainage, maintenance, or safety purposes, stock trails or passes, the elimination of encroachments, the elimination of private or

This parallels the provisions for the State Highway Commission, the Counties, and the Municipalities.

public crossings or intersections, the establishment of controlled-access highways or streets, and any and all other needs, uses, or purposes which may be reasonably related to the development, growth, or enhancement of the district. No improvement district may acquire any real property or any interest in real property lying outside the established boundaries of the district.

Section 2. Acquisition Procedures.

All acquisition of real property allowable under this Code shall proceed under one of the methods set out herein for the acquisition of real property by an improvement district. The instruments which convey such real property to the district shall be recorded in each County wherein the real property may lie.

a. By Gift, Donation, or Transfer. Each Board is authorized to accept gifts, donations, or transfers of land from private persons or agencies of government, provided such land is suitable for present or future needs or purposes of the district. Such donations of land when made for rights-of-way purposes may be in fee simple or any lesser interest, but such

donations of land when made for purposes incidental or collateral to the actual roadway or street facility, such as roadside parks, rest areas, or materials yards, must convey an interest of sufficient duration to ensure reasonable and prudent protection of the public investment which may be made in such land.

b. By Devise. The Board is authorized to accept real property by devise when the possession of such lands would be of benefit to the district and in the best interests of the public.

c. By Exchange. The Board is authorized to enter into agreements with the proper officials of other State agencies, Counties, Municipalities, and private persons to exchange real estate held by the district for real property held by the other party to the agreement. Such exchanges shall not be consummated until the Board has certified to the County Clerk for public record that such exchange is fair and equitable and best serves the public interest.

d. By Purchase. The Board is authorized to appraise, negotiate for, and purchase real estate when the acquisition of such real estate will serve the best interests of the district and the public.

e. By Prescription. The Board is authorized to acquire

and incorporate into the district the right-of-way of any highway, road, or street on other land within the boundaries of the district which has by exercise of unlimited public use for the preceding seven or more years come to be a public way.

f. By Dedication. The Board is authorized to accept rights-of-way or other real property dedicated as public ways; provided, that the dedicated land is adequate for its intended purposes and the acceptance of such dedicated real estate serves the best interests of the public.

g. By Forfeit or Foreclosure. The Board is authorized to acquire real property being sold under a Court judgment or decree for the recovery of delinquent improvement district taxes, penalties, interest, and costs; if there be no purchasers offering as much as the total tax or assessment, plus penalty, interest, and all costs including attorney fees allowed, then such property shall be struck off to the Board of the improvement district.

Section 3. By Exercise of Eminent Domain.

The right of eminent domain is granted to the Board to be exercised in the acquisition of real property which is considered essential in the operation and maintenance of the district.

The district in its exercise of the power of eminent domain for road or street purposes shall pursue the procedures outlined in Article I of this Chapter for the State Highway Commission through a condemnation action filed in the Circuit Court of competent jurisdiction.

Section 4. Quantity of Real Property Acquired.

Although the acquisition of real property, or any interest therein, must in all other respects be for present needs or purposes or for presently contemplated future needs or purposes, if in the opinion of the Board excessive damages would result from the partial taking of a lot, block, or tract of real property, the Board may in its discretion acquire the entire lot, block, or tract of land involved or any interest therein, even though said entire lot, block, or tract is not immediately needed for present purposes or for presently contemplated future purposes or needs, but only if by so doing the interests of the public will be best served.

This has been reworded, but it provides the same authority and serves the same purpose as Ark. Stat. Sec. 76-543. The committee stated that the purpose of this statute was to avoid excessive damages on a partial taking. The normal rule is that a taking must have some relationship to present or planned future needs. The statute was reworded to show that this is an exception to that rule, but that the exception is limited in nature.

Section 5. Lease or Rental Agreements.

In lieu of acquiring real property or an interest therein, the Board may enter into and execute, as lessees or renters, lease or rental agreements covering real property; or may enter into and execute, as lessors or owners, lease or rental agreements covering real property owned by the district. Such lease or rental agreements, except as otherwise provided by law, shall be upon such terms and conditions as may under the circumstances be reasonable; provided, however, that no real property owned by the district shall be leased or rented to others if its use is contemplated in the immediate or near future; or if such leasing or renting would be contrary to the public interest.

Section 6. Right-of-Way to be Held Inviolate.

C/R, Chapter 11, Access and Land Use Control -- Article I, Use of Rights-of-Way for Other Purposes -- Sec. 1, Limitation on Use of Rights-of-Way.

The rights-of-way provided for the district shall be held inviolate for their essential purposes, except as hereinafter provided, and no physical or functional encroachments, installations, signs other than uniform traffic control signs and devices, posters, billboards, roadside stands, motor fuels pumps, or other structures or uses shall be permitted within the right-of-way limits; except that political subdivisions, rural

electric cooperatives, rural telephone corporations, Rural Electrification Administrations, public and private utilities of the State may use any right-of-way or land, property, or interest therein for the purpose of laying, constructing, or erecting pipelines, sewers, wires, poles, ditches, railways, or any other purpose in accord with the provisions of Article I, Chapter 11, hereof, under existing agreements or permits or such agreements or permits hereinafter made or under existing laws, except that such permits shall be issued by the Commissioners of the Improvement District involved, provided such use does not interfere with the public use of such property for its basic highway purpose.

Section 7. Adverse Possession.

No title nor right to possession of any highway, road, street, bridge, overpass, underpass, alley, right-of-way, or any property belonging to the district may be obtained or acquired by adverse possession or occupancy thereof, nor may such property be disposed of by the Board on the basis that such property has been acquired by the recipient or by some other person through adverse possession.

Ark. Stat. § 19-3831 and 37-109 and 37-110 deal with this probelm, and these sections will be left intact, outside the Code. However, we deem it appropriate to have an adverse possession statute in the Code.

Section 8. Right to Dispose of Lands, Tenements, and Hereditaments.

Real property or any interest therein, including rights of

This is the exposition of the "powers and duties" covering

access, air, view, and light, may be disposed of by the Board, whenever such disposition is in the best interests of the district and the public, either in the ordinary course of business or in the dissolution of the district as provided in Article V, Chapter 13, of this Code. Such disposition may be accomplished by transfer, donation, exchange, sale, vacation, or abandonment, in fee simple or in any lesser interest.

Section 9. Disposition Procedures.

All disposition of real property allowable under this Code shall proceed under one of the methods set out herein for the disposition of real property by the Board. The instruments which convey such real property from the district shall be recorded in each County wherein the real property may lie.

a. Transfer by Donation or Exchange. The Board is authorized to transfer land to other agencies of government, including counties and municipalities, provided such transfer of land is not detrimental to the best interests of the district. Such transfer may be an element of an exchange of real property or an outright donation of real property, provided that in either situation the consummation of the

acquisition and disposition of property in Chapter 2. It is largely a compilation of existing law scattered through the statutes.

transaction shall be contingent upon the filing with the instrument of conveyance in the County Recorder's archives of a certificate by the Board that such transfer is fair and equitable and in the best interests of the district and the public.

b. Sale. The Commission is authorized to appraise, advertise, and sell real property when the disposition of such real estate serves the best interests of the district.

This provision replaces Ark. Stat. 76-226 and 76-227 in line with recommendations of the committee. In connection with sales at public auction as compared to private sales, the Board should be permitted to decide which method will produce the most money. As a general rule, it is our belief that you can obtain more at private sales. The only limitation is in connection with prior appraisal of the property, and this provision is based on committee recommendations. Ark. Stat. §§ 76-226, 76-227, and 76-548 will be repealed

by and replaced by this Section.

(l) Declared Surplus. Whenever the Board shall find that any real property among its holdings is not needed for highway, road, or street purposes, achievement of the purposes for which the district was organized, or the operation of the district, such unneeded real property shall be declared surplus by the Board and offered for sale. The owner from whom such property was acquired, his heirs, successors, or assigns, shall be furnished a copy of the Board's declaration and intent with the notification that they shall have a ninety (90) day option to reacquire the real property at an equitable price prior to its being put up for sale. When an entire parcel is declared surplus, it may be reacquired under such option by a refund of the price paid by the Board in its acquisition. If such option is not exercised in the ninety (90) day period, the Board shall have the property appraised and advertised for sale at public auction or private sale for the best possible price, provided that, unless such price shall equal or exceed the appraisal valuation, the purchase offer will be rejected. The proceeds accruing from such sales shall be deposited with the district's funds in the same manner as improvement district tax revenues are deposited.

(2) Appraised. The appraised value of the property to be sold shall be determined by an appraiser who is qualified by knowledge and experience to appraise the particular type of property being sold; and such appraisal shall be submitted in writing to the Board prior to advertising the sale thereof.

(3) Public Auction. The terms, time and place of sales conducted at public auction, and the advertising and notice of such sales shall be determined by the Board, who shall set such terms as are reasonably necessary to obtain the highest and best bid; provided, however, that such property shall not be sold for less than its appraised value.

(c) Vacation, Closing, or Abandonment. Whenever it shall be necessary or of benefit to the district to close or permanently vacate a highway, road, street, alley, or other public way, which is a part of the district, the Board shall proceed in the manner herein set forth:

This par. provides for a method for the vacation or closing of any highway, street, road, alley, or public way by the Board. The chief limitation (which would be necessitated as a matter of law anyway) is that any landowner who would lose his access must be compensated or the process for compensation must have begun

(1) The Board shall publish in a newspaper having a general circulation in the municipality or county in which the relevant highway, road, street, alley, or other public way is located, a notice, which shall be published once each week for a period of two weeks, stating that such highway, road, street, alley, or other public way will be closed, abandoned, or vacated, the date such action will be taken, and describing the highway, road, street, alley, or other public way, or the portion thereof, which will be closed, abandoned, or vacated, with sufficient accuracy and clarity as to identify its location. The final insertion of the publication will appear not less than thirty (30) days nor more than forty-five (45) days prior to the date of closing, abandonment, or vacation of the highway, road, street, alley, or other public way.

(2) At such time as the foregoing requirements have been fully complied with, the chancery court of the county in which said highway, road, street, alley, or other public way, or the affected portion thereof, is located shall enter an order vacating or closing same as of the date stated in the notice.

(3) This section does not apply to the temporary vacation or closing of any highways, roads, streets, alleys, or other public ways, or any portion thereof, and the power of the Board to close same temporarily or vacate same temporarily and without notice shall continue inviolate.

CHAPTER 6. REAL PROPERTY ACQUISITION AND DISPOSITION.

Article V. General Provisions.

Article V. General Provisions.

Effect of Dedication or Deeding of Roads or Streets -- When the owner thereof shall dedicate any road or street to the public by filing for record a suitable plat and bill of assurance in the manner provided by law, the same shall become a public way upon said filing for record of the plat and bill of assurance; or when the owner thereof shall deed any strip of land to the State or to any Municipality, County, or improvement district for a public roadway or thoroughfare, the same shall become a public way upon the delivery and acceptance of such deed; provided, however, that streets within the corporate limits of incorporated Cities and Towns shall not become a part of the Municipal Street System until accepted as a part of said system by ordinance or resolution of the City Council or other such governing body; and no highway, road, street, or other public way shall become a part of the State Highway System unless and until designated as such by the State Highway Commission in the manner herein provided.

This replaces Ark. Stat. ss ss 76-108 and 76-109, which shall be repealed.

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CHAPTER 7. PURCHASING, CONTRACTS, AND MAINTENANCE.

Article I. Purchasing and Procurement.

Section 1. Purpose and Scope of Article.

To promote efficiency in purchasing by the Arkansas Highway Commission, all material, equipment, and supplies, except stationery, printing paper and fuel, used by the State Highway Department and the Commission shall be purchased through the State Highway Department Purchasing Agent without monetary limitation.

The provisions of this Code shall constitute the exclusive method and procedure for purchase and contracting for the purchase of commodities, except stationery, printing paper and fuel, by the Department. All other acts or statutes relating to the purchase of items or commodities by any other state agencies are, in respect to the Commission and the Department, hereby superseded and repealed, insofar as they pertain to purchases made by the Arkansas Highway Department Purchasing Agent for and on behalf of the Department or the Commission, and the Purchasing Agent shall not be restricted or bound in purchasing commodities except by the provisions of this Code.

Affected Sections and Comments.

The section is new and speaks for itself. It has been felt, in view of the fact that the size and quantity of the purchases by the Department are of such volume and amount, that a duplication of procedures and effort exists between the Department and the State Purchasing Agency, and, further, that since the Department utilizes materials, supplies, and equipment that are unique to its own functions and needs, that, in effect, special purchasing act pertaining solely to the State Highway Department will effect a saving and

economy for the people of the State and the budget. Furthermore, provision is made in this Code to require that purchasing procedures be made under businesslike safeguards, with appropriate audits regularly required in accordance with other provisions of applicable law.

The terms and definitions as used in Ark. Stat. § 14-203, where appropriate, are followed, but where definitions of terms vary for the purpose of this Article or are new. they have been added.

Section 2. Definitions.

The following terms when used in this Article shall mean and include the following:

a. "State Highway Department Purchasing Agent", "Purchasing Agent", and "Agent" shall mean the purchasing officer of the State Highway Department.

b. "State Purchasing Director" shall mean the Director of Purchasing of the State Purchasing Department.

c. "Purchase price" shall mean the sales or bid price of any commodity, exclusive of trade-in or State sales or use taxes.

d. "Commodity" shall mean all supplies, goods, material,

equipment, and non-personal services, except stationery, printing paper and fuel.

e. "Formal bidding" shall mean the procedure to be followed in the solicitation and receipt of sealed bids, wherein: (1) at least five (5) days and not more than thirty (30) days prior to the date for opening the sealed bids, other notice thereof shall have been given by a publication and paper having state wide circulation, such notice setting forth the date, time, place of opening, and the names and brief description of the commodities for which bids are to be received; the State Highway Department Purchasing Agent may, at his discretion, advertise for bids for a longer period of time, but shall not be required to do so; (2) not less than two weeks in advance of the date of opening the bids, notices or bid forms shall be given to all eligible prospective bidders on the classified bid list for the particular class of commodities for which bids are to be received, and shall be furnished to all others requesting the same; and (3) a copy of the notice or invitation to bid also shall be posted in a conspicuous place in the office of the State Highway Department Purchasing Agent not less than two weeks in advance of the date of opening of bids.

f. "Informal bidding" shall mean the procedure followed in the solicitation and receipt of bids, wherein not less than one

week prior to the date of opening of bids, the State Highway Department Purchasing Agent shall have furnished notice or bid forms to all eligible prospective bidders on the classified bid list, and shall have posted a copy of the notice of invitation to bid in a conspicuous place in the office of the State Highway Department Purchasing Agent.

g. "Open market" purchases shall mean those purchases of commodities made by the State Highway Department in which competitive bidding is not required.

Section 3. Appointment and Qualifications of State Highway Department Purchasing Agent.

The purchasing officer of the Highway Department is hereby designated as the "State Highway Department Purchasing Agent", hereinafter called the Purchasing Agent.

The Purchasing Agent shall be appointed by the Director of Highways and shall be a resident of this State, at least thirty (30) years of age, of good moral character, and of demonstrated ability and capacity in the field of purchasing commodities.

The qualification for the Purchasing Agent are the same as required for the State Director of Purchasing as contained in Ark. Stat. § 14-207.

Section 4. Bond of Purchasing Agent.

Before entering upon his duties of employment, the Purchasing Agent shall furnish bond, with surety thereon approved by the State Highway Commission, hereinafter called the Commission, to the State of Arkansas, in the penal sum of fifty thousand dollars ($50,000.00), conditioned upon the faithful performance of his duties and for the proper accounting of all funds received and disbursed by him.

The bond required is the same amount as set forth in Ark. Stat. § 14-208 for the State Director of Purchasing. In addition, the filing requirements are similar.

Section 5. Additional Functions, Powers, and Duties.

In addition to other functions, powers, and duties as provided in this Code, it shall be the function, power, and duty of the Purchasing Agent:

a. To make such reasonable rules and regulations, not inconsistent with the law, as shall be necessary or desirable to effectuate the intent and purposes of this Code.

b. To prepare and publish, and to furnish the parties of interest therein, a manual of purchasing procedure which, without being limited thereto, shall include:

(1) The applicable laws of this State relating in any manner to Highway Department purchasing;

Patterned after Ark. Stat. §§ 14-211; changes have been made, and certain eliminations, so that the section will pertain solely to highway matters.

(2) The opinions of the Supreme Court and the rulings of the Attorney General in relation to any such laws;

(3) The rules and regulations promulgated by the Purchasing Agent to implement such laws;

(4) The duties and responsibilities of the Purchasing Agent;

(5) Such other information and details, such as the standards of quality, preparation of specifications, solicitation of bids, bidding procedure, awarding of contracts, performance under contract, delivery and receipt of merchandise, testing, invoicing, and payment, as the Purchasing Agent shall deem necessary or desirable to effect a sound purchasing program.

c. To establish, maintain, and use up-to-date classified lists of eligible and responsible prospective bidders.

d. To maintain current net State price lists as established by manufacturers and distributors.

Section 6. Listing of Prospective Bidders--Eligibility.

a. The Purchasing Agent shall solicit, establish, and maintain up-to-date classified lists of all eligible and responsible prospective bidders covering all commodities. Any firm which

Ark. Stat. § 14-218 is closely followed by this section.

desires to bid, and have its name placed on the list of prospective bidders, shall notify the Purchasing Agent in writing of such desire, setting forth the class or description of commodities on which it desires to bid, and of the firm's qualifications as a responsible bidder. In all instances in which either formal or informal bids are required, the Purchasing Agent shall take all reasonable steps to notify all eligible and responsible propsective bidders in order to obtain a maximum response from bidders.

b. In order for any prospective bidder to become eligible, and thereafter to retain his eligibility, it shall be necessary that: (1) he have a current gross receipts sales tax permit issued by the State Revenue Department and, where applicable, shall have complied with the registration provisions of the Arkansas Compensating Tax Act; and (2) he submit a bid, or "no-bid", at least once out of each three /3/ times for which formal and informal bids shall be requested by the Purchasing Agent for the particular class or classes of commodities for which he is eligible to bid; provided, that any such prospective bidder may re-establish his eligibility upon request to the Purchasing Agent, as in the instance of first obtaining eligibility.

Section 7. Types of Bidding Required and Permitted.

With respect to the purchase of any commodity or group of the same commodities, the payment for which is to be made by the Arkansas Highway Department with State funds, such purchases, unless otherwise provided for in this Code, shall be made as follows:

a. Formal bidding shall be required in each instance in which the estimated purchase price shall equal or exceed one thousand dollars ($1,000.00).

b. Informal bidding shall be required in each instance in which the estimated purchase price shall equal or exceed five hundred dollars ($500.00) but shall be less than one thousand dollars ($1,000.00); but in any such instance formal bidding is permitted.

c. Quotation bidding shall be required, and not less than three (3) bids, if such are available locally, shall be received, either verbally or by other means, in each instance in which the estimated purchase price shall equal or exceed two hundred and fifty dollars ($250.00) but shall be less than five hundred dollars ($500.00); but, in any instance, formal or informal bidding is permitted. Records of all quotations received will be maintained by the Department.

This is a new section but conforms with the provisions for bidding set forth in Article I of this Chapter.

d. Open market purchases may be made of any commodities the purchase price of which shall be less than two hundred and fifty dollars ($250.00).

e. Any item, of a type of which the Purchasing Agent, after publication of notice and by other means available to him, shall have determined that there is only a single source of supply, may be purchased in the open market.

Parcelling or splitting of any item, or items, or estimates, with intent or purpose to change the classification or to enable the purchase to be made under a less restrictive method, shall not be permitted.

This provision duplicates Ark. Stat. Sec. 14-205 for the State Purchasing Director.

Section 8. Items for Which Competitive Bidding Not Required.

Upon promulgation of rules and regulations by the Purchasing Agent, the following commodities may be purchased without soliciting competitive bids:

a. Commodities or materials that are perishable by nature.

b. Commodities purchased for resale in cafeterias and commissaries.

c. Books, manuals, periodicals, films, educational aids, and other material, for use in libraries or for other informational

The categories of items enumerated are in each case of the type where it would not be practical to require or advertise for submission of bids. For the most part, the section follows and adopts the exempt items as set forth in the State Purchasing Act (Ark. Stat. § 14-204).

or instructional purposes.

d. Technical or scientific equipment, and the parts therefor, for which the Purchasing Agent shall have been furnished a statement in writing that the specific item of such equipment, or a part thereto, is required by an employee of the Department by reason of his profession or training.

e. Commodities obtainable solely from an agency of the government of the United States.

f. Any item or commodity of a type of which the Purchasing Agent, after publication of notice for receipt of bids, shall have determined that there is only a single source of supply.

g. Any item or commodity in which an unforeseen and unavoidable emergency shall have arisen, in which the human life or health of the people, or the property of the State, is in jeopardy, or the solicitation of bids for such commodity or item would result in an excessive expenditure of State funds.

Section 9. Bidding Procedure.

a. All bids which require either formal or informal bidding procedure shall be opened and read in public at the hour, place, and date specified in the notice; and all original bids, whether

This section and also sections 10 and 11 follow the requirements set forth in Ark. Stat. §§ 14-219, 14-220, and 14-221, but have also

formal or informal, together with all documents pertaining to the proposal, shall be retained and made a part of the permanent file or record, and shall be open to public inspection.

b. The permanent file pertaining to all formal and informal bidding shall contain a list of all persons or firms solicited or invited to bid.

c. In any instance in which either formal or informal bidding procedure has been followed, and no bids are received at the time fixed for the opening of bids, or in the event that those bids which are received do not meet the specifications or other requirements of bidding, and it appears that further solicitation would be futile, then such commodities may be purchased by the Purchasing Agent at the best available prices in the open market.

d. Specifications in connection with all solicitations for bids requiring either formal or informal bidding procedure shall be prepared by the Purchasing Agent, and may include any single item, commodity, or group thereof. Notice in connection with solicitation for bids may specify that the commodities are to be in an estimated quantity and amount to be delivered at a specific time, or are to be delivered when needed, and such notice may call for such bids for commodities which are in use continuously;

been drafted to be in conformity with Article I of this Chapter, so no conflict exists.

provided, however, that where necessary, notice for bids may specify an unknown quantity or amount of certain commodities, and that the Purchasing Agent shall not be obligated by acceptance of a bid to purchase any specific quantities or to make purchases at any specific time. The Purchasing Agent shall establish the estimated time limits to be included in the proposed solicitation for bids, but no bids shall be solicited for a period greater than one /1/ year.

e. To assure that the bidder will accept a contract under the terms of his bid, the Purchasing Agent may require that bids be accompanied either by a certified or cashier's check or by a bond in favor of the Commission furnished by a surety company authorized to do business in this State in such reasonable sum as the Purchasing Agent shall determine, which may be a percentage of the estimated total amount of the bid; provided that a bidder may, at his option, furnish a bond covering any and all bids submitted by him during any calendar year, the amount thereof to be determined by the Purchasing Agent.

Section 10. Examination of Bids.

In connection with the submission of bids in which either

formal or informal bidding procedure is required, the specifications relating thereto, and the examination of the same prior to the awarding of contracts, the Purchasing Agent shall have the authority to require and to establish the following procedure:

a. Descriptions and specifications shall be sufficiently restricted or specific so as to exclude cheap or inferior commodities which are not suitable or practicable for the purpose for which they are to be used, but at no time shall they be so specific in detail as to restrict or eliminate competitive bidding of any items of comparable quality and coming within a reasonably close price range. Brand names may be used to simplify or to indicate the general description of the commodities required, but at no time, except for repair parts or items for use with existing equipment, and medicines or other health aids requested by a professional employee, shall such names be used to indicate any preference, or to prevent bidding on commodities of like quality and coming within a reasonably close price range.

b. After the bids have been opened and publicly read, the Purchasing Agent shall prepare a tabulation of all bids under each bid reference. Such tabulation shall be made available for public inspection; and then, or thereafter when the contract is awarded,

such tabulation shall become a part of the record file.

Section 11. Awarding of Contracts.

a. All contracts shall be awarded to the lowest responsible bidder, taking into consideration the cost of performance to the extent that the Purchasing Agent deems expedient. "Cost of performance" shall include, to the extent applicable, operational costs, probable costs of repairs, trade-in value, and serviceability.

b. It shall be the duty of the Purchasing Agent: (1) to establish all necessary procedure for studying and testing cost of performance; (2) to supervise such study and testing; and (3) to establish formulae for the relative weighing of initial cost and cost of performance. These procedures shall be kept on file in the office of the Purchasing Agent and shall be available to bidders and to the general public.

c. Actual testing shall be conducted by the State Highway Department and may be conducted both before and after the opening of the bids. The data compiled as a result of such testing shall be made available only to those submitting bids and only for proper purposes. Proper purposes shall include, but not be

limited to, use in preparation of future bids. Improper purposes shall include, but not be limited to, advertising. An improper use shall constitute a misdemeanor, and upon conviction the offender shall be subject to a fine of not less than $500 or more than $10,000.

d. The Purchasing Agent shall establish and enforce the following rules in connection with awards and performance in connection with such contracts:

(1) Any and all bids may be rejected. Where bids are rejected and the proposed purchase is not abandoned, and circumstances indicate that further solicitation for bids would be in the best interest of the State, new bids shall be called for.

(2) All bidders shall be given equal consideration. In the case of awards for large quantities of any item, if there are equal or tie bids, the awards may be split or divided between two /2/ or more firms, where the best interest of the Department would be served by so doing, or may be awarded to only one /1/ of the two /2/ or more low equal or tie bidders, as the Purchasing Agent shall determine.

(3) Except where the elements of urgent need, emergency involving the public welfare, and performance are vital factors,

the awarding of contracts need not be upon the same day as the opening and consideration of the bids; but all such bids shall be opened and tabulated and subject to such additional study and examination as the Purchasing Agent may require prior to the awarding of contracts.

(4) After contracts are awarded, the Purchasing Agent may require periodic inspection and testing of commodities.

(5) If any bidder to whom a purchase contract is awarded under the provisions of this Code shall refuse or fail to perform such contract, or to make delivery when required by such contract, or shall deliver commodities which are of inferior quality to those which the bid, purchase, or contract specified, or if commodities delivered fail to meet the standard specifications prescribed, the contract may, at the discretion of the Purchasing Agent, be voided, and the bidder may be barred from further participation in bidding for such period of time as the Purchasing Agent shall determine.

(6) In the case of purchase contracts in which a "trade-in" is being offered on the purchase of commodities, the full purchase price shall govern the classification or purchase procedure to be followed in the solicitation for bids and the awarding of

contracts; and the Purchasing Agent shall determine, with respect to trade-ins, what procedure shall be for the best interest of the Department; and, if he so determines, such commodities, equipment, or machinery may be traded in or may be sold outright upon competitive bids or at public auction.

(7) All original bids, together with all documents pertaining to the approval and awarding of contracts under the purchasing procedure required by this Chapter, shall be retained and made a part of a file or record which shall be open to public inspection.

(8) The Purchasing Agent may, for faithful performance, require a bond in favor of the Commission, furnished by a surety company authorized to do business in this State, in a sum of at least five percent (5%) of the total amount of the contract.

Section 12. Beneficial Interests, Prohibitions, Violations, and Penalties.

a. It shall be unlawful for any Commission member, or officer, agent, servant, or employee of the Department, or any company, firm, partnership, or association in which any such person has any interest, to sell to the Department any commodities, except where the price of such commodities is fixed by law or by an agency of

This section is new, although based upon Ark. Stat. § 14-222 and is considered an improvement on that section and place a high duty or trust upon the members of the Commission, officers, the Purchasing Agent

government with which he is not connected.

b. It shall be unlawful for any member of the Commission, or any officer, agent, or employee of the Department, to accept or agree to accept, to receive or agree to receive, to ask or to solicit, either directly or indirectly, any financial or other beneficial interest, in any contract for or purchase of any commodity furnished the Department; or for any person to give or offer to give, to promise or cause to be promised, either directly or indirectly, to any of these persons, any money, or any obligation or security for the payment of money, or any delivery or conveyance of anything of value, or any political appointment or influence, or any employment. Such offer and/or receipt of any gift shall be presumed to have been given and/or received with the intent to influence a decision or action on a question, matter, cause, or proceeding, and both parties shall be guilty of conspiracy to commit a felony.

c. Any person who shall violate the provisions of this Section shall be guilty of a felony.

or employees of the Department or the State Purchasing Department. This paragraph tracks Ark. Stat. § 14-223, insofar as the provisions are applicable to purely Highway matters.

Section 13. Sale of State-Owned Commodities

Obsolete or used machinery, equipment, and other items or

Primarily, this Section follows Ark. Stat. §§ 14-216 but is keyed

commodities owned by the Department may be traded in as a part of the purchase price of new machinery, equipment, or other items of like kind and character or if not traded in may be sold by the Commission, at its discretion, if in the best interest of the State and the Department, either upon inviting or advertising for bids, or by public auction.

to apply to highway and road matters, whereas the section referred to in the State Purchasing Act actually has reference mostly to agricultural products. Accordingly, and since a provision for sale of commodities is self-evidently necessary and required, this section has been included in its altered form.

Section 14. Transfer of Files.

The Purchasing Agent shall upon the effective date of this Code receive all records, files, books, and papers in the custody of the State Purchasing Department which are relevant to State Highway Department purchasing; and said records, files, books, and papers shall be delivered to the Purchasing Agent by the State Purchasing Director at that time.

Article II. Construction and Maintenance Contracts.

Section 1. Exemption of Contracts Involving Federal Funds.

Any provision or condition contained in this Code or otherwise provided by State law which is in conflict with any provision of Federal law, or any rule or regulation made pursuant to Federal law, shall not apply to contracts or the letting of contracts in which Federal-aid funds are expended; but all other provisions and conditions of this Code and other applicable State laws shall apply fully where no conflict exists.

This Section broadens Ark. Stat. § 14-624 to exempt Federal-aid contracts from all conflicting State laws.

Section 2. No Preferences Allowed for Awarding Contracts.

No statute or provision requiring, or permitting, any preference for domestic firms, companies, or individuals in the letting of public contracts, or hiring, shall have any application to contracts, or the letting of contracts, for or concerning the construction, maintenance, or repair of highways, bridges, or any part of the System.

This Section broadens Ark. Stat. § 14-117, which exempts construction and maintenance contracts from statutes giving preference to Arkansas firms. The wording of the new Section is designed to exempt these contracts from all such statutes.

Section 3. Contracts for Construction, Repair, and Maintenance.

All construction, reconstruction, repair, and maintenance work on highways, bridges, or any other part of the State Highway System, except when such work is undertaken by State work forces, shall be performed pursuant to previously executed written contracts. Any contract for such work in excess of one thousand dollars ($1,000.00) shall be let to the lowest responsible bidder after advertising for bids in a newspaper having general statewide circulation at least once a week for two consecutive weeks in advance of the date set for the opening of bids, and after sending notice to contractors on the Department's bid list; provided, however, that the Commission may, at its discretion, enter into agreements in excess of one thousand dollars ($1,000.00) with railway companies for the installation of flashing light signals or other types of railroad-highway grade crossing protective devices and work which must necessarily be performed by the railway companies in connection with the construction of railroad-highway grade separations; and provided further, that where the Commission finds, for reasons of public safety, that an emergency exists and immediate action is required, a contract for repair or maintenance may be negotiated without advertising or competitive

This Section combines Ark. Stat. §§ 14-611, contracts for repairs, §§ 76-505, contracts for maintenance, and § 76-507, contracts for new construction. At the committee's suggestion the $10,000 limitation has been reduced to $1,000 with the exception of contracts for emergency maintenance or repair; the purpose of the exception is to avoid the two weeks' notice requirement of the bidding procedure. The new section does not require bidding when maintenance work is undertaken by Department work forces.

bidding, if such contract does not exceed the sum of fifty thousand dollars ($50,000). The Commission shall have the right to, and may, reject any and all bids.

Section 4. Contractors' Bonds.

Every contractor for construction, maintenance, or repair of highways, bridges, or any part of the state highway system, shall be required to furnish a corporate surety bond or a surety bond of an acceptable association of underwriters to be approved by the State Highway Commission, in an amount equal to the amount of the contract, conditioned upon full performance of the contract. Such bonds shall be security for payment of materials, labor, supplies, and expenses used in or incident to the work, including that which may be or become due to subcontractors; and such bonds shall so provide. If claims for materials, labor, supplies, or expenses used in or incident to the work or for amounts due to subcontractors are filed with the Commission within sixty (60) days after completion of the work or within six (6) months from the time of its abandonment by the contractor, or if the Commission shall enter an order extending the time for filing such claims, the parties to whom such payments are due may maintain a

The 25% bond requirement of Ark. Stat. § 76-507 has been raised to 100% to avoid conflict with Ark. Stat. § 76-217, which statute has been substantially followed. The new section is in addition to Ark. Stat. § 14-604, which is of general application.

direct action on the bond against the surety or sureties and principal, but any recovery thereon shall be postponed until all sums that may be due under the bond to the State have been paid and the Commission has so certified.

No surety bond shall be approved by the Commission unless the surety is duly authorized to transact business in Arkansas and has complied with all pertinent provisions of Arkansas law.

Section 6. Conflict of Interest

No member of the commission or Department or any employee of such, shall be, directly or indirectly, financially or beneficially, interested in any contract for the construction, maintenance, or repair of any highway, bridge, or any portion of the System, nor in any contract to furnish materials or supplies in connection with such construction, maintenance or repair, or in the purchase of insurance or bonds; in any financial gain accruing to one so interested shall be held for the benefit of the Commission or may be recovered in a legal action. Any person found to be so interested shall be guilty of a misdemeanor and subject to a fine of an amount not to exceed one thousand dollars ($1,000.00), or imprisonment for a term of up to one year, or both.

Article III. Maintenance.

Section 1. General.

The Commission shall be responsible for the maintenance of the State Highway System, which shall include but not be limited to drainage work, making such cuts and fills as are necessary, and making constant repairs to surfaces, roadways, structures, and any and all appurtenances thereto.

This Section replaces Ark. Stat. Sec. 76-505. The duty to maintain highways has been included under powers and duties, Chapter 2, Section 1(b)(3).

Section 2. Removal of Sand or Gravel from Navigable Waters for Road Purposes.

Sand or gravel may be removed from the beds or bars of any navigable river or lake by the Commission, for use in construction, maintenance, or repair of State Highways or any portion of the System, without paying royalties to the State. All persons, firms, partnerships, associations, or corporations removing and selling the same for a profit, and all contractors removing and using the same, shall file detailed accounts of such operations with the State Attorney General and with the County Judge of the County where the sand or gravel was removed, and shall pay to the State the usual and customary royalties provided by law.

This Section combines and condenses, but does not change, the provisions of Ark. Stat. §§ 10-1005, 1006, and 1007.

Section 3. Exemption from Sales and Severance Tax.

When the Commission, by lease or by agreement, severs sand or gravel for use in the construction, maintenance, or repair of any part of the State Highway System, the Commission as the producer and the other party to the lease or agreement shall not be liable for, nor shall they pay to the State, any gross receipts taxes or severance taxes for the sand or gravel.

This Section is essentially the same as Ark. Stat. Sec. 76-243, which will be replaced.

Section 4. Repair and Maintenance of Roads and Streets Not a Part of the State Highway System.

a. The Commission may reconstruct, repair, maintain, or otherwise improve any portion of a county road or municipal street which has been or is to be used as a temporary connection or access road to or from a State Highway or a detour route for a State Highway.

This Section enlarges Ark. Stat. § 76-551 to include city streets as well as county roads, but like the old statute, this Section is permissive as it does not require the Department to undertake these repairs.

b. The Commission is authorized to make any and all necessary repairs to any portion of a county road or municipal street which has been damaged by the State Highway Department or by any contractor performing work for the Commission.

c. The Commission may, by contract or agreement, construct, reconstruct, repair, and maintain roads, drives, and streets

This has been included in the event some other agency wants to contract

owned and operated by and existing within the confines of property owned, operated, or controlled by other state commissions, agencies, or institutions.

Section 5. Railroad Crossings.

a. Whenever a railroad shall cross any State Highway, the railroad shall construct and maintain the roadbed of the highway in accordance with specifications and to the satisfaction of the Highway Commission.

b. If a railroad shall fail or neglect to construct or maintain properly a crossing, the Commission may serve written notice of such failure or neglect upon the nearest station agent to the crossing of the railroad, or upon any officer of the railroad, and the railroad shall have twenty (20) days from the service of such notice in which to correct its failure or neglect. If the failure or neglect has not been corrected with the Department.

This Section is a consolidation of, and supersedes, Ark. Stat. §§ 73-614, 615, 616, 617, 618, 621, 622; and Ark. Stat. §§ 76-517 and 519. The purpose of the Section is to require the railroads to maintain the roadway crossings. Of course, references to road overseers have been eliminated.

The penalty provided in Ark. Stat. § 73-617 has been substantially increased to reflect present values.

within such prescribed time, the Commission shall be empowered to make such corrections or improvements as were encompassed in the notice thereof, and the Commission is further empowered and authorized to file proceedings against the railroad, and if it be established that the railroad has so failed and neglected to perform its duty and that such corrections or improvements were made for it by the Commission, then the railroad shall be liable to the Commission for the actual cost of the work with interest thereon at six percent (6%) per annum and for the penal amount of one hundred dollars ($100) per day for every day following the expiration of said twenty-day period of notice up until the date of the judgment. Judgments so rendered, unless paid, may be collected in the same manner provided by law for other civil judgments. All sums collected from the railroad under this provision shall be placed in the Highway Fund.

Article 4. Purchasing by Counties.

Act No. 52 of the Acts of Arkansas of 1965, entitled An Act to Prescribe a Uniform Method of Purchasing for the Several Counties of the State, is hereby incorporated herein.

Since this Act, passed in the recent special legislative session, covers all purchases by Counties, which includes items pertaining to roads, it was felt it should be incorporated in the Code by reference, but since it also applies to other things, it was believed it should not be set out in full.

Article 5. Purchasing by Municipalities.

Purchases by Municipalities of the first class shall be in accordance with the provisions of Act 28 of the Acts of Arkansas of 1959, as amended.

This refers to Ark. Stat. Sec. 19-4425 - 19-4427.

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Proposed Code

Affected Sections and Comments

Chapter 8. Traffic Management and Enforcement, and Criminal Provisions.

Article 1. Rules of the Road.

Section 1. Basic rule of speed restrictions and maximum limits.

(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions.

(b) Except when a special hazard exists that requires lower speed for compliance with paragraph (a) of this section, the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds:

1. Thirty miles per hour in any urban district;

2. Sixty miles per hour in other locations.

The maximum speed limits set forth in this section may be altered as authorized in sections 2 and 3.

(c) The driver of every vehicle shall, consistent with the requirements of paragraph (a), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special

UVC (Uniform Vehicle Code) § 11-801 has been substituted for Ark. Stat. § 75-601 (a) and (c). The main change is the elimination of special speed limits for trucks.

hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

Section 2. Establishment of State speed zones.

Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the State Highway system, said Commission may determine and declare a reasonable and safe maximum limit thereat, which shall be effective when appropriate signs giving notice thereof are erected. Such a maximum speed limit may be declared to be effective at all times or at such times as are indicated upon the said signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

UVC § 11-802 has been substituted for Ark. Stat. § 75-601 (b) which allows the Commission to alter speed limits only on controlled access facilities. The new section allows it to alter speed limits on any part of the highway system.

Section 3. When Local authorities may and shall alter maximum limits.

(a) Whenever local authorities in their respective jurisdictions

UVC § 11-803 has been substituted for Ark. Stat. § 75-602 and gives local

determine on the basis of an engineering and traffic investigation that the maximum speed permitted under this article is greater or less than is reasonable and safe under the conditions found to exist upon a road, street or highway or part thereof, the local authority may determine and declare a reasonable and safe maximum limit thereon which:

1. Decreases the limit at intersections; or
2. Increases the limit within an urban district but not to more than 60 miles per hour; or
3. Decreases the limit outside an urban district, but not to less than 35 miles per hour.

(b) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under this act for an urban district.

(c) Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

authorities a little more latitude in altering speed limits but requires approval by the State Highway Commission before limits on State highways can be altered.

(d) Any alteration of maximum limits on State highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the State Highway Commission.

(e) Not more than six such alterations as hereinabove authorized shall be made per mile along a street or highway, except in the case of reduced limits at intersections, and the difference between adjacent limits shall not be more than 10 miles per hour.

Section 4. Minimum speed regulation.

This is the same as Ark. Stat. § 75-604.

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) Whenever the State Highway Commission or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the Commission or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

Section 5. Vehicles driven on right side of roadway -- Exceptions. Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

This is the same as Ark. Stat. § 75-607.

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

2. When the right half of a roadway is closed to traffic while under construction or repair;

3. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

4. Upon a roadway designated and signposted for one way traffic.

Section 6. When overtaking on the right is permitted. This is the same as Ark. Stat. § 75-610.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn;

2. Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two [2] or more lines of moving vehicles in the same direction;

3. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two [2] or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

Section 7. Limitations on overtaking on the left.

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by the provisions of this article and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and, should the passing movement involve the use of a lane authorized for vehicles approaching from the opposite direction, before creating an unsafe and hazardous condition.

UVC §§ 11-305 and 306 have been substituted for Ark. Stat. §§ 75-609 and 611. There are no major changes in the law.

Section 8. Further limitations on driving to the left of center of roadway.

(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard should another vehicle approach from the opposite direction;

2. When approaching within 100 feet of or traversing any intersection or railroad grade crossing;

3. When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway.

UVC §§ 11-305 and 306 have been substituted for Ark. Stat. §§ 75-609 and 611. There are no major changes in the law.

Section 9. One-way roadways

A vehicle shall be driven only in the direction designated on roadways sign-posted for one-way traffic.

This is essentially the same as Ark. Stat. § 75-612. Essentially the same means that the wording has been altered to prune surplusage or to make the meaning more clear.

Section 10. Passing vehicles proceeding in opposite directions.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right without encroaching on the other's traffic lane.

This is essentially the same as Ark. Stat. § 75-608.

Section 11. Laned roadways.

On laned roadways a vehicle shall be driven within a single lane except when passing other vehicles or when turning. Slow moving vehicles shall use lanes designated for same.

This is essentially the same as Ark. Stat. § 75-613.

Section 12. Following too closely.

When traveling in excess of 30 miles per hour all vehicles shall maintain safe intervals between other vehicles proceeding in the same direction except when overtaking and passing such vehicles.

This section replaces Ark. Stat. § 75-614.

Section 13. Turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

UVC § 11-601 has been substituted for Ark. Stat. § 75-615, the only major change being the addition of part (d) which

(a) Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

(b) Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered.

(c) At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme lefthand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(d) Local authorities in their respective jurisdictions may cause signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be

allows local authorities to direct turns to be executed differently at particular intersections. Part (e) supersedes Ark. Stat. § 75-616 and prohibits U turns at intersections.

traveled by vehicles turning at an intersection, and when markers or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers or signs.

(e) No vehicle shall make a "U" turn at an intersection. "U" turns shall be made only on the roadway where the turning vehicle can be seen by the driver of any other vehicle approaching from either direction within 500 feet.

Section 14. Turning movements and required signals.

(a) No person shall turn a vehicle from a direct course upon a roadway without giving appropriate signals including signal by horn if pedestrians may be affected by such movement.

This is essentially the same as Ark. Stat. § 75-618.

(b) A signal of intention to turn right or left shall be given continuously for at least the last 100 feet traveled by the vehicle before turning.

(c) No person shall stop or slow down suddenly without first giving an appropriate signal.

Section 15. Signals by hand and arm or by signal device.

Any turn, slow or stop signal shall be given by signal lamp or by hand and arm.

This section supersedes Ark. Stat. § 75-619.

Section 16. Method of giving hand and arm signals.

All signals given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

This is the same as Ark. Stat. § 75-620.

1. Left turn - Hand and arm extended horizontally.
2. Right turn - Hand and arm extended upward.
3. Stop or decrease speed - Hand and arm extended downward.

Section 17. Vehicles approaching or entering intersection.

(a) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

This is the same as Ark. Stat. § 75-621.

(b) When two vehicles enter an intersection from different highways at the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(c) The foregoing rules are modified at through highways and otherwise as hereinafter stated in this article.

Section 18. Vehicle turning left at intersection.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a

This is the same as Ark. Stat. § 75-622.

signal when and as required by this Code, may make such left turn and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right-of-way to the vehicle making the left turn.

Section 19. Vehicle entering stop or yield intersection.

This replaces Ark. Stat. Sec. 75-623 and 75-645 (d) and (e).

(a) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching an intersection with a stop sign shall stop before entering the crosswalk on the near side of the intersection, or, should there be no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and after having stopped shall yield the right of way to any vehicle which has entered the intersection from another roadway or which is approaching so closely as to constitute an immediate hazard.

(b) The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions, or, if necessary for safety, shall stop as prescribed in (a) above, and shall yield the right of way to any vehicle which has entered the intersection from another roadway or which is approaching so closely as to constitute an immediate

hazard.

(c) If a driver, obliged to yield the right of way as prescribed in (a) or (b) preceding, is involved in a collision with a vehicle in the intersection, such collision shall be deemed prima facie evidence of his failure to yield right of way at stop or yield sign, as the case may be.

Section 20. Stop before emerging from alley or private driveway.

The driver of a vehicle emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across any alley way or private driveway and prior to entering the roadway, yielding the right of way to both pedestrians on the sidewalk and traffic on the roadway.

This Section combined Ark. Stat. §§ 75-624 and 646. The latter requires only yielding the right of way instead of stopping, but does not mention sidewalks. The former requires stopping when crossing sidewalks. The new Section requires stopping in both instances.

Section 21. School bus -- Display of sign -- Flasher lights -- Passing when loading and unloading prohibited.

(a) All vehicles used for the transportation of pupils to and/or from any school or college, shall have a sign on the front and on the rear of said vehicle, showing the words "SCHOOL BUS" and said words shall be plainly readable in letters not less than eight (8) inches in height. Provided, that when a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

This Section combines and supersedes Ark. Stat. §§ 75-658, 658.1, 658.2, and 1032. No changes have been made in the law.

(b) Every school bus shall be the color officially designated by the State Board of Education.

(c) (1) Every school bus shall be equipped with two red alternating, flasher lights on the front and two red alternating flasher lights on the rear.

(2) Such flasher lights shall be mounted as follows: the front lights shall be mounted above the windshield on the right and left sides of the bus, and the rear lights shall be mounted above the rear windows on the right and left sides of the bus, in such a position as to be plainly visible to other vehicles approaching from any direction.

(3) Such flasher lights shall meet the current specifications of the Society of Automotive Engineers, and shall flash at the rate of from 60 to 120 cycles per minute. The lamps shall be controlled by a manually operated spring load switch and a switch mounted in the door control handle. No brake operated switch shall be permitted. Said flasher lights shall be operating at all times while said buses are loading or discharging school children, but at no other time.

(4) It shall be the duty of the operator of every school bus vehicle to see that the identification and safety devices required by this section are displayed on his vehicle in the manner required, and it

shall be unlawful to operate any school bus vehicle unless such identification and safety devices are properly displayed thereon.

(d) Unless the school bus is on the opposite side of a divided roadway having a dividing strip of at least 20 feet, whenever such school bus stops, every operator of a motor vehicle, including motorcycles, approaching the same from any direction shall bring such vehicle to a full stop before proceeding in any direction; and in the event such school bus is receiving and/or discharging passengers, the said operator of such vehicle shall not start up or attempt to pass in any direction until said school bus has finished receiving and/or discharging its passengers.

(e) School bus drivers shall stop the buses entirely off the highway for loading and unloading passengers unless the shoulder is too narrow for this to be done safely in which case the bus shall be stopped in the right hand traffic lane.

(f) It shall be a misdemeanor for any person to operate a motor vehicle that formerly was but is not now a school bus or a motor vehicle similar in shape and form to a school bus upon any public highway, road or street when said vehicle is painted with the officially designated school bus colors and/or has the words "SCHOOL BUS" marked thereon.

Section 22. Designation of hazardous railroad crossings -- Posting by railroads

(a) The State Highway Commission, and local authorities with the approval of the State Highway Commission, are hereby authorized to designate particular dangerous state highway grade crossings of railroads and to erect traffic control devices thereat.

(b) This Section shall not relieve railroad companies of the responsibility of erecting and maintaining at all railroad grade crossings crossbuck signs of the design standardized by the Association of American Railroads.

This Section combines and supersedes Ark. Stat. § § 75-640, 641, 643, 644, 665, and 667. The new Section authorizes approval by the State Highway Commission of the designated crossings and erection of Traffic Control devices thereat. The provision of Ark. Stat. 75-644 that money collected for violations of this Section be paid into the county school fund has been eliminated. Ark. Stat. § 75-665 authorizes the Commission and local authorities to place these signs. This is the same as Ark. Stat. § 75-637.

Section 23. Railroad grade crossings -- Obedience

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this Section, the driver of such vehicle shall stop within 50 ft. but not less than 15 ft. from the nearest track of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

1. A clearly visible signal device gives warning of the immediate approach of a train;

2. A crossing gate is lowered or when a flagman gives a signal of the approach of a train;

3. A train approaching within approximately 1500 feet of the highway crossing emits a signal audible from such distance and such train is an immediate hazard;

4. An approaching train is plainly visible and is an immediate hazard;

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

Section 24. Vehicles which must stop at all railroad grade crossings.

This is essentially the same as Ark. Stat. § 75-638.

Except when otherwise directed by a police officer or traffic control signal and except when within a business or residential district the driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo,

before crossings at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train and shall not proceed until he can do so safely.

Section 25. Moving heavy equipment at railroad grade crossing.

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of 10 or less miles per hour or a vertical clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than 9 inches, measured above the level surface of a roadway, upon or across any tracks

This is the same as Ark. Stat. § 75-639.

at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time shall be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet nor more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

Section 26. Stopping, standing or parking prohibited in specified places.

A. Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

1. Stop, stand or park a vehicle:

(a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(b) On a sidewalk;

(c) Within an intersection;

(d) On a cross walk;

(e) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the traffic authority indicates a different length by signs or markings;

(f) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;

UVC § 11-1003 has been substituted for Ark. Stat. § 75-649. The only major change is that part A 2 of the new section allows standing momentarily to pick up or discharge passengers in enumerated placed where the old statute prohibits all parking.

(h) On any railroad tracks;

(i) At any place where official signs prohibit stopping.

2. Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:

(a) In front of a public or private driveway;

(b) Within 15 feet of a fire hydrant;

(c) Within 20 feet of a cross walk or an intersection;

(d) Within 30 feet upon the approach to any flashing signal, stop sign or traffic-control signal located at the side of a roadway;

(e) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance (when properly sign-posted);

(f) At any place where official signs prohibit standing.

3. Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:

(a) Within 50 feet of the nearest rail of a railroad crossing;

(b) At any place where official signs prohibit parking.

B. No person shall move a vehicle not lawfully under his control into

any such prohibited area or away from a curb such a distance as is unlawful.

Section 27. Additional parking regulations.

(a) Except as otherwise provided in this section, every vehicle stopped or parked upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within 18 inches of the right-hand curb or edge of the roadway.

This is the same as Ark. Stat. § 75-650.

(b) Except when otherwise provided by local ordinance, every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within 18 inches of the right-hand curb or edge of the roadway, or its left-hand wheels within 18 inches on the left-hand curb or edge of the roadway.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any Federal-aid or State highway unless the State Highway Commission has determined by resolution or order entered in its minutes

that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The State Highway Commission with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where it is determined by engineering studies that such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand or park any vehicle in violation of the restrictions stated on such signs.

Section 28. Unattended motor vehicle--Stopping motor and setting brakes--Turning wheels on grade--Opening door on traffic side.

This is the same as Ark. Stat. § 75-651.

(a) No person driving or in charge of a motor vehile shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, or when standing upon any perceptible grade without effectively setting the brake thereon and turning

the front wheels to the curb of side of the roadway.

(b) No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

Section 29. Stopping, standing or parking outside of business or residential district.

Except when a vehicle is so disabled that it cannot be moved, no person shall stop, park or leave standing any vehicle, attended or unattended, upon the paved or main traveled part of any highway outside of a business or residential district when it is practicable to stop, park or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a safe distance in each direction upon such highway.

This is essentially the same as Ark. Stat. § 75-647.

Section 30. Officer authorized to remove illegally stopped vehicle.

Whenever any police officer finds a parked vehicle obstructing traffic or creating a hazardous condition, he is authorized to move such vehicle or have it moved to a position of safety.

This supersedes Ark. Stat. § 75-648.

Section 31. Moving stopped vehicle.

No person shall initiate the movement of a vehicle which is stopped, standing or parked unless and until such movement can be made with reasonable safety to vehicles and pedestrians in the vicinity.

This replaces Ark. Stat. § 75-617.

Section 32. Operation of vehicles on approach of authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle making use of audible and/or visual signals meeting the requirements of this Code, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

This is essentially the same as Ark. Stat. § 75-625.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

Section 33. Following emergency vehicle--Distance.

The driver of any vehicle other than one on official business shall not follow any emergency vehicle traveling on an emergency call closer than 200 feet.

This expands and replaces Ark. Stat. § 75-655.

Section 34. Crossing unprotected fire hose prohibited.

Except when otherwise directed by a police officer or fire department official no vehicle shall be driven over any unprotected fire department hose on any public or private roadway.

This is essentially the same as Ark. Stat. § 75-656.

Section 35. Obstruction to driver's view or driving mechanism prohibited.

No person shall drive a vehicle with more than three persons in the front seat when it is otherwise loaded so as to obstruct his view to the front or sides or interfere with his control over the driving mechanism of the vehicle, and no passenger shall ride so as to so obstruct or interfere.

This is essentially the same as Ark. Stat. § 75-652.

Section 36. Coasting prohibited.

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.

(b) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

This is the same as Ark. Stat. § 75-654.

Section 37. Pedestrians' right of way in crosswalks.

(a) Pedestrians shall be subject to traffic control signals at intersections but where such signals are not in place or in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if necessary to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at any intersection, except as otherwise provided in this Article.

(b) Whenever any vehicle is stopped at a crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any

This section combines and supersedes Ark. Stat. § § 75-626 and 627 but does not change the law.

other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

Section 38. Pedestrians crossing at other than crosswalks-Drivers to use due care.

This replaces Ark. Stat. § 75-628.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to all vehicles upon the roadway.

(c) Notwithstanding the provisions of this section every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and

shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

Section 39. Pedestrians on roadways

(A) Where sidewalks are provided, pedestrians shall not walk along and upon an adjacent roadway.

(B) Where sidewalks are not provided any pedestrian walking along and upon a roadway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(C) No person shall stand in a roadway for the purpose of soliciting a ride, employment or business from the occupant of any vehicle.

This combines and supersedes Ark. Stat. §§ 75-629 and 630. The latter statute has been expanded to prohibit standing in the road to solicit business or employment; this is to prevent vendors and distributors of handouts from standing in the road. Parts (B) and (C) of this section are new.

Section 40. Blind persons with canes or dogs to have right of way. Misdemeanor.

All blind persons with canes or with "seeing-eye

This section supersedes and limits Ark. Stat. §§ 75-631 and 632.

dogs" traveling along any roadway shall have the right of way over other traffic except emergency vehicles and except at intersections where traffic lights are provided.

Section 41. Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone.

This is the same as Ark. Stat. § 75-636.

Section 42. Litter on highways and other property.

No person shall throw, drop, dump or otherwise deposit on any public or private highway, road or street or right of way thereof, without the consent of the person or authority in charge thereof, any trash, garbage or injurious substance. In addition to being subject to the penalty for misdemeanor, any person violating the provisions of this section may be made to remove, or to pay for the cost of removing, the substance so deposited.

This section combines and supersedes Ark. Stat. §§ 75-657 and 41-2117.

Section 43. Obstructing highway.

Any person obstructing a public or private highway, road or street except in an emergency or by special permit from the authority with jurisdiction over the roadway, shall be guilty of a misdemeanor. Each day said obstruction shall remain shall constitute a separate offense.

This section supersedes Ark. Stat. §§ 41-2101 76-112 and adds a provision allowing such obstruction in emergency or by permit.

Section 44. Obstructing crossings by trains.

Any person or corporation owning or operating trains who shall allow a train to stand across any highway, road, street or farm crossing for more than 10 minutes shall be guilty of a misdemeanor.

This section combines and supersedes Ark. Stat. §§ 73-718 and 719. No reason could be determined to justify separate statutes for freight and passenger trains.

Section 45. Driving on controlled-access facilities.

It is unlawful for any person (1) to drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled-access facilities; (2) to make a left turn or a semicircular or U-turn except through an opening

This is the same as Ark. Stat. § 76-2210.

provided for that purpose in the dividing curb section, separation, or line; (3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (4) to drive any vehicle into the controlled-access facility from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the controlled-access facility proper.

Section 46. Use of closed or restricted highway, road or street.

Whenever the State Highway Commission or a local authority shall have restricted the use of, or closed, any highway road or street, anyone who shall disregard such restriction or closing shall be guilty of a misdemeanor and shall be liable to the authority with jurisdiction over the roadway for any damages to the roadway resulting from such use. The misdemeanor provision shall not apply to one who has obtained a special permit from the authority with jurisdiction over the roadway to make use of the roadway.

This section combines and supersedes Ark. Stat. §§ 76-124, 125 and 128. Ark. Stat. § 76-125 exempts "special trips" for the movement of some particular thing or vehicle from the penal provision of Ark. Stat. § 76-124. The new section requires a special permit to obtain such exemption.

Section 47. Negligent homicide--Penalty--Revocation of driver's license.

This replaces Ark. Stat. § 75-1001.

(a) When the death of any person ensues within one year as a proximate result of injury received by the driving of any vehicle in wilful and wanton disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide.

(b) Any person convicted of negligent homicide under the provisions of this section shall be punished by imprisonment for not more than one year, or by a fine of not less than two hundred dollars ($200.00), nor more than one thousand dollars ($1,000.00), or by both such fine and imprisonment.

(c) The Commissioner of Revenues shall revoke the operator's or chauffeur's license of any person convicted of negligent homicide under the provisions of this section for a period of one year.

(d) The offense of negligent homicide shall be included in and be a lesser degree of the offense of involuntary manslaughter.

Section 48. Reckless driving.

Any person who drives any vehicle in such a manner as to indicate a wilful and wanton disregard for the safety of persons or property shall be guilty of the misdemeanor of reckless driving.

This is essentially the same as Ark. Stat. § 75-1003.

Section 49. Operating a vehicle under the influence of drugs.

It shall be unlawful and punishable as provided in section 52 for any person to drive a vehicle who is an habitual user of or under the influence of any drug to such a degree as to render him incapable of safely driving a vehicle. The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this State shall not constitute a defense against any charge of violating this section.

This is essentially the same as Ark. Stat. § 75-1026.1.

Section 50. Operating a vehicle under the influence of intoxicating liquor.

It shall be unlawful and punishable as provided in section 52 for any person who is under the influence of intoxicating liquor to drive any vehicle.

This is essentially the same as Ark. Stat. § 75-1027.

Section 51. Chemical analysis in cases of persons charged with driving under the influence of intoxicating liquor as evidence.

(a) In any criminal prosecution of a person charged with the offense of driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

1. If there was at that time 0.05 percent or less by weight (or 0.05 Mg. per cc) of alcohol in the defendant's blood, urine, breath or other bodily substance, it shall be presumed that the defendant was not under the influence of intoxicating liquor;

2. If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the defendant's blood, urine, breath or other bodily substance, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

3. If there was at that time 0.10 percent or more by weight of alcohol in the defendant's blood, urine, breath or other bodily substance, it shall be presumed that the defendant was under the influence of intoxicating liquor.

This modifies and updates Ark. Stat. § 75-1031.1 to conform with the UVC.

(b) The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

(c) The chemical analysis referred to in the above paragraphs shall be made by a method approved by the Director of the Arkansas State Board of Health, and/or the Director of Arkansas State Police.

Section 52. Penalty.

This is the same as Ark. Stat. §§ 75-1029, 1029.1 and 1029.2.

Every person who is convicted of a violation of section 49 or 50 shall be punished by imprisonment for not less than 24 hours, nor more than 30 days, and by a fine of not less than fifty dollars ($50.00), nor more than five hundred dollars ($500.00), and his privilege to operate a motor vehicle may be suspended for a period of not more than one [1] year. On a second or subsequent conviction for an offense committed within one [1] year of the first offense of a violation of Section 49 or 50 , he shall be punished by imprisonment for not less than ten days (10) days, nor more than [1] one year, and a fine of not less than two hundred and fifty dollars ($250.00), nor

more than one thousand dollars ($1000.00) and his privilege to operate a motor vehicle shall be revoked for one [1] year. Imprisonment as provided in this Section shall not be deemed to have begun until after conviction and sentencing of the defendant. Any person whose privilege to operate a motor vehicle has been so suspended or revoked who shall, during the period of such suspension or revocation, operate a motor vehicle in this State, shall be imprisoned for 10 days. This penalty shall be mandatory and no court shall have power to suspend it.

Section 53. Court record of conviction or forfeiture of bail.

Every magistrate or judge of a court shall keep or cause to be kept a record of every violation of Sections 49 and 50 presented to said court, and shall keep a record of every official action by said court in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of any fine and jail sentence.

Sections 53 and 54 are essentially the same as Ark. Stat. § 75-1031, with same modification.

Section 54. Abstract of conviction.

A. Within 10 days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of Section 49 or 50 every said magistrate of the court or clerk of the court of record in which such conviction was had or bail was forfeited shall prepare and immediately forward to the Commissioner of Revenues an abstract of the record of said court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

B. Said abstract must be made upon a form furnished by the Commissioner of Revenues, and shall include the name and address of the party charged, the number if any, of his operator's or chauffeur's license, the registration number of the vehicle involved, the date of hearing, the plea, the judgment, or whether bail forfeited, and the amount of the fine and jail sentence or forfeiture as the case may be.

Section 55. Adoption of sign-manual and uniform system of traffic-control devices.

The State Highway Commission shall adopt a manual and specifications for a uniform system of traffic control devices for use upon the highways of this State conforming with the system then current as approved by the American Association of State Highway Officials.

This is essentially the same as Ark. Stat. § 75-501.

Section 56. All traffic-control devices to be uniform.

All traffic-control devices, and their arrangement, in the State of Arkansas on any public highway, road or street shall conform with

This section combines and supersedes Ark. Stat. §§ 75-509, 510, 511, 512 and 513. The new section refers

standards recommended by the Institute of Traffic Engineers, approved by the American Standards Association, and with the State Manual and specifications adopted by the State Highway Commission.

to all traffice-control devices instead of only to electric ones as do the old statutes. The provisions of Ark. Stat. § 75-510 dealing with the relative positions of the different colors and arrows have been eliminated from the new section as this is more properly a regulation and will be covered in the State manual which the Commission shall adopt. This is the same as Ark. Stat. § 75-502.

Section 57. Traffic-control devices on state highways.

(a) The State Highway Commission shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this Code or to regulate, warn or guide traffic.

(b) No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the State Highway Commission except by the latter's permission.

Section 58. Local traffic-control devices.

This is the same as Ark. Stat. § 75-503.

A. Local authorities, in their respective jurisdictions, shall place and maintain such traffic-control devices upon roads or streets under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this Code or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the State Manual and specifications.

B. Local authorities in exercising those functions referred to in the preceding paragraph shall be subject to the direction and control of the State Highway Commission.

Section 59. Obedience to and required traffic-control devices.

A. The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this Code, unless otherwise directed by a traffic or police officer.

B. No provision of this Code for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by a reasonably prudent man. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

UVC § 11-201 has been substituted for Ark. Stat. § 75-504. Part A corresponds to the old statute. Parts B, C and D are new.

C. Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this Code, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

D. Any official traffic-control device placed pursuant to the provisions of this act and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this Code, unless the contrary shall be established by competent evidence.

Section 60. Traffic-control signal legend.

Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

UVC §§ 11-202 and 203 have been substituted for Ark. Stat. § 75-505. Part E of section 62 was taken from part D of the old statute.

A. Green indication:

1. Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent cross walk at the time such signal is exhibited.

2. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent cross walk and to other traffic lawfully using the intersection.

3. Unless otherwise directed by a pedestrian-control signal, as provided in Section 61 herein, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked cross walk.

B. Steady yellow indication:

1. Vehicular traffic facing a steady yellow signal is thereby warned that the green movement has been terminated and that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

C. Steady red indication:

1. Vehicular traffic facing a steady red signal alone shall stop before entering the cross walk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown.

2. Unless otherwise directed by a pedestrian-control signal, pedestrians facing a steady red signal alone shall not enter the roadway.

D. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop

shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

E. Steady red with green arrow:

1. Vehicular traffic facing such signal may enter the intersection only to make the movement indicated by such arrow but shall yield the right of way to pedestrians lawfully within a cross walk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

Section 61. Pedestrian-control signals.

UVC §§ 11202 and 203 have been substituted for Ark. Stat. § 75-505.

Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" are in place such signals shall indicate as follows:

A. Walk.--Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles.

B. Don't Walk.--No pedestrian shall start to cross the road-

way in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal is showing.

Section 62. Flashing signals.

A. Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

1. Flashing red (stop signal).--When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest cross walk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

2. Flashing yellow (caution signal).--When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal with caution.

UVC § 11-204 has been substituted for Ark. Stat. § 75-506. The new section is the same as the old statute except that part B is new.

B. This section shall not apply to railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in Section 23 of this article.

Section 63. Lane-direction-control signals.

When lane-direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but shall not enter or travel in any lane over which a red signal is shown.

This section is new and is taken from UVC § 11-204.1.

Section 64. Display of unauthorized signs, signals or markings.

No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any rail-

This section is taken from UVC § 11-205 and represents a consolidation and modification of Ark. Stat. §§ 75-507 and 41-2110. The other evils contemplated by these statutes are covered in the Land Use Chapter.

road sign or signal.

Section 65. Destruction of public property--Reward.

A. Any person who shall willfully break, destroy, remove,

This section combines and supersedes Ark. Stat. §§ 75-508, 41-2104 and 41-2105.

deface or alter any road sign, railroad crossing sign, traffic-control device or other public property on any highway, road or street or right of way thereof shall be guilty of a misdemeanor and shall also be liable to the State for the damage done to such property.

B. There is posted a standing reward of $25.00 to be paid by the State Highway Department from maintenance funds for information leading to the arrest and conviction of any person violating the provisions of this section.

The size of the reward has been increased from $10.00 to $25.00.

Section 66. Free passage over toll bridges and ferries.--Penalty for refusal--Crossing without paying toll prohibited.

A. All federal, State or emergency vehicles shall pass free over all toll bridges and ferries erected or operated under permit, order or authority of a county court or the State Highway Commission. Any person refusing to allow such a vehicle to pass free of charge shall be deemed guilty of a misdemeanor.

B. Any person who shall cross or attempt to cross any toll bridge, toll ferry or other toll structure without tender and payment of the lawful toll therefor shall be deemed guilty of a misdemeanor.

This section combines and supersedes Ark. Stat. §§ 11-1006 and 41-2111, 2112, 2113 and 2114. The only change is that Ark. Stat. § 11-1006 limits free passage to military vehicles of the State or federal governments, whereas the new section allows free passage to all State, federal or emergency vehicles.

Section 67. Right to recover damages unaffected--Prima facie case.

A. Nothing in this article shall be construed to limit the right of any person to prosecute a civil action for damages by reason of injuries to persons or property resulting from the negligent use of the highways by the operator of a motor vehicle or its owner or his employee or agent.

B. In any action brought to recover damages for injury caused by the operation of a vehicle at speeds in excess of those established herein or permitted hereby, the plaintiff shall be deemed to have made a prima facie case by showing the fact of injury and that such person or persons driving such vehicle or vehicles was at the time of the injury operating the same at such excessive speed.

This is essentially the same as Ark. Stat. § 75-662.

Section 68. Exceptions to application of this article.

The provisions of this article applicable to the drivers of vehicles upon the highway shall apply to the drivers of all vehicles owned or operated by the United States, this State or any political subdivision thereof subject to the following exceptions:

This section supersedes Ark. Stat. § 75-423. The old statute allows the driver of an emergency vehicle while on an emergency call to cautiously proceed through stop signs and stop signals with-

(1) Subject to municipal ordinances the driver of any authorized emergency vehicle while on an emergency call or in the immediate pursuit of an actual or suspected violator of the law may disregard any of the provisions of this Code so long as he can do so with safety and so long as he maintains due regard for the safety of other users of the highway; and

(2) The provisions of this Code shall not apply to persons, vehicles and equipment actually engaged in road construction, maintenance or repair.

out actually stopping. The new section allows such a driver to disregard all provisions of this article when he can do so with safety and subject to municipal ordinance.

Section 69. Penalties.

This section is new.

A. Violation of any of the provisions of any of the sections of this Article except Sections 26, 27 and 28 and sections for which another penalty is provided shall be punishable as a misdemeanor and shall be subject to a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00).

B. Violation of any of the provisions of Sections 26, 27 and 28 shall be punished by fine of not more than $10.00 for each such conviction.

Proposed Code	Affected Sections and Comments
Article 2. Equipment.	
Section 1. Scope and effect of regulations--Exceptions.	Except where noted hereinafter, this Article is the same as the present Chapter 7 of Title 75, as amended, of the Arkansas statutes. Sec. 1 is the same as Ark. Stat. Sec. 75-701.
(a) It is a misdemeanor for any person to drive or for the owner to cause or knowlingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this Article, or which is equipped in any manner in violation of this Article, or for any person to do any act forbidden or fail to perform any act required under this Article.	
(b) The provisions of this Article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.	
Section 2. When lighted lamps are required.	This is the same as Ark. Stat. Sec. 75-702.
(a) Every vehicle, except motorcycles and motor-driven cycles, upon a highway within this State at any time from a half hour after sunset to a half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of	

500 feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.

(b) Every motorcycle and every motor-driven cycle upon a street or highway within this State at any time shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as hereinafter stated.

(c) Whenever requirement is hereinafter declared as to distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in subsection (a) in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(d) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when vehicle is without a load.

Section 3. Head lamps on motor vehicles. This is same as Ark. Stat. Sec. 75-703.

(a) Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two [2] head lamps with at least one [1] on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this Article.

(b) Every motorcycle and every motor-driven cycle shall be equipped with at least one [1] and not more than two [2] head lamps which shall comply with the requirements and limitations of this Article.

(c) Every head lamp upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the head lamp of not more than 54 inches nor less than 24 inches to be measured as set forth in Section 2(c).

Section 4. Tail lamps--New motor vehicles to be equipped with reflectors. This is same as Ark. Stat. Sec. 75-704.

(a) Every motor vehicle, trailer, semitrailer and pole trailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on

the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified. And further, every such above-mentioned vehicle, other than a truck tractor, registered in this State and manufactured or assembled after July 1, 1959, shall be equipped with at least two tail lamps mounted on the rear, on the same level and as widely spaced laterally as practicable, which, when lighted as herein required, shall comply with the provisions of this Section.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than 72 inches nor less than 20 inches.

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible for a distance of 50 feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

(d) Every new motor vehicle hereafter sold and operated upon a highway other than a truck tractor shall carry on the rear, either as a part of the tail lamps or separately, two [2] red reflectors, except that every motorcycle and every motor-driven cycle shall carry at least one [1] reflector, meeting the requirements of this Section, and except that vehicles of the type mentioned in Section 9 of this Article shall be equipped with reflectors as required in those Sections applicable thereto.

(e) Every such reflector shall be mounted on the vehicle at a height not less than 20 inches nor more than 60 inches measured as set forth in Section 2 of this Article, and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 350 feet to 100 feet from such vehicle when directly in front of lawful upper beams of head lamps, except that visibility from a greater distance is hereinafter required of reflectors on certain types of vehicles.

Section 5. Lamps on buses, trucks, tractors and trailers.

This is the same as Ark. Stat. Sec. 75-705.

(a) In addition to other equipment required by this Chapter,

the following vehicles shall be equipped as herein stated.

(1) On every bus or truck, whatever its size, there shall be the following:

On the rear, two [2] reflectors, one [1] at each side, and one [1] stop light.

(2) On every bus or truck 80 inches or more in over-all width, in addition to the requirements in paragraph (1):

On the front, two [2] clearance lamps, one [1] at each side.

On the rear, two [2] clearance lamps, one [1] at each side.

On each side, two [2] side marker lamps, one [1] at or near the front and one [1] at or near the rear.

On each side, two [2] reflectors, one [1] at or near the front and one [1] at or near the rear.

(3) On every truck tractor:

On the front, two [2] clearance lamps, one [1] at each side.

On the rear, one [1] stop light.

(4) On every trailer or semitrailer having a gross weight in excess of 3,000 pounds:

On the front, two [2] clearance lamps, one [1] at each side.

On each side, two [2] side marker lamps, one [1] at or

near the front and one[1] at or near the rear.

On each side, two [2] reflectors, one [1] at or near the front and one [1] at or near the rear.

On the rear, two [2] clearance lamps, one [1] at each side, also two [2] reflectors, one [1] at each side, and one [1] stop light.

(5) On every pole trailer in excess of 3,000 pounds gross weight:

On each side, one [1] side marker lamp and one [1] clearance lamp which may be in combination, to show to the front, side and rear.

On the rear of the pole trailer or load, two [2] reflectors, one [1] at each side.

(6) On every trailer, semitrailer or pole trailer weighing 3,000 pounds gross or less:

On the rear, two [2] reflectors, one [1] on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one [1] stop light.

(b) The clearance lamps, side marker lamps, back-up lamps and reflectors required in subsection (a) hereof shall display or reflect the following colors:

(1) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect a red color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white or amber.

(c) Reflectors, clearance and side marker lamps When required by subsection (a) of this Section shall be mounted as follows:

(1) Reflectors when required by subsection (a) of this Section shall be mounted at a height not less than 24 inches and not higher than 60 inches above the ground on which the vehicle stands,

except that if the highest part of the permanent structure of the vehicle is less than 24 inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this chapter.

(2) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illimination is given as required herein with reference to both.

(d) Visibility requirements for reflectors, clearance lamps and side marker lamps when required under subsection (a) of this Section shall be as follows:

(1) Every reflector upon any vehicle referred to in subsection (a) of this Section shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet from the vehicle when directly

in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicles shall reflect the required color of light to the sides, and those mounted on the rear shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of 500 feet from the front and rear, respectively, of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance 500 feet from the side of the vehicle on which mounted.

(e) Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the

rear of the rear-most vehicle of any combination shall be lighted.

Section 6. Lamp or flag on projecting load.

This is the same as Ark. Stat. Sec. 75-706.

Whenever the load upon any vehicle extends to the rear 4 feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in Section 2 hereof, a red light or lantern plainly visible from a distance of at least 500 feet to the sides and rear. The red light or lantern required under this section shall be in addition to the rear red light required upon every vehicle. At any other time there shall be displayed at the extreme rear of such a load a red flag or cloth not less than 16 inches square.

Section 7. Lamps on Parked vehicles.

This is the same as Ark. Stat. Sec. 75-707.

Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended during the times mentioned in Section 2 of this Article such vehicle shall be equipped with one [1] or more lamps which shall exhibit a white or amber light on the roadway side visible from a distance of 500 feet to the front of such vehicle and a red light visible a distance of 500 feet to the

rear, except that local authorities may provide by ordinance or resolution that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or object within a distance of 500 feet upon such highway. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed.

Section 8. Lamps on bicycles.

This is the same as Ark. Stat. Sec. 75-708

Every bicycle shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of 500 feet to the rear; except that a red reflector meeting the requirements of this chapter may be used in lieu of a rear light.

Section 9. Lamps of farm tractors, farm equipment and implements of husbandry

(a) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry shall at all times mentioned in Section 2 of this Article be equipped with two (2) single-beam or multiple-beam head lamps meeting the requirements of Section 14 or Section 16 of this Article, and at least two (2) red lamps visible when lighted from a distance of not less than 1,000 feet to the rear; and at least two (2) reflectors visible from all distances within 600 feet to 100 feet to the rear when directly in front of lawful upper beams of head lamps.

(b) Every combination of farm tractor and towed farm equipment or towed implement of husbandry shall at all times mentioned in Section 2 of this Article be equipped with lamps as follows:

UVC Sec. 12-215 and 12-216 has been substituted for Ark. Stat. Sec. 75-709.

(1) The farm tractor element of every such combination shall be equipped as required in paragraph (a) of this section.

(2) The towed unit of farm equipment of implement of husbandry element of such combination shall be equipped on the rear with two (2) red lamps visible when lighted from a distance of not less than 1,000 feet to the rear, and two (2) red reflectors visible to the rear from all distances within 600 feet to 100 feet to the rear when directly in front of lawful upper beams of head lamps.

(3) Said combinations shall also be equipped with a lamp displaying a white or amber light, or any shade of color between white and amber, visible when lighted from a distance of not less than 1,000 feet to the front. This lamp shall be so positioned to indicate, as

nearly as practicable, the extreme left projection of the combination carrying it.

(c) The two red lamps and the two red reflectors required in the foregoing paragraphs of this section on a self-propelled unit of farm equipment or implement of husbandry or combination of farm tractor and towed farm equipment shall be so positioned as to show from the rear as nearly as practicable the extreme width of the vehicle or combination carrying them.

(d) Every vehicle, including animal-drawn vehicles and vehicles referred to in Section 1 (b) of this Article, not specifically required by the provisions of this Article to be equipped with lamps or other lighting devices, shall at all times specified in Section 2 of this Article be equipped with at least

one lamp displaying a white light visible from a distance of not less than 1,000 feet to the front of said vehicle, and shall also be equipped with two lamps displaying a red light visible from a distance of not less than 1,000 feet to the rear and two red reflectors visible from all distances of 600 to 100 feet to the rear when illuminated by the upper beam of head lamps.

Section 10. Prohibition of motorcycles with inadequate lights. This is a new section.

No person shall operate any motorcycle at any time when headlamps are required to be used under this Code unless such motorcycle is equipped with and lighted by a headlamp or lamps which are adequate to reveal a person or vehicle at a distance of 500 feet ahead.

Section 11. Spot lamps, fog lamps, and auxiliary passing and driving lamps. This is the same as Ark. Stat. Sec. 75-710.

(a) Spot Lamps. Any motor vehicle may be equipped with no more than two (2) spot lamps, and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed in such a manner as to blind or impair the vision of the driver of an approaching vehicle.

(b) Fog Lamps. Any motor vehicle may be equipped with no more than two (2) fog lamps mounted on the front at a height not less than 12 inches nor more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded, none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of 4 inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower head-lamp beams as specified in Section 14 (b) of this Article.

(c) Auxiliary Passing Lamps. Any motor vehicle may be equipped with not to exceed two (2) auxiliary passing lamps mounted on the

front at a height not less than 24 inches nor more than 42 inches above the level surface upon which the vehicle stands. The provisions of Section 14 of this Article shall apply to any combination of head lamps and auxiliary passing lamps.

(d) Auxiliary Driving Lamps. Any motor vehicle may be equipped with not to exceed two [2] auxiliary driving lamps mounted on the front at a height not less than 16 inches nor more than 42 inches above the level surface upon which the vehicle stands. The provisions of Section 14 of this Article shall apply to any combination of head lamps and auxiliary driving lamps.

Section 12. Signal lamps and signal devices.

This is the same as Ark. Stat. Sec. 75-711.

(a) Any motor vehicle may be equipped and when required under this chapter shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one or more other rear lamps.

(b) Any motor vehicle may be equipped and when required under this chapter shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. Such lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than 100 feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(c) Any motor vehicle or combination of vehicles 80 inches or more in overall width, and manufactured or assembled after July 1, 1959, shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right

or the left. Such lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than 500 feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 500 feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(d) (1) No person shall sell or offer for sale or operate on the highways any motor vehicle registered in this State and manufactured or assembled after July 1, 1959 unless it is equipped with at least two [2] stop lamps meeting the requirements of this Section, except that a motorcycle, motor-driven cycle or truck tractor manufactured or assembled after said date shall be equipped with at least one [1] stop lamp meeting the requirements of this Section.

(2) No person shall sell or offer for sale or operate on the highways any motor vehicle, trailer or semitrailer registered in this State and manufactured or assembled after July 1, 1959, unless it is equipped with electrical turn signals meeting the requirements of this Section. This paragraph shall not apply to any motorcycle or motor-driven cycle.

(e) No stop lamp or signal lamp shall project a glaring light.

Section 13. Additional lighting equipment.

This is the same as Ark. Stat. Sec. 75-712.

(a) Any motor vehicle may be equipped with not more than two [2] side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one [1] running-board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) Any motor vehicle may be equipped with not more than two [2] back-up lamps either separately or in combination with other lamps, but any such back-up lamp shall not be lighted when the motor vehicle is in forward motion.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this chapter. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable, and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red. These warning lights shall be visible from a distance of not less than 500 feet under normal atmospheric conditions at night.

(e) Any commercial vehicle 80 inches or more in overall width may be equipped with not more than three [3] identification lamps showing to the front which shall emit an amber light without glare and not more than three [3] identification lamps showing to the rear

which shall emit a red light without glare. Such lamps shall be placed in a row and may be mounted either horizontally or vertically.

Section 14. Multiple-beam road lighting equipment.

This is the same as Ark. Stat. Sec. 75-713.

Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles or motor driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the

high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this State after July 1, 1955, which has multiple-beam road lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

Section 15. Use of multiple-beam road-lighting equipment. This is the same as Ark. Stat. Sec. 75-714.

(a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in Section 2 of this Article, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations.

(b) Whenever a driver of a vehicle approaches an oncoming

vehicle within 500 feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam, specified in Section 14(b) of this Article, shall be deemed to avoid glare at all times, regardless of road contour and loading.

(c) Whenver the driver of a vehicle follows another vehicle within 200 feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this Article other than the uppermost distribution of light specified in Section 14(a) of this Article.

Section 16. Single-beam road lighting equipment.

This is the same as Ark. Stat. Sec. 75-715.

Headlamps arranged to provide a single distribution of light not supplemented by auxiliary driving lamps shall be permitted on motor vehicles manufactured and sold prior to 1938 in lieu of multiple-beam road lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(1) The headlamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of 25 feet ahead project higher than a level of 5 inches below the level of the center of the lamp from which it comes, and in no case higher than 42 inches above the level on which the vehicle stands at a distance of 75 feet ahead.

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet.

Section 17. Alternate road lighting equipment.

This is the same as Ark. Stat. Sec. 75-716.

Any motor vehicle may be operated under the conditions specified in Section 2 of this Article when equipped with two lighted lamps under the front thereof capable of revealing persons and objects 75 feet ahead in lieu of lamps required in Section 14 or Section 16 of this Article; provided, however, that at no time shall it be operated at a speed in excess of twenty (20) miles per hour.

Section 18. Number of driving lamps required or permitted.

This is the same as Ark. Stat. Sec. 75-717.

(a) At all times specified in Section 2 of this Article, at least two (2) lighted lamps shall be displayed, one on each side at the front of every motor

vehicle except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of an intensity greater than 300 candlepower, not more than a total of four [4] of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

Section 19. Special restrictions on lamps.

This is the same as Ark. Stat. Sec. 75-718.

(a) Any lighted lamp or illuminating device upon a motor vehicle, other than head lamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and school bus warning lamps, which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying a red light

visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this chapter.

(c) Flashing lights are prohibited except on an authorized emergency vehicle, school bus, or on any vehicle as a means of indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking or passing.

Section 20. Selling or using lamps or equipment.

This is the same as Ark. Stat. Sec. 75-719.

(a) After the effective date of this Code, no person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, or use upon any such vehicle any headlamp, auxiliary, or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required hereunder, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the commission and approved by it. The foregoing provisions of this section shall not apply to equipment in actual use when this section is adopted or replacement parts therefor.

(b) No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer any lamp or device mentioned in this Section which has been approved by the Commission unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

(c) No person shall use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted and aimed in accordance with instructions of the commission.

Section 21. Authority of the State Highway Commission with reference to lighting devices.

(a) The Commission is hereby authorized to approve or disapprove lighting devices and to issue and enforce regulations establishing standards and specifications for the approval of such lighting devices, their installation, adjustment and aiming, and adjustment when in use on motor vehicles. Such regulations shall correlate with and, so far as practicable, conform to the then current standards and specifications of the Society of Automotive Engineers applicable to such equipment.

This is the same as Ark. Stat. Sec. 75-720. (This is also covered under Powers and Duties of the Commission, Article 1.)

(b) The Commission is hereby required to approve or disapprove any lighting device, of a type on which approval is specifically required in this chapter, within a reasonable time after such device has been submitted.

(c) The Commission is further authorized to set up the procedure which shall be followed when any device is submitted for approval.

(d) The Commission upon approving any such lamp or device shall issue to the applicant a certificate of approval together with any instructions determined by it.

(e) The Commission shall publish lists of all lamps and devices by name and type which have been approved by it.

Section 22. Revocation of certificate of approval on lighting devices. This is the same as Ark. Stat. Sec. 75-721.

When the Commission has reason to believe that an approved device as being sold commercially does not comply with the requirements of this Article, it may, after giving 30 days' previous notice to the person holding the certificate of approval for such device in this State, conduct a hearing upon the question of compliance of said approved device. After said hearing the Commission shall determine whether said approved device meets the requirements of this Article.

If said device does not meet the requirements of this chapter it shall give notice to the person holding the certificate of approval for such device in this State.

If, at the expiration of 90 days after such notice, the person holding the certificate of approval for such device has failed to satisfy the Commission that said approved device as thereafter to be sold meets the requirements of this Article, the Commission shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this Article, and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this Article. The Commission may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of such approved devices, and if such device upon such retest fails to meet the requirements of this Article, the Commission may refuse to renew the certificate of approval of such device.

Section 23. Flares and emergency lighting equipment.

This is the same as Ark. Stat. Sec. 75-722.

A. Certain vehicles to carry flares or other warning devices.

1. No person shall operate any motor truck, passenger bus or truck tractor, or any motor vehicle towing a house trailer, upon any highway outside the corporate limits of municipalities at any time from a half hour after sunset to a half hour before sunrise unless there shall be carried in such vehicle the following equipment except as provided in Subsection (2) of this Section.

(a) At least three[3] red electric lanterns or three[3] portable red emergency reflectors, each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal atmospheric conditions at nighttime.

(b) No flare, fusee, electric lantern or cloth warning flag shall be used for the purpose of compliance with the requirements of this Section unless such equipment is of a type which has been submitted to and approved by the Commission. No portable reflector unit shall be used for the purpose of compliance with the requirements of this Section unless it is so designed and constructed as to include two [2] reflecting elements one [1] above the other, each of which shall be capable of reflecting red light clearly visible from all

distances within 600 feet to 100 feet under normal atmospheric conditions at night when directly in front of lawful upper beams of head lamps, and unless it is of a type which has been submitted to and approved by the Commission.

(c) At least three[3] red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried.

(d) At least two [2] red-cloth flags, not less than 12 inches square, with standards to support such flags.

2. No person shall operate at the time and under conditions stated in Subsection (1) of this Section any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gases, or any motor vehicle using compressed gas as a fuel unless there shall be carried in such vehicle three[3] red electric lanterns or three [3] portable red emergency reflectors meeting the requirements of Subsection (1) of this Section, and there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame.

B. Display of warning devices when vehicle is disabled.

1. Whenever any motor truck, passenger bus, truck tractor, trailer, semitrailer or pole trailer, or any motor vehicle towing a house trailer, is disabled upon traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in paragraph two of Subsection (B 2) of this Section.

(a) A lighted fusee, a lighted red electric lantern or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three [3] lanterns or three [3] portable red emergency reflectors on the traveled portion of the highway in the following order:

(i) One, approximately 100 feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane.

(ii) One, approximately 100 feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle.

(iii) One at the traffic side of the disabled vehicle not less than 10 feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with paragraph (i) of this Section, it may be used for this purpose.

2. Whenever any vehicle referred to in this section is disabled within 500 feet of a curve, hillcrest or other obstruction to view, the warning signal in that direction shall be so placed as to afford ample warning to other users of the highway, but in no case less than 100 feet nor more than 500 feet from the disabled vehicle.

3. Whenever any vehicle of a type referred to in this Section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in paragraphs one and five of Subsection (B) of this Section shall be placed as follows:

One at a distance of approximately 200 feet from the

vehicle in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane; one at a distance of approximately 100 feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane; one at the traffic side of the vehicle and approximately 10 feet from the vehicle in the direction of the nearest approaching traffic.

4. Whenever any vehicle of a type referred to in this Section is disabled upon the traveled portion of a highway or the shoulder thereof outside of any municipality at any time when the display of fusees, flares, red electric lanterns or portable red emergency reflectors is not required, the driver of the vehicle shall display two [2] red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately 100 feet in advance of the vehicle, and one at a distance of approximately 100 feet to the rear of the vehicle.

5. Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon a highway of this

State at any time or place mentioned in paragraph one of Subsection (B) of this Section, the driver of such vehicle shall immediately display the following devices: One [1] red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle, and two [2] red electric lanterns or portable red reflectors, one placed approximately 100 feet to the front and one placed approximately 100 feet to the rear of this disabled vehicle in the center of the traffic lane occupied by such vehicle. Flares, fusees or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this paragraph.

6. The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this Section shall conform with the requirements of Subsection (A) of this Section.

Section 24. Vehicles transporting explosives--Placards--Fire extinguishers. This is the same as Ark. Stat. Sec. 75-723.

Any person operating any vehicle transporting any explosive as a cargo upon a highway shall at all times comply with the provisions of this Section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than 8 inches high, or there shall be displayed on the rear of such vehicle a red flag not less than 24 inches square marked with the word "Danger" in white letters 6 inches high.

(b) Every said vehicle shall be equipped with not less than two /2/ fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The Commission is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles in vehicles upon the highways as it shall deem advisable for the protection of the public.

Section 25. Brakes.

This is the same as Ark. Stat. Sec. 75-724, with the exception of paragraph 5. This has been changed.

A. Brake equipment required.

1. Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two /2/ separate means of applying the brakes, each of which means shall be effective to apply the brakes to at

least two /2/ wheels. If these two /2/ separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two /2/ wheels.

2. Every motorcycle and every motor-driven cycle, when operated upon a highway, shall be equipped with at least one /1/ brake, which may be operated by hand or foot.

3. Every trailer or semitrailer of a gross weight of 3,000 pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes shall be so designed and connected that in case of an accidental break-away of the towed vehicle the brakes shall be automatically applied.

4. Every new motor vehicle, trailer or semitrailer hereafter sold in the State and operated upon the highways shall be equipped with service brakes upon all wheels of every such vehicle, except any motorcycle or motor-driven cycle, and except that any semi-trailer of less than 1,500 pounds gross weight, need not be equipped with brakes.

5. One of the means of brake operation shall consist of a mechanical connection from the operating lever to the brake shoes or bands and this brake shall be capable of holding the vehicle, or combination of vehicles, stationary under any condition of loading on any up grade or down grade upon which it is operated.

6. The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

7. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

B. Performance ability of brakes.

Every motor vehicle or combination of vehicles, at all times and under all conditions of loading, upon application of the service (foot) brake, shall be capable of (a) developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification, (b) decelerating in a stop from not more than twenty /20/ miles per hour at not less than the feet per second tabulated herein for its classification, and (c) stopping from a speed of twenty /20/ miles per hour in not more than the distance tabulated herein for its

classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

1 Classification of vehicles and combinations	2 Braking force as a percentage of gross vehicle or combination weight	3 Minimum Deceleration in feet per second (from max. of 20 MPH)	4 Brake system application and max. braking distance in feet (20 MPH)
Passenger vehicles, not including buses----------	52.8%	17	25
Single-unit vehicles with a manufacturer's gross vehicle weight rating of less than 10,000 pounds----------	43.5%	14	30
Single-unit two axle vehicles with a manufacturer's gross vehicle weight rating of 10,000 or more pounds, and buses not having a manufacturer's gross vehicle weight rating---------	43.5%	14	40
All other vehicles and combinations with a manufacturer's gross vehicle weight rating of 10,000 or more pounds---------	43.5%	14	50

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent [1%] grade), dry, smooth, hard surface that is free from loose material.

Section 26. Horns and warning devices--Flashing lights on emergency vehicles.

This is the same as Ark. Stat. Sec. 75-725.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section. It is permissible but not required that commercial vehicles may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Every authorized emergency vehicle shall be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the department, but such warning device shall not be used except when such vehicle is operated in response

to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said warning device when necessary to warn pedestrians and other drivers of the approach thereof.

(c) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two /2/ alternately flashing red lights located at the same level and to the rear two /2/ alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight.

(d) A police vehicle when used as an authorized emergency vehicle may, but need not, be equipped with alternately flashing red lights specified herein.

(e) The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in Section 33 of Article 1 of this Chapter.

(f) Except as required or authorized for emergency vehicles no person shall drive or move any vehicle or equipment on any highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof.

Section 27. Mufflers--Noise producing devices prohibited.

This is the same as Ark. Stat. Sec. 75-726.

Every motor vehicle shall at all times be equipped with a factory installed muffler or one duplicating factory specifications, in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use on a motor vehicle upon the public roads, highways, streets or alleys of this State, nor shall any person sell nor use on a motor vehicle upon the public roads, highways, streets or alleys of this State, a muffler, other than as defined above, cutout, bypass, similar device, or any type device which produces excessive noise or smoke.

Section 28. Sale of cut outs prohibited.

This is the same as Ark. Stat. Sec. 75-727.

The sale (or use) of cut outs on any motor driven vehicle while on the public roads, highways, streets and alleys of Arkansas, be and is hereby prohibited.

Section 29. Mirrors.

This is the same as Ark. Stat. Sec. 75-729.

Every motor vehicle shall be equipped with a rearview mirror. Every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall

be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such vehicle.

Section 30. Windshields must be unobstructed and equipped with wipers.

(a) No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, sidewings, side or rear windows of such vehicle other than a certificate or other paper required to be so displayed by law, if such sign, poster, or other nontransparent material would obscure the driver's vision or otherwise create a safety hazard.

(b) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

This is the same as Ark. Stat. Sec. 75-730.

Section 31. Restrictions as to tire equipment.

(a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least 1 inch thick above the edge

UVC § 12-405 (a) has been substituted for Ark. State § 75-731 (a). The rest

of the flange of the entire periphery.

of the new section is the same as the rest of the old statute.

(b) No person shall operate or move on any highway any motor vehicle, trailer or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid.

(d) The State Highway Commission and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the

operation of which upon a highway would otherwise be prohibited under this section.

Section 32. Safety glazing material in motor vehicles.

(a) On and after the effective date of this Code, no person shall sell any new motor vehicle as specified herein nor shall any new motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glazing material of a type approved by the Commission wherever glazing material is used in doors, windows and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material used in doors, windows and windshields shall apply to the driver's compartment of such vehicles.

(b) The term "safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources

UVC § 12-406 has been substituted for Ark. Stat. § 75-732.

or by these safety glazing materials when they may be cracked or broken.

(c) The Commission shall compile and publish a list of types of glazing material by name approved by them as meeting the requirements of this Section and the Commission shall not register after the effective date of this Code any motor vehicle which is subject to the provisions of this Section unless it is equipped with an approved type of safety glazing material, and they shall thereafter suspend the registration of any motor vehicle so subject to this Section which they find is not so equipped until it is made to conform to the requirements of this Section.

Section 33. Sale of substandard seat belts, shoulder harness, and similar safety devices prohibited. It shall be unlawful for any person, firm or corporation to sell or offer for sale any automobile seat belts or similar safety devices which do not equal or exceed the minimum requirements for motor vehicle standards as now set by the United States Department of Transportation.

Section 34. Penalty.

Any person, firm or corporation violating any of the provisions of this Article shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) for a first conviction thereof; and for a second or subsequent conviction within one year thereafter such person shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than two hundred fifty dollars ($250.00).

Affected Sections and Comments

Article 3. Miscellaneous Criminal Provisions and Penalties.

Section 1. Penalties for misdemeanor.

Every person convicted of a misdemeanor for violation of any of the provisions of this Chapter, for which another penalty is not provided, shall for a first conviction thereof be punished by a fine of not less than ten dollars ($10.00), nor more than one hundred dollars ($100.00); for a second such conviction within one year thereafter such person shall be punished by a fine of not less than twenty-five dollars ($25.00), nor more than two hundred fifty dollars ($250.00).

This section combines and supersedes Ark. Stat. § 75-1004 and 1037. The penalties in Ark. Stat. § 75-1037 have been modified.

Section 2. Penalty for felony.

Any person who is convicted of a violation of any of the provisions herein declared to constitute a felony, for which another penalty is not provided, shall be punished by a fine of from $500.00 to $5000.00 and/or imprisonment in the state penitentiary for from one to three years.

This is a new section.

Section 3. Additional penalty on conviction of moving traffic violation.

This is the same as Ark. Stat. §75-1038.

In addition to the penalties now provided by law, after conviction of any person for any moving traffic violation, the trial judge or magistrate may, in disposition and assessing penalty, consider the previous traffic conviction record; and impose the following penalty or penalties or combination thereof:

(a) Suspend driver's license for any period not to exceed one [1] year; or

(b) Suspend driver's license for any period not to exceed one [1] year, but grant a conditional permit to drive during such suspension, by imposing conditions and restrictions, not to exceed one [1] year, defining circumstances under which the violator will be allowed to drive while under suspension; or

(c) Require attendance of the violator at a drivers' training school; or

(d) Require the violator to retake the driver's test, or to furnish proof of adequate sight or hearing, necessary for driving; or to produce proof of physical or mental capability and ability to drive; or

(e) Require minors to write themes or essays on safe driving; or

(f) Place a minor under probationary conditions, as determined by the Court in its reasonable discretion, designed as a reasonable and suitable preventative and educational safeguard to prevent future traffic violations by such minor.

Section 4. Additional fines on conviction of moving traffic violations. This section combines Ark. Stat. § 75-1039 through § 75-1043.

(a) In addition to any fines now provided by law, there shall be assessed and collected a penalty of one dollar ($1.00) for each conviction of a moving traffic violation, such conviction arising out of the unlawful operation of a motor vehicle in violation of municipal ordinances and/or the laws of this State. Such penalty hereinbefore mentioned shall also apply to each conviction for the violation of a criminal law of this State.

(b) The penalty provided in part (a) of this Section is mandatory and shall be levied in connection with each conviction as provided in part (a) and no court shall have the power or authority to suspend, postpone or forgive the collection of any penalty as provided in part (a) of this Section. However, the

penalties as provided in part (a) of this Section, and the collection thereof, shall only apply to those cities of the first and second class that now have or may hereafter have a valid Policeman's Pension and Relief Fund as provided by law.

(c) All penalties collected under the provisions of this Section shall be deemed to be collected for the benefit and use of the Policeman's Pension and Relief Fund of the respective cities of the first and second class of this State.

(d) All penalties collected under the provisions of this Section shall be remitted, by the collecting officials, to the treasurer of the board of trustees of each pension and relief fund, on or before the fifth day of the month next following the month of collection thereof.

(e) The records of all officials charged with the duty of collecting penalties as prescribed in this Section shall be audited annually by the State Comptroller or his designated agents. Any official charged with the duty of collecting any of the penalties as prescribed in this Section shall, upon failure to collect the same and remit same to the treasurer of the board

of trustees of each pension and relief fund as provided in this section, be guilty of misfeasance in office and shall be subject to removal from said office, and in addition thereto shall be liable on his official bond for any penalties which are not collected and/or remitted as required in this section.

Section 5. Parties guilty of acts declared to be a crime.

Every person who commits, attempts to commit, conspires to commit, or aids or abets in the commission of, any act declared herein to be a crime, whether individually or in connection with one or more other persons or as principal, agent, or accessory, shall be guilty of such offense. Every person who falsely, fraudulently, forcibly, or wilfully induces, causes, coerces, requires, permits, or directs another to commit any act declared herein to be a crime is likewise guilty of such offense.

This section is the same as Ark. Stat. § 75-1005.

Section 6. Offenses by persons owning or controlling vehicles.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway

This is the same as Ark. Stat. § 75-1006

in any manner contrary to law.

Section 7. Cases in which person arrested must be taken immediately before magistrate.

This is essentially the same as Ark. Stat. § 75-1007, except for paragraph (B) which is new and which corresponds to Ark. Stat. §75-1008.

A. Whenever any person is arrested for any violation of this Chapter punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate or other proper officer within the county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense and is nearest or most accessible with reference to the place where said arrest is made, in any of the following cases:

1. When a person arrested requests or demands an immediate appearance before a magistrate;

2. When the person is arrested and charged with an offense under this Chapter causing or contributing to an accident resulting in injury or death to any person;

3. When the person is arrested upon a charge of negligent homicide;

4. When the person is arrested upon a charge of driving while under the influence of intoxicating liquor or narcotic drugs;

5. When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal

injuries, or damage to property.

6. In any other event when the person arrested refuses to give his written promise to appear in court as hereinafter provided.

B. Failure by any law enforcement officer to comply with any requirement or provision of this Section shall constitute misconduct in office, shall be grounds for dismissal from office, and, further, shall subject such officer to civil liability.

Section 8. Arrested persons given 5 days' notice to appear in court where not immediately taken--Release upon written promise--Violations of officers.

This supersedes Ark. Stat. § 75-1008, which has been slightly modified.

A. Whenever a person is charged with any violation of this code punishable as a misdemeanor, and such person is not taken into custody, the officer bringing such charge shall prepare in duplicate written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, and the time and place and where such person shall appear in court.

B.The time specified in said notice to appear must be at least 5 days after such charge unless the person charged shall demand an earlier hearing.

C. The place specified in said notice to appear must be before a magistrate within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

D. The charged person in order to secure release, as provided in this Section, must give his written promise so to appear in court by signing in duplicate the written notice prepared by the officer. The original of said notice shall be retained by said officer and the copy thereof delivered to the person charged. Thereupon, said officer shall forthwith release the person charged.

E. Any officer violating any of the provisions of this Section shall be guilty of misconduct in office and shall be subject to removal from office.

Section 9. Violation of promise to appear--Appearance by counsel.

A. Any person wilfully violating his written promise to appear in court, given as provided in this Article,is guilty

This is the same as Ark. Stat. § 75-1009.

of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

B. A written promise to appear in court may be complied with by an appearance by counsel.

Section 10. Records of conviction or forfeiture of bond inadmissible in civil action.

No record of the forfeiture of a bond or of the conviction of any person for any violation of this chapter shall be admissible as evidence in any court in any civil action.

This is the same as Ark. Stat. §75-1011.

Section 11. Conviction of forfeiture of bond for traffic violation not to affect credibility of witness.

The forfeiture of a bond or the conviction of a person upon a charge of violating any provision of this Chapter or other traffic regulation less than a felony shall not affect or impair the credibility of such person as a witness in any civil or criminal proceeding.

This is the same as Ark. Stat. §75-1012

Section 12. Convictions to be reported to State Police Department--Penalty for failure.

This is the same as Ark. Stat. § 75-1013.

A. Every magistrate or judge of a court not of record shall keep a full record of every case in which a person is charged with any violation of this Chapter or of any other law regulating the operation of vehicles on highways.

B. Within 10 days after the conviction or forfeiture of bail of a person upon a charge of violating any provision of this Chapter or other law regulating the operation of vehicles on highways every said magistrate of the court or clerk of the court of record in which said conviction was had or bail was forfeited shall prepare and immediately forward to the Department of Arkansas State Police an abstract of the record of said court covering the case in which said person was so convicted or forfeited bail, which abstract must be certified by the person so required to prepare the same to be true and correct.

C. Said abstract must be made upon a form furnished by the State Police Department and shall include the name and address of the party charged, the registration number of the vehicle involved, the nature

of the offense, the date of the hearing, the plea, the judgement, or whether bail forfeited and the amount of the fine or forfeiture as the case may be.

D. Every court of record shall also forward a like report to the State Police Department upon the conviction of any person of manslaughter or other felony in the commission of which a vehicle was used.

E. The failure, refusal, or neglect of any such judicial officer to comply with any of the requirements of this Section shall constiture misconduct in office and shall be ground for removal therefrom.

F. The State Police Department shall keep all abstracts received hereunder at its main office and the same shall be open to public inspection during reasonable business hours.

Section 13. Abandoned vehicles--Duty of officer--Sale.

This is Ark. Stat. § 75-1034, as modified to make sense.

A. Hereafter when any vehicle is found abandoned by the sheriff or any other law enforcement officer of the State of Arkansas the same shall be stored by such officer and its owner located if possible. After a period of ninety (90) days, if the owner of said vehicle cannot be located, the same shall be sold under the supervision of the Circuit Court after the following

provisions have been complied with:

(1) the officer storing such vehicle has made a diligent inquiry as to the registration of the motor and license number of said vehicle;

(2) such officer has notified the Federal Bureau of Investigation by certified mail to advise whether such a car has been reported stolen;

(3) the National Bureau of Underwriters has been requested by certified mail to advise whether the car has been stolen.

B. When the above provisions have been complied with such officer shall petition the Circuit Court, said petition to be filed with the clerk of the Circuit Court, for an order permitting the sale of such vehicle, said sale to be conducted as now provided by law for judicial sales. The storage or towing bills will be deducted from proceeds of such sales. After ninety (90) days from the date of sale, if the owner has not been located or if no claim has been made on such vehicle, then the balance of the proceeds of such sales shall go to the City General Treasury if found originally

within the city limits and to the County General Fund if found outside of the city limits.

Section 14. Right of qualified surety company to become surety with respect to guaranteed arrest bond certificates.

A. Any domestic or foreign surety company or association of underwriters which has qualified to transact surety business in this State may, in any year, become surety in an amount not to exceed five hundred dollars ($500.00) with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association by filing with the insurance commissioner of this State an undertaking thus to become surety.

B. Such undertaking shall be in a form to be prescribed by the insurance commissioner and shall state the following:

(1) The name and address of the automobile club or clubs or automobile association or associations with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed five hundred dollars ($500.00) of any person who, after posting a

This is the same as Ark. Stat. § 75-1035 except that the amount has been increased from $200.00 to $500.00 and the words "or association of underwriters" have been inserted after the words "surety company".

guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

C. The term "guaranteed arrest bond certificate", as used herein, means any printed card or other certificate issued by an automobile club or association to any of its members, which said card or certificate is signed by such member and contains a printed statement that such automobile club or association and a surety company guarantee the appearance of the person whose signature appears on the card or certificate and that they will, in the event of failure of said person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed five hundred dollars ($500.00).

Section 15. Guaranteed arrest bond certificates as cash bail.

Any guaranteed arrest bond certificate with respect to which a surety company or association of underwriters has become surety as provided in Sec. 14(A) of this Article, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed five hundred dollars ($500.00), as a bail

This is the same as Ark. Stat. § 75-1036 except that the amount has been increased from $200.00 to $500.00 and the words "or association of underwriters" have been inserted after the words,

bond, to guarantee the appearance of such person in any court, including municipal courts, in this State, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this State or ordinance of any municipality in this State (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificates; provided, that any such guaranteed arrest bond certificate so posted as bail bond in any court in the State shall be subject to the forfeiture and enforcement provisions with respect to bail bonds in criminal cases under the law as it now exists or may hereafter be amended, and that any such guaranteed arrest bond certificate posted as a bail bond in any municipal court in this State shall be subject to the forfeiture and enforcement provisions of the charter or ordinance of the particular municipality pertaining to bail bonds posted.

"surety company".

Section 16. Disposition of Fines and Forfeitures.

(a) All fines and forfeitures collected upon conviction or upon forfeiture of bail of any person charged with a violation of any of the provisions of Chapter 1, Title 75, of the Arkansas

With improvement in language and phraseology, as well as elimination of unnecessary and outmoded provisions, the substance of Ark.

Statutes (The Uniform Motor Vehicle Administration, Certificate of Title, and Anti-Theft Act), constituting a misdemeanor, shall be deposited in the road or street fund of the county, city, or town maintaining the court wherein such conviction or forfeiture took place and such funds shall be used exclusively in construction, maintenance, and repair of roads, streets, highways, or other facilities in connection therewith, within such respective jurisdictions.

(b) Failure, refusal, or neglect on the part of any judicial or other officer or employee receiving or having custody of such fines or forfeitures, either before or after the deposit in the road or street fund of the county, city, or town, to comply with the foregoing provision shall constitute misconduct in office and shall be grounds for removal therefrom.

Stat. § 75-188 is included here.

Section 17. Excess Dimension and/or Weight--Penalty in Addition to Misdemeanor--Civil Liability.

(a) Any operator who violates the provisions of the Chapter on Dimensions and Weights or any owner, principal, employer, lessor, lessee, agent, or officer of any firm or corporation who permits such operator to violate said provisions shall be guilty of a misdemeanor.

This Section supersedes Ark. Stat. § 75-812 and §§ 75-819. The latter has a graduated scale of fines at two cents per pound for the first 1,000 pounds of excess weight and ranging up to 5 cents per pound

(b) If the gross weight of the vehicle exceeds the maximum as prescribed by the Chapter on Dimensions and Weights or the gross weight as provided by a special permit, such person, in addition to being guilty of a misdemeanor, shall also pay a penalty of 5 cents per pound for each pound of excess weight, which penalty shall be mandatory.

when the total excess weight is over 3,000 pounds. The old statute does not provide for collection of this penalty when bond is forfeited.

(c) If the dimension of the vehicle exceeds the maximum as prescribed by the Chapter on Dimensions and Weights, or the maximum as provided by a special permit, such person, in addition to being guilty of a misdemeanor, shall also pay a penalty of five dollars ($5.00) for each six (6) inches, or fraction thereof, of oversize in width, height, and/or length, which penalty shall be mandatory. The provisions of this Section shall apply whether bond is forfeited or the penalty is actually assessed.

This is a new provision.

(d) All fines and penalties collected as provided in this Section for violations on the State Highway System shall be transferred to the Cashier of the Highway Department to be deposited in the State Highway Department Fund. All fines and penalties collected as provided by this Section for violations on a local road or street system shall be transferred to the agency having jurisdiction over the system, to be deposited in

This replaces Ark. Stat. Sec. 75-819(c).

the appropriate fund as provided by law.

(e) Also, such person shall be liable to the State, or the local authority with jurisdiction over the particular roadway involved, for any damage resulting to any highway, bridge, or other roadway structure because of such excess size or weight.

This is the same as Ark. Stat. Sec. 75-812.

Section 18. Operation of Vehicles without License Plates and Evidence of Registration.

No person shall operate, nor shall any owner knowingly permit to be operated, on the highways, roads, or streets of this State, any motor vehicle unless such vehicle is properly registered, and evidence of registration is carried in the vehicle or on the person driving or in control of the vehicle, and unless a valid registration plate or plates is displayed as required by the motor vehicle licensing and registration laws of this State. Every violation of this prohibition shall constitute a misdemeanor independent of any violation of the registration provisions.

This is included to show that licenses and registration are required elsewhere.

Section 19. Operator's or Chauffeur's License Required.

No person shall operate a motor vehicle on any highway, road, or street of this State unless such person has a valid license as

This is included to show that an operator's license is required.

an operator or chauffeur in accordance with the laws of this State regulating motor vehicle operation. Violation of this provision shall constitute a misdemeanor.

Section 20. Unauthorized Use of Vehicles.

Any person who shall use a State, county, or municipal highway department vehicle for private purposes, or who shall use a State, county, or municipal highway department license tag on a private vehicle, or who shall use a State, county, or municipal highway department vehicle without the State, county, or municipal highway department license tag shall be guilty of a misdemeanor.

This Section combines and supersedes Ark. Stat. §§ 14-501, 502, and 75-247.

Section 21. Felony to Issue or Accept Voucher for Money Not Earned.

Any agent of the State Highway Commission who shall knowingly issue any voucher for any sum not actually earned by the one to whom it is issued, and any person accepting and endorsing such voucher without having earned the wages mentioned therein shall be deemed guilty of a felony.

This is substantially the same as Ark. Stat. §§ 76-306.

Section 22. Enforcement of the Provisions of this Code.

The Arkansas State Police and other law enforcement officers shall enforce all laws and regulations pertaining to license fees, motor fuel taxes, and the operation and regulation of motor vehicles. The dimensions and weights provisions of this Code shall be enforced through coordinated efforts of the police unit of the Highway Department and other law enforcement organizations and agencies.

This Section supersedes Ark. Stat. § 75-1022.1, .2, and .3.

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Proposed Code

Chapter 9. Dimensions and Weights

Article I. Definitions.

AXLE: The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments, and regardless of the number of wheels carried thereon. See also SINGLE AXLE.

AXLE GROUP: An assemblage of two or more consecutive axles considered together in determining their combined load effect on a bridge or pavement structure.

AXLE WEIGHT: See SINGLE AXLE WEIGHT.

BUS: A motor vehicle designed for the transportation of more than 10 persons.

CARGO: The items or freight to be moved; including items placed on or in a vehicle, towed by a vehicle, or a vehicle itself.

CONNECTING MECHANISM: An arrangement of parts interconnecting two or more consecutive axles to the frame of a vehicle in such a manner as to equalize the load between axles.

DESIGNATED HIGHWAY: Any State or local highway upgraded both geometrically and structurally to the extent that it will render at least the same transportation service as provided by the Interstate System, and so designated by the State Highway Department.

DIVISIBLE LOAD: Any load consisting of a product, material, or equipment which can be reduced in weight and/or size to the specified regulatory limit.

DUMMY AXLE: A single axle attached independently to the frame of a vehicle and so designed and placed as to indicate the appearance of a normal tandem axle.

FLAG: A plain red cloth marker having a minimum size of 16 inches square.

FREIGHT: See CARGO.

GROSS WEIGHT: The weight of a vehicle and/or vehicle combination without load plus the weight of any load thereon.

HEIGHT: The total vertical dimension of any vehicle above the ground surface including any load and load-holding device thereon.

HIGHWAY: The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

HIGHWAY DEPARTMENT: The highway administrative body of the State, which is authorized and required to design, construct, maintain, operate, and control all highways under its jurisdiction.

HOLIDAY: As used in a permit and in this Chapter, given to mean the following holidays: New Year's Day, Robert E. Lee's Birthday, Geo. Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, and all biennial statewide primary and general election days. See also LONG HOLIDAY.

As given in Ark. Stat. Sec. 69-101.

HOUSE TRAILER: A vehicle, other than a motor vehicle, for human occupancy which can be drawn by a motor vehicle. For purposes of this code, synonymous with "Mobile Home" and "Trailer Coach".

INDIVISIBLE LOAD: A vehicle or load which cannot be dismantled, disassembled, or loaded so as to meet the requirements for vehicles

in regular operation.

INTERSTATE AGREEMENT: A covenant between two or more States in which the authority of the highway department of any State which is a party to the agreement shall be extended to the issuance of Special I & D Permits to cover oversize and/or overweight movements on completed routes or sections of the National System of Interstate and Defense Highways and other designated highways built to similar standards, in any and all States which are parties to the agreement.

ISSUING AUTHORITY: The State Highway Department, County, or Municipal agency empowered through jurisdictional right, or by Interstate Agreement as defined in this Code, to issue special permits and/or Special I & D Permits for oversize and/or overweight movements over highways, roads, and street.

LENGTH: The total longitudinal dimension of any vehicle or combination of vehicles, including any load or load-holding devices thereon.

LOAD: A weight or quantity of anything resting upon something

else regarded as its support.

LONG HOLIDAY: The days Friday, Saturday, and Sunday, or Saturday, Sunday, and Monday, depending whether a "Holiday" as defined herein falls on a Friday or Monday.

MOBILE HOME: See HOUSE TRAILER.

MOTOR VEHICLE: A vehicle which is self-propelled or propelled by electric power obtained from overhead trolley wires, but not operating upon rails.

OVERSIZE OPERATION: Transport over a highway, road, or street of a vehicle, or vehicle with indivisible load, of gross size exceeding the maximum prescribed for vehicles in regular operation.

OVERWEIGHT OPERATION: The transport over a highway, road, or street of a vehicle, or vehicle with indivisible load, of gross weight exceeding the maximum prescribed for vehicles in regular operation, and/or in which the axle load transmitted to the pavement exceeds the maximum prescribed for regular operation.

OWNER: A person, other than a lien-holder, having the property in or title to a vehicle, including a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excluding a lessee under a lease not intended as security.

PAVEMENT STRUCTURE: The combination of subbase, base course, and surface course placed on an earth subgrade to support the traffic load and distribute it to the roadbed.

PERMIT APPLICANT: See SPECIAL PERMIT APPLICANT.

PERMITTEE: As used in this Code, an applicant for a special permit or Special I & D Permit who has received written permission to make an oversize and/or overweight movement.

REGULAR OPERATION: Movement over highways, roads, and streets of vehicles, vehicle combinations, and loads thereon, subject to the limitations contained in this Code governing maximum weights and dimensions for motor vehicles and loads thereon.

ROADWAY: The portion of a highway, road, or street including shoulders, for vehicular use. A divided highway has two or more roadways.

SCALE TOLERANCE: An allowable variation in the static weight of an axle load in accordance with, but not exceeding, the precision of the scale involved.

SEMITRAILER: A vehicle designed for carrying persons or property and drawn by a truck tractor on which part of its weight and load rests.

SINGLE AXLE: An assembly of two or more wheels, whose centers are in one transverse vertical plane or may be included between two parallel transverse vertical planes extending across the full width of the vehicle.

SINGLE AXLE WEIGHT: The total weight transmitted to the road by a single axle.

SPECIAL I & D PERMIT: A special permit issued by a State Highway Department for movement over Interstate and other designated highways, particularly movement under Interstate Agreement.

SPECIAL PERMIT: A written authorization to move or operate on a highway, road, or street a vehicle or vehicles with indivisible load of size and/or weight exceeding the limits prescribed for vehicles in

regular operation.

SPECIAL PERMIT APPLICANT: An individual, firm, partnership, corporation, or association making application for a special permit to transport a vehicle, vehicles, and/or load which is oversize or overweight and under whose authority and responsibility such vehicle or load is transported.

STATE HIGHWAY ADMINISTRATIVE BODY: See HIGHWAY DEPARTMENT.

TANDEM AXLE: Any two or more consecutive axles whose centers are more than 40 inches but not more than 96 inches apart, and are individually attached to and/or articulated from a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

TANDEM AXLE WEIGHT: The total weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than 40 inches and not more than 96 inches apart, extending the full width of the vehicle.

TIRE, PNEUMATIC: A tire of rubber or other resilient material which depends upon compressed air for support of a load.

TRAILER: A vehicle designed for carrying persons or property and drawn by a motor vehicle which carries no part of the weight and load of the trailer on its own wheels.

TRAILER COACH: See HOUSE TRAILER.

TRAVELED WAY: The portion of the roadway, road, or street for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

TRUCK: A motor vehicle designed, used, or maintained primarily for the transportation of property.

TRUCK-TRACTOR: A motor vehicle designed for drawing other vehicles, but not for a load other than a part of the weight of the vehicle and load drawn.

TURNING PATH: The path of a designated point on a vehicle making a specified turn.

TURNING TRACK WIDTH: The radial distance between the turning paths of the outside of the outer front tire and the outside of the rear tire which is nearest the center of the turn.

VEHICLE: A device in, upon, or by which any person or property may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

VEHICLE COMBINATION: A truck-tractor and semitrailer, either with or without a full trailer, or a truck with one or more full trailers.

WEIGHT: See GROSS WEIGHT.

WIDTH: The total outside transverse dimension of a vehicle including any load or load-holding devices thereon, but excluding approved safety devices and tire bulge due to load.

Article II. Vehicles in Regular Operation.

Section 1. Scope.

a. The provisions of this Article governing width, height, length, tire pressure, permissible loads, and performance limits shall apply to vehicles serving in regular operation, as defined in Article 1. Vehicles operated under the terms of special permits are covered in Article 3 and Article 4. This is new

b. The provisions of this Article governing size, weight, and load shall not apply to fire apparatus, and emergency equipment, temporarily moved upon a highway other than a highway designated and known as a part of the National System of Interstate and Defense Highways. This is new

Section 2. Width.

No vehicle, including any load and load-holding devices thereon, shall exceed a width of ninety-six (96) inches, excluding both tire bulge and approved safety devices.

Section 3. Height.

No vehicle, including any load and load-holding devices thereon, shall exceed a height of 13 feet, 6 inches.

This is the same as Ark. Stat. Sec. 75-815.

Section 4. Length.

(a) No single truck or truck-tractor, including any load thereon, shall have an overall length, inclusive of front and rear bumpers in excess of forty (40) feet.

This is the same as Ark. Stat. Sec. 75-816 except for (d).

(b) No single two-axle or three-axle bus, including any load thereon, shall have an overall length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(c) No combination of truck-tractor and semi-trailer operated on the highways of this State shall have an overall length, unladen, or with load, in excess of fifty-five (55) feet. No other combination of vehicles coupled together shall exceed a total length of sixty-five (65) feet. The State Highway Commission shall have authority to determine by resolution and to impose restrictions as to the length of vehicles, or combinations thereof, upon any highways under its jurisdiction, and such restrictions shall be effective when signs giving notice thereof are erected upon any such highway, or portion thereof, affected by such resolution.

Section 5. Tire Pressure.

This is new.

The loads hereinafter specified for vehicles in regular operation shall be permissible only when such loads are transmitted to the road surface through wheels equipped with pneumatic tires, and no such tire equipment shall be designed for use or used with an operating inflation pressure in excess of 95 pounds per square inch.

Section 6. Maximum Permissible Weights.

Same as 75-817 (a).

a. Single axle weight: The total gross weight imposed on the highway by the wheels of any one single axle of a vehicle shall not exceed 18,000 pounds.

This is taken from Ark. Stat. Sec. 75-817 (c)

b. Front or steering axle: The maximum weight imposed on the highway by the front steering axle of a vehicle shall not exceed 12,000 pounds.

Same as 75-817 (b).

c. Tandem-axle weight: The total gross weight imposed on the highway by two or more consecutive axles in tandem articulated from a common attachment to the vehicle, and spaced not less than 40 inches nor more than 96 inches apart, shall not exceed 32,000 pounds, and no one axle of any such group of two consecutive axles shall exceed the weight permitted for a single

axle. Further, the weight imposed on the highway by two or more consecutive axles, individually attached to the vehicle and spaced not less than 40 inches nor more than 96 inches apart, shall not exceed 32,000 pounds. No one axle of any such group of two or more consecutive axles shall exceed the weight permitted for a single axle.

d. Gross vehicle weight: Subject to the limit upon the weight imposed on the highway by any axle or group of axles as set forth in Sub-sections a, b, and c, no vehicle or combination of vehicles shall operate upon the highways of this State when the gross weight is in excess of 73,280 pounds. Provided, that the foregoing maximum gross weights shall be applicable only to vehicles, or combinations of vehicles, operated on highways in this State that are a part of the Federal Interstate Highway System or that have been designated by the State Highway Commission as primary highways, and on all other highways in this State the maximum gross weight of any vehicles or combinations thereof shall not exceed sixty-four thousand (64,000) pounds unless the State Highway Commission, after giving

This replaces Ark. Stat. Sec. 75-817 (d). The same minimum is allowed for all highways.

consideration to all factors involved, shall designate, under such rules and regulations as the Commission shall deem appropriate, other highways or portions thereof upon which the maximum gross weight of seventy-three thousand two hundred and eighty (73,280) pounds shall be permitted, for such period of time as the Commission shall determine.

Section 7. Weighing of Vehicles and Removal of Excess Load.

a. All trucks, buses, and commercial vehicles, including tow vehicles, shall stop at all Weight Stations along their trip route.

This is new.

b. Any police or enforcement officer may require any vehicle to stop and be weighed at a designated official scale, and on determination that the vehicle exceeds the lawful weight, may require the operator of said vehicle to unload it until the gross weight is within the lawful limit before allowing the vehicle to proceed. All material so unloaded shall be cared for by the owner or operator of the vehicle and at his own risk. Failure to comply with any of the provisions of this Section shall be punishable as a misdemeanor.

This supersedes Ark. Stat. § 75-810. The old statute provides that the vehicle must proceed to the nearest public scales only if they are within two miles. Part (d) of the old statute which invests the Commission with police powers to enforce the statute is now covered in the powers and duties section of the Code.

Section 8. Reductions in Maximum Permissible Weights: The maximum single-axle, tandem-axle, and axle-group weights set out in Section 6 are subject to reduction at the discretion of appropriate highway authorities during periods when road subgrades have been weakened by water saturation, frost-action, or some other cause.

75-258, 75-801, 76-1228, 76-126

Section 9. Performance Requirements.

a. Brake performance shall conform to the requirements set forth in Section 5, Article II, Chapter 8 of this Code.

This is simplified.

b. Linkage between combinations of vehicles shall conform to the current recommended practice of the Society of Automotive Engineers.

This replaces Ark. Stat. Sec. 75-806.

c. Dummy axles shall not be considered in the determination of allowable axles.

This is new.

d. The total gross weight of any vehicle or combination of vehicles shall not exceed a ratio of 400 pounds per engine net horsepower delivered to the clutch or its equivalent under conditions specified in SAE Test Code.

AASHO & SAE recommend this for safety.

Article III. Vehicles Operating By Special Permit

Section 1. Scope. This is new.

This section is concerned with movements under special permit of vehicles or combinations of vehicles with indivisiable loads, in excess of maximum sizes and weights permitted in regular operation, for transportation during a single trip in an oversize operation and/or an overweight operation as defined in Article 1.

Section 2. Applicability.

(a) The classes of vehicles and operation intended to be covered by application of Article 3 include movements over all highways in this State, except where a special I&D permit has been issued as provided for in Article IV of this Chapter. This is new.

(b) It shall not be necessary to obtain a permit, nor shall it be unlawful, to move any vehicle or machinery in excess of the maximum width of ninety-six (96) inches prescribed for regular operation, used for farm purposes only (such as, but not limited to, hay harvesting equipment, plows, tractors, bulldozers, combines, etc.), where the same is hauled on a vehicle licensed as a "farm" vehicle and such movement is within a radius of fifty (50) miles of the point of origin thereof and no part of such movement This is essentially the same as and replaces the second paragraph of Ark. Stat. Sec. 75-818 (a).

is upon any highway designated and known as a part of the National System of Interstate and Defense Highways.

Section 3. Application for Special Permit.

(a) How Application May Be Made: An application for a permit may be made in person, in writing, by telephone, or by telegraph.

This replaces a part of Ark. Stat. Sec. 75-818(a).

(b) Information Furnished by Applicant: The applicant shall prove to the satisfaction of the issuing authority that the vehicle or loaded vehicle has been reduced to the minimum practicable size. The application for any permit shall specifically describe the vehicle and load to be operated or moved, the origin and destination of the vehicle and load, the dates in which the movement is to be completed, and the particular highways over which the movement is to be made.

The first sentence is new. The second sentence replaces Ark. Stat. Sec. 75-818(d).

Section 4. Permits.

(a) Conditions for Permits: The operation of vehicles or combinations of vehicles having dimensions and/or weights in excess of the maximum limits provided for in Article II Chapter 9, of this Code shall be permitted only if authorized by special

This replaces the last part of Ark. Stat. Sec. 75-818(a).

written permits. Permits shall not be issued for vehicles or loads which can be reduced to the legal size and/or weight.

(b) When Required: Special permits for movements by vehicles or combinations of vehicles with indivisible loads in excess of the maximum size and weights allowed for vehicles in regular operation, as defined in this Code, must be obtained from the proper authority prior to any part of the movement to be undertaken.

This is new.

(c) Issuing Authority: The State Highway Commission, through its designated agents, and local road officials shall have sole authority to issue or deny special permits for movement of oversize and/or overweight vehicles on highways under their respective jurisdictions.

This replaces the first part of Ark. Stat. Sec. 75-818(a).

(d) To Whom Issued: A special permit will be issued only to the owner or lessee of the vehicle involved in the oversize and/or overweight movement involved.

This is new.

(e) Extent of Permit: No permit shall be issued for more than a single continuous movement by one vehicle. Exception: An applicant may request, and a permit may be issued, for two or more consecutive movements by a vehicle all of which shall be executed or performed within six (6) consecutive days and which

This replaces Ark. Stat. Sec. 75-818(b).

shall be limited to one county.

(f) Axle Requirements: No permit shall be issued for loads in excess of weights permitted by Sub-Sections a, b, c, of Section 6, of Article II Chapter 9 of this code, provided, however, the Director of Highways may issue special permits to a permit a maximum front or steering axle weight of not to exceed 18,00 pounds for vehicles of special design, equipment or construction, engaged in occasional or specialized heavy hauling, such as, but not limited to, hauling of heavy machinery, commodities which require specialized equipment, oil and/or gas field equipment or similar equipment, for a period of not more than one (1) year, upon application containing satisfactory proof that such vehicles are used solely for the above purposes. Such permits may contain such limitations upon speed of operation as the Director may deem necessary for safety. Provided further, that the permits authorized under this Subsection shall apply only to the front or steering axle and shall not affect the requirement of this code, that special permits be obtained for vehicles exceeding other maximum size or weight limitations imposed by this code.

75-817(c)

(g) Inspection of Permit: Each permit shall be carried in the vehicle to which it refers and shall be open to inspection by any police officer or authorized agent of the issuing

This is essentially the same as Ark. Stat. Sec. 75-818(f).

authority, and no person shall violate any of the terms or conditions of the permit.

Section 5. Issuance Fees for Permits.

(a) Establishment of Fees: The authority issuing the permit may establish reasonable rates for oversize and overweight loads using highways under its jurisdiction. No fee shall be charged to any Federal, State, County, or Municipal government agency for any permit issued under the provisions of this Code.

The first sentence replaces Ark. Stat. Sec. 75-818(e). The last sentence replaces Ark. Stat. Sec. 75-818(h).

(b) Collection of Fees: It shall be the duty of the authority, or its agent, issuing the permit to collect fees therefor at the time of the issuance of permit, except that any applicant may furnish a corporate surety bond guaranteeing the payment of fees for such permits issued during any period of time, in accordance with rules and regulations promulgated by the issuing authority.

Subsections (b) and (c) replace Ark. Stat. Secs. 75-818(g) and 75-825.

(c) Disposition of Fees: All fees collected for permits by the State Highway Commission, or its designated agent, for movement of oversize or overweight loads over any portion of the State Highway System, shall be transferred to the Cashier of the Highway Department for proper distribution according to law.

This Section replaces Ark. Stat. Sec. 75-826.

All fees collected for permits by local authorities for movement of oversize or overweight loads over highways under their respective jurisdictions shall be deposited to the appropriate highway, road, or street fund.

Section 6. Operational Requirements.

The following specific requirements shall govern issuance of special permits:

(a) The proposed movement shall be made so that the traveled way will remain open for traffic at all times. In movements over two-lane pavements, provisions shall be made for continuous movement of opposing traffic and for frequent passing by vehicles traveling in the same direction. If necessary, the load shall be removed from the traveled way at frequent intervals to allow traffic to pass.

(b) The movement of oversize and/or overweight vehicles shall be limited to daylight hours, from one-half hour after sunrise to one-half hour before sunset, and prohibited on Saturday, Sunday, and holidays as defined in Article I. There shall be no movements under special permit from 12 o'clock noon

Taken from "Policy on Maximum Dimensions and Weights of Motor Vehicles To Be Operated Over The Highways of the United States" prepared by the Committee on Highway Transport, The American Association of State Highway Officials, except for minor changes.

on the day before a holiday to 12 o'clock noon the day after a holiday and/or a "long holiday". Movement by special permit may at any time be delayed when traffic, weather, or other conditions are determined by the State Highway Department, State Police Department, Sheriff's Offices or Municipal Police when pertinent, to constitute a hazard to life and/or property.

(c) The vehicle involved in oversize and/or overweight movement shall not be loaded, unloaded or parked, at any time, upon the roadway of any Interstate Highway except in an emergency, without specific permission or by the direction of the State Highway Department or State Police Department.

(d) The extremities of the oversize vehicle or load shall be marked with flags, having the following basic characteristics: in color, they shall be bright red with no wording, emblem, symbol, or insignia inscribed thereon; in size, they shall be a minimum of 16 inches square; in condition, they shall be completely clean and not torn, faded, nor worn out; in location, where possible they are to be fastened on the vehicle or load with a staff or bracket so as to wave freely -- at the front

fastened on each corner in a staff or bracket, at the rear fastened on each corner at the rearmost part of the vehicle or load not less than 7 feet above the highway surface or at the top of the load, whichever is higher, and at the sides fastened on each side of the vehicle or load at the middle or widest part.

(e) The movement of vehicular overloads shall not be made upon highways or across bridges that are posted temporarily for emergency conditions in accord with Section 8, Article II of this Chapter.

(f) The permittee shall assume all responsibility for injury to persons or damage to public or private property caused directly or indirectly by the transportation of a vehicle or loaded vehicle under special permit, and he shall hold harmless the State of issuance and the State in which the injury or damage has occurred and all their officers, agents, employees, and servants from all suits, claims, damages, or proceedings, of any kind, as a direct or indirect result of the transportation of the vehicle or vehicle and load. Such security and/or indemnity as required by the States in which the movement occurs shall be provided by the permittee.

This replaces the first part of Ark. Stat. Sec. 75-823.

(g) The special permit will be effective only insofar as the issuing authority has jurisdiction for its issue, and does

not release the permittee from complying with other existing laws, local ordinances, or resolutions which may govern the movement.

(h) Misrepresentation of information or noncompliance with limitations in weight and dimensions, route of travel, or other provisions as stated in the special permit will render it null and void, and the permittee and/or vehicle driver shall be subject to all penalties provided by law with respect to the provision violated. The movement shall not proceed from the point of apprehension until all penalties have been satisfied and a new or supplemental permit is obtained.

(i) The permittee shall check structures for available clearance in over-height movements.

(j) A registered vehicle must be licensed for the maximum permissible load in the State of registration in order to be eligible for issuance of an overweight special permit.

Section 7. House Trailers, Trailer Coaches, and Mobile Homes.

(a) Special Permit Required: A house trailer, trailer coach, or mobile home moved upon the highways of this State in excess of the maximum size permitted in this Code for vehicles

This replaces Ark. Stat. Sec. 75-822. It has been reworded.

in regular operation shall require a special permit.

(b) Maximum Width by Permit: No permit shall be issued for movement of any house trailer, trailer coach, or mobile home in excess of twelve (12) feet, excluding approved safety devices.

This is essentially the same as the last sentence of Ark. Stat. Sec. 75-821.

(c) Excess Dimensions: A house trailer, trailer coach, or mobile home which exceeds the dimensions permitted in Subsection (b) shall be subject to building-moving regulations under Section 10 of this Article.

This is new.

(d) Special Permits. Special permits required by this Section shall be applied for and issued in accordance with provisions in this Article for Special Permits.

This is new. It causes all Permits to be treated the same.

(e) Operational Requirements: Specific operational requirements relating to the movement of house trailers, trailer coaches, and mobile homes and their towing vehicles under special permit shall be in accordance with those for vehicles and loads in Section 6 of this Article.

(f) Towing Vehicle: Any vehicle towing a house trailer, trailer coach, or mobile home ten (10) feet wide or wider shall be a truck or truck-tractor of not less than one (1) ton factory-rated capacity, with dual wheels on the drive axle. The towing vehicle shall be equipped with such devices and safety equipment and be in compliance with safety regulations as required by the

This restates and enlarges similar provisions in Ark. Stat. Sec. 75-823.

Interstate Commerce Commission for such towing vehicles.

(g) Brakes Required: Brakes on any towing vehicle and towed load shall conform to the requirements set forth in Section 25, Article II, Chapter 8 of this Code.

This is new with respect to mobile homes.

Section 8. Boats.

A trailed boat in excess of the maximum width permitted for vehicles in regular operation, in excess of twenty-five (25) feet in length, or, in combination with the towing vehicle, in excess of fifty (50) feet in overall length, inclusive of front and rear bumpers, shall require a special permit.

This is new. It was taken from the AASHO Policies Manual.

Section 9. Aircraft.

No permit shall be issued to tow an aircraft over the highways of this State on its own wheels. The aircraft shall be loaded on a vehicle.

This is new. It was taken from the AASHO Policies Manual.

Section 10. Movement of Buildings.

(a) All provisions of this Code and all rules and regulations of the Highway Commission now in force or hereafter prescribed, relative to the movement of oversize and/or overweight loads, shall apply to the movement of buildings upon the highways, roads, or streets of this State.

This replaces Ark. Stat. Sec. 76-135. It is reworded to make all provisions applicable to all highways, roads, and streets.

(b) Municipalities and counties may make and enforce such other rules and regulations as they deem necessary regarding the movement of buildings upon roads and streets under their respective jurisdictions.

This replaces Ark. Stat. Sec. 76-136. It has been reworded to some extent.

Article IV. Issuance of Special I & D Permits
(Interstate and Other Designated Highways)

Section 1. Scope

This Article is concerned with general policies regulating issuance of special permits, procedures governing application for and issuance of special permits, and establishment of a uniform system of charges for special permits, as used for oversize and/or overweight interstate movements over completed routes or sections of the National System of Interstate and Defense Highways, and other highways designated by the State Highway Commission as "primary highways", as shown on a map captioned "Gross Weight Map" on file in the office of the State Highway Department. The purpose for issuance of such special permits is to provide means by which warranted exceptions may be made to State limitations of vehicle size and weight for the movement of oversize and/or overweight vehicles and vehicles with individible loads, essential to pursuit of legitimate and objective enterprise, over those elements of the State Highway System which are structurally, more able to sustain such loads with a minimum of damage to the

This is drawn from, "Policy on Maximum Dimensions and Weights of Motor Vehicles to be Operated Over the Highways of the United States" prepared by the Committee on Highway Transport, The American Association of State Highway Officials, 1963 edition

highway facility, and less hazard to traffic. Interstate agreements shall be established and incorporated into the permit issuance procedures so that special permits issued in one State will be valid for oversize and/or overweight movement in other States under the conditions set forth in this Chapter. The term "special permit" as used in this Article shall mean only the "Special Interstate and Designated Highway (I&D) Permits" to be issued under this Article.

Section 2. General Policies Regulating Permit Issuance.

(a) Issuing Authority: The State Highway Commission through its designated agents shall have sole authority to issue or deny special permits for oversize and/or overweight vehicular movements on State highways, and on other designated highways covered by an Interstate agreement.

(b) Extent of Authority: The Commission is hereby given authority to issue or deny special permits, to establish and collect permit fees for the movement of vehicles and vehicle loads of sizes and weights exceeding the maximums specified for vehicles in regular operation on State Highways upon receipt of written application, and to enter into Interstate agreements with other States regarding the issuance of special permits. Any movement of military vehicles and equipment when operated by military personnel shall be exempt from all permit fees.

(c) Interstate Agreements: Upon agreement between Arkansas and any other States, the authority of the Highway Department of any State which is a party to the agreement shall be extended to issuance of special permits to cover operation on completed sections of the

National System of Interstate and Defense Highways and other designated State highways in each of the States which are parties to the agreement.

(d) To Whom Issued: A special permit will be issued only to the owner or lessee of the vehicle involved in the oversize and/or overweight movement.

(e) When Required: A written special permit shall be required for any movement which exceeds the dimensions or weights established in Article II.

(f) Responsibilities of the Issuing Authority:

(1) The primary concern of the State Highway Department when issuing a special permit shall be the safety and convenience of the general public and the preservation of the highway system.

(2) The Highway Department shall in each case make a reasonable determination of the necessity and feasibility of the proposed movement, and an engineering analysis of the structural adequacy of the highway pavements and structures on the route of travel.

(3) When a movement is to be made through two or more States under a special permit, the Highway Department of the State in which the movement originates shall require the applicant to

furnish suitable assurance from the State in which it is to terminate that the movement can transfer from the National System of Interstate and Defense Highways and other designated state highways to its point of destination before issuing a permit for such a movement.

(g) Responsibilities of Applicant/Permittee:

(1) When applying, the applicant for a special permit for an oversize and/or overweight movement shall certify that the vehicle or loaded vehicle will be reduced to the minimum practicable dimensions and weight before the movement takes place.

(2) The acceptance of a special permit by the permit applicant is his agreement that the vehicle or loaded vehicle covered by the permit can and will be moved in compliance with the terms set forth in the special permit.

(3) When a permit has been or is being acted upon by a permittee, such action will be deemed a guarantee by the permittee that he has complied with all operating, licensing, and financial responsibility requirements, both in the State of issuance and all the States involved if the permit authorizes movement in more than one State.

(4) The special permit must be carried in the vehicle during the movement and shall be shown on demand to any police officer or authorized representative of a State Highway Department.

(5) The permittee shall bind securely the components of the vehicle and load with appropriate load-holding devices to prevent creating any hazards.

(6) A special permit shall give the permittee the right to move over only the highways and bridges under the jurisdiction of the issuing State Highway Department, or covered by Interstate agreement. The right to use other highways is neither implied nor granted.

(h) Limitations in Operation: The following specific requirements shall govern issuance of special permits by the State Highway Commission.

(1) Vehicles and loads shall not exceed the limits set forth in Article III.

(2) The proposed movement shall be made so that the traveled way will remain open for traffic at all times. In movements over two-lane pavements, provisions shall be made for continuous movement of opposing traffic and for frequent passing by vehicles traveling

in the same direction. If necessary, the load shall be removed from the traveled way at frequent intervals to allow traffic to pass.

(3) The movement of oversize and/or overweight vehicles shall be limited to daylight hours, from one-half hour after sunrise to one-half hour before sunset, and prohibited on Saturday, Sunday, and holidays as defined in Article I. There shall be no movements under special permit from 12 o'clock noon on the day before a holiday to 12 o'clock noon the day after a holiday and/or a "long holiday". Movement by special permit may at any time be delayed when traffic, weather, or other conditions are determined to constitute a hazard to life and/or property by the State Highway Department or policing agency of any State party to the agreement whose highways are then being used by the permittee.

(4) The vehicle involved in oversize and/or overweight movement shall not be loaded, unloaded or parked, at any time, upon the roadway of any Interstate highway except in an emergency, without specific permission or by the direction of the State Highway Department or policing agency having jurisdiction over such highway.

(5) The extremities of the oversize vehicle or load shall be marked with flags, having the following basic characteristics:

in color, they shall be bright red with no wording, emblem, symbol, or insignia inscribed thereon; in size, they shall be a minimum of 16 inches square· in condition, they shall be completely clean and not torn, faded or worn out· in location, where possible they are to be fastened on the vehicle or load with a staff or bracket so as to wave freely--at the front fastened on each corner in a staff or bracket, at the rear fastened on each corner at the rearmost part of the vehicle or load not less than 7 feet above the highway surface or at the top of the load, whichever is higher, and at the sides fastened on each side of the vehicle or load at the middle or widest part.

(6) The movement of vehicular overloads shall not be made upon highways or across bridges that are posted temporarily for emergency conditions.

(7) The permittee shall assume all responsibility for injury to persons or damage to public or private property caused directly or indirectly by the transportation of a vehicle or loaded vehicle under special permit, and he shall hold harmless the State of issuance and the State in which the injury or damage has occurred and all their

officers, agents, employees, and servants from all suits, claims, damages, or proceedings, of any kind, as a direct or indirect result of the transportation of the vehicle or vehicle and load. Such security and/or indemnity as required by the States in which the movement occurs shall be provided by the permittee.

(8) The special permit will be effective only insofar as the State Highway Department has authority for its issue, and does not release the permittee from complying with other existing laws, local ordinances, or resolutions which may govern the movement.

(9) Misrepresentation of information or noncompliance with limitations in weight and dimensions, route of travel, or other provision as stated in the special permit will render it null and void, and the permittee and/or vehicle driver shall be subject to all penalties provided by law with respect to the provision violated. The movement shall not proceed from the point of apprehension until all penalties have been satisfied and a new or supplemental permit is obtained.

(10) The permittee shall check structures for available clearance in over-height movements.

(11) A registerable vehicle must be licensed for the maximum permissible load in the State of registration in order to be eligible for issuance of an overweight special permit.

Section 3. Application for Special Permit.

(a) Form Applications: Application for a special permit shall be made in writing, on forms provided for the purpose, to the State Highway Department of the State in which the movement will originate. Application forms shall be obtainable by the applicant from the Highway Department of any State.

(b) Letter and Telegram Applications: If the prescribed application form is not available, applications may be made by letter or telegram.

(c) Information Furnished by Applicant: Whether application is made by form, by letter, or by telegram, the following basic information shall be furnished to establish the necessity of the proposed movement, and to provide for an engineering determination of the feasibility of the proposed movement:

(1) A statement of necessity.

(2) Description of object or load to be moved (make, model, serial number, etc.)

(3) Gross weight of loaded vehicle and gross loaded weight of each axle.

(4) Description of hauling, towing, and/or towed vehicles involved (make, model, serial number, and type and capacity of brakes).

(5) Empty weight of hauling, towing, and/or towed vehicles and unloaded weight of each axle.

(6) Total number of axles, spacing between axles, and number and size of tires on each axle of all hauling, towing, and/or towed vehicles included in the movement.

(7) License numbers of vehicles, classification of licenses, State of registration, and maximum gross weight for which vehicles are registered.

(8) Overall dimensions of vehicle and load, including both tire bulge and approved safety devices, amount of front and rear overhang, and dimensions of any nonregistered vehicle.

(9) If house trailer, serial number and make; type, size, and weight of towing vehicle.

(10) Name of bonding company and amount of bond on file in States of movement where bonding is required.

(11) Name of insurance company and amount of liability and property damage coverage on file in States of movement where evidence of financial responsibility is required.

(12) Interstate Commerce Commission Certificate number if movement is being made for hire.

(13) Point of origin of movement.

(14) Preferred routing and number of miles to be traveled.

(15) Point of destination of movement.

(16) Inclusive dates and estimated hours required for movement.

(17) Name and address of owner of load.

(18) Name and address of owner or lessee of vehicle (indicate which).

(19) Certification of owner or lessee of vehicle, or duly authorized agent, that load and dimensions will be reduced to a minimum for movement.

(20) Specific instructions regarding address to which special permit is to be sent.

(21) Horsepower of power vehicle.

(d) Interstate Distribution of Permits: A copy of the special permit and supplements thereto shall be mailed by the issuing State to all other States included or remaining in the movement.

Section 4. Types of Special Permits.

(a) Single Trip Permits: Special permits shall be issued only for single trips for a specific vehicle and load, for a designated continuous route of travel over specified routes between predetermined points of origin and destination. The specified period of movement shall be limited to the time required to make the move.

(b) Time Extension Permits: If the permittee finds before or during the period covered by his special permit that the movement cannot be completed during that period, one extension of time may be permitted upon request by telegram or in writing. Time extension permits will be issued by telegram or in writing as requested by the permittee, by the State Highway Department which issued the original permit if the movement has not yet begun, or if it has begun, by the State in which the need for change occurs. The time extension permit must be attached to the original special permit. Only one such extension permit will be issued.

(c) Supplemental Permits: In the event of any change from the conditions authorized in the original special permit, such as change of route, second or more extension of time, increased weight, or correction of errors, the permittee shall apply to the State where the delay develops for a supplemental permit. All regulations governing the issuance and use of an original special permit shall also govern for a supplemental permit.

Section 5. Special Permit Fees.

(a) Issuance Fee: A fee of $10 shall be assessed as a special permit issuance fee for each movement to cover the cost of processing, issuing, and enforcing the special permit. The applicant shall also pay all charges for telephone, telegraph, and teletype communications necessary for handling of his application.

(b) Overweight Fees: For an overweight vehicle or vehicle and indivisible load, the charge shall be sufficient to defray costs incurred in processing, issuing, and enforcing special permits, together with a charge deemed adequate to defray the cost of extra wear and tear on the mileage of highway over which the overload is to be moved.

(1) Overweight-Gross Fee: In addition to the issuance fee and other applicable fees, there shall be a charge of 3¢ per ton-mile or fraction thereof for the excess of gross weight of the vehicle and/or vehicle and load over the maximum permissible gross weight as provided by Article II for vehicles or vehicles and loads in regular operation

Article III, Sec 4(f) prohibits overweight axles with exception of 6,000 lbs. on front axle. Conflict?

(2) Overweight-Axle Fee: In addition to the issuance fee and other applicable fees, for each overweight axle there shall be a charge of 4% per axle ton-mile, or fraction thereof, for each single axle, tandem axle group, or intermediate axle group, overloaded in excess of the maximum limitations for axles of vehicles in regular operation.

(c) Oversize Fees: For an oversize vehicle or vehicle and indivisible load, the charge shall be sufficient to defray costs incurred in processing, issuing, and enforcing special permits, together with a charge deemed adequate to pay for the special privilege of transporting a more hazardous load over the highway, and to compensate for the economic loss of operators of vehicles in regular operation due to necessary delays and inconveniences occasioned by the oversize movement.

(1) Oversize-Width Fee: In addition to the issuance fee and other applicable fees, there shall be a charge of 1¢ per inch-mile or fraction thereof, for each inch of width in excess of that allowed in regular operation.

(2) Oversize-Height Fee: In addition to the issuance fee and other applicable fees, there shall be a charge of 2¢ per foot-mile or fraction thereof, for each foot of height in excess of that allowed in regular operation.

(3) Oversize-Length Fee: In addition to the issuance fee and other applicable fees, there shall be a charge of 2¢ per foot-mile or fraction thereof, for each foot of length in excess of that allowed in regular operation.

(d) Time Extension Fee: An issuance fee of $5 for each movement shall be charged to cover the cost of processing an application for extension of time for special permit. The applicant shall also pay all charges for telephone, telegraph, and teletype communications necessary for special handling of the application.

(e) Supplemental Permit Fee: An issuance fee of $5 and other applicable fees shall be charged to cover the cost of processing an application for supplemental special permit. This fee shall be charged for each supplemental special permit issued. In addition, if the supplemental permit provides for an increase in size and/or weight over that specified in the original special permit, an additional fee shall be charged as provided elsewhere in this Section, as applicable, to correct for the increase. The applicant shall also pay all charges for telephone, telegraph, and teletype communications necessary for handling of the application.

Article V. National Defense.

Section 1. Military Certification.

It is declared to be the policy of the State of Arkansas that, on movements essential to national defense, the Department of Defense shall be the sole certifying agency during peacetime for all movements by any national agency declared essential to the national defense. During a national emergency, movements essential to national defense would be far greater in scope, and those not under direct control

of one of the military departments or Department of Defense agencies would be certified by the appropriate emergency transportation authority.

Section 2. Joint Policies.

(a) Except to meet overriding military necessity, no vehicular movement which exceeds any legal weight or dimension limitation, nor any other special military movement, will be undertaken over public highways of this State unless prior permission is secured from the appropriate highway authorities. Necessary permits for short-distance local movements not under the jurisdiction of the State Highway Commission will be obtained from local governments in accordance with applicable regulations and ordinances.

(b) If movements of oversized or overweight vehicles that are militarily owned or operated are in the interest of national defense but cannot be certified as essential to national defense, designated military representatives may discuss the matter with the Director of Highways. If a permit is approved by the Director without regard to the military essentiality of the movement, this approval shall be accepted by the military representatives as evidence that such movement is within the provisions of the laws of this State governing civilian cargo movements.

(c) Permits for oversized or overweight movements which may be applied for by a commercial carrier and approved by the Commission without regard to the military character of the cargo, will be accepted by the military agencies as evidence that such movements are within the provisions of the laws of this State governing civilian cargo movements. However, if it is essential to national defense that an oversized or overweight movement be made by highway, under no condition shall the Commission accept certification of the military necessity of such a movement from any but the representatives of the military agencies or the Department of Defense.

Section 3. Procedures for Implementing Joint Policies.

(a) The Commission will designate an official (and alternates, if desired) authorized to issue permits for oversized, overweight, or other special military movements on State Highways, and, with the concurrence of the appropriate local highway authority, over local highways, roads, and streets.

(b) The Army, Navy, Air Force, and Marine Corps will designate a limited number of officials authorized to request permits for oversize, overweight, or other special military movements on public highways. These officials will establish and maintain their liaison with the official designated under Subsection (a) hereof.

(c) Authorized military representatives will make necessary certifications to the Arkansas Director of Highways as to the military necessity of the proposed movement when applying to State representatives for permits for oversized, overweight, or other special vehicular military movements, and will furnish such other information as may be necessary to enable the State Director of Highways to make a reasonable evaluation of the effects of the movements on the highway facilities and traffic involved.

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PROPOSED CODE

Affected Sections and Comments

CHAPTER 10. FINANCE.

ARTICLE I. FEDERAL FUNDS.

Section 1. Federal Aid Funds.

The State Treasurer is hereby designated as the proper authority of the State of Arkansas to receive any Federal Aid Funds to be disbursed under the provisions of Title 23, U.S. Code, for the improvement of highways, roads, and streets. Any and all money so received shall be credited to the State Highway Department fund.

To assure Arkansas full ability to participate in benefits made available by Federal Aid legislation.

13-701/729

13-531 (C)

Section 2. Other Federal Funds.

Other Federal funds allocated to the State of Arkansas for highway, road, and street purposes under the following Federal programs shall be distributed as provided elsewhere in the Arkansas statutes:

a. Development of Ports.

b. Donations of Federal surplus personal property.

c. Geodetic Control Surveys and Tideland Studies.

d. Grants and loans for public works and development facilities.

e. Model Neighborhoods in Demonstration Cities.

f. National Highway Safety Program.

g. National Traffic Safety Program.

To assure Arkansas full ability to participate in benefits made available by other Federal programs involving the allocation of Federal funds for highway, road, and street purposes, e.g., Acts 281/67 & 549/67 and similar appropriation Acts.

13-701/729

h. Navigation in Rivers and Harbors.

i. Payments to Counties, National Grasslands, and Land Utilization.

j. Payments to States with National Forests.

k. Public Facility Loans.

l. Supplementary Grants for Planned Metropolitan Development.

m. Urban Renewal Projects.

n. Historic Properties Preservation Program.

o. Land and Water Conservation Program.

This authority is not limited to these Federal programs set out above but shall be extended to any other Federal programs hereafter initiated which may involve the allocation of Federal funds to the State of Arkansas for highway, road, and street purposes.

ARTICLE II. STATE REVENUES.

Section 1. Highway Revenues Defined. 76-331, 13-520 & 13-505

The term "highway revenues" as used in this article shall mean and include the "special revenues" derived from the following motor-user and/or road-user imposts:

a. Fees for the registration and licensing of motor vehicles. 76-331 & 75-201(I)

b. Taxes levied and collected under the Motor Fuel Tax Law and the Special Motor Fuels Tax Law. 76-331, 75-1105, & 75-1267.

c. Fees for the permits movement of IRREDUCIBLE oversize/overweight motor vehicle loads over the public highways, roads, and streets of the State. 75-826

d. Fees for the inspection and testing of distillate motor fuels. 75-1104 & 53-609

e. Fees for motor vehicle operators' and chauffeurs' licenses. 75-320

f. Motor vehicle in-transit fees. 75-235

g. Fees for motor vehicle certificates of title, duplicate certificates of title, and recording liens. 75-185

h. Auto division fees, i.e., transfer of motor vehicle registration, issuance of duplicate or substitute registration certificates, and issuance of duplicate or substitute registration plates. 75-185

For the purpose of this Section, any penalties, fines, charges, or other amounts paid in connection with, or in lieu of, any of the foregoing enumeration shall be deemed, unless otherwise expressly provided for by law, to be highway revenues, and shall be added to, and considered as a part of, the particular foregoing enumeration to which it shall respectively belong.

Section 2. Deposited in State Apportionment Fund. 76-332

All highway revenues shall be deposited in the State Treasury to the credit of the State Apportionment Fund as special revenues; and after deducting the amount of uncollected checks and reserving such amount as shall be required to liquidate claims for taxes erroneously paid, the State Treasurer shall, on the last business day of each month, transfer such highway revenues in the amounts or proportions, and to the State Treasury funds, specified in Section 3 hereof.

Section 3. Disbursement to State Funds. 76-333, 13-520, 13-522, 13-527, & 13-528

All highway revenues which are available for distribution during each fiscal year shall be transferred to the following State Treasury funds, and in the order specified, with such transfers to be made monthly until all of such available revenues have been transferred:

a. First, three percent (3%) of the amount thereof to the Constitutional and Fiscal Agencies Fund, there to be used for the purposes specified for such fund by the Revenue Stabilization Law of Arkansas. 76-333(d) 13-512

b. Next, ninety-seven percent (97%) of the fees defined in Section 1c to the State Highway Department Fund for the operation and maintenance of the Weights and Standards Division of the State Highway Department. 75-826

c. Next, ninety-seven percent (97%) of the fees defined in Section 1d to the Constitutional and Fiscal Agencies Fund. 75-1104

d. Next, ninety-seven percent (97%) of the fees defined in Sections 1e, 1f, and 1h to the State Police Fund. 75-320(c), 75-235, & 75-185

e. Next, ninety-seven percent (97%) of the fees defined in Section 1g to the Revenue Department Building Fund. 75-185

f. Next, $896,875.00 each month to the Highway Bond and Interest Fund, there to be used to pay the principal of, interest on, and paying agents' fees in connection with, State Highway Refunding Bonds, authorized and issued under the provisions of Act 4 of the Acts of the General Assembly, approved January 28, 1941. Provided, that the aggregate total amount of all such transfers under this paragraph shall equal, but not exceed, $7,175,000.00 during each fiscal year. 76-333(b)

g. Next, to the Gasoline Tax Refund Fund, such amount as the Commissioner of Revenues shall, from time to time, certify to the State Treasurer as being necessary to pay approved gasoline tax refund claims under the provisions of Act 406, approved March 23, 1949, and Act 269, approved March 18, 1963, or other applicable law. Provided, that the aggregate total amount of all such transfers under this paragraph shall not exceed $2,500,000.00 during any fiscal year. 76-333(c)

h. After meeting the requirements set out in the foregoing paragraphs of this section, all remaining highway revenues which are available for distribution during each fiscal year shall be transferred: 76-333(d)

15% of the amount thereof to the County Aid Fund for the maintenance, construction, reconstruction, and operation of the roads and bridges of the County Highway Systems;

15% of the amount thereof to the Municipal Aid Fund for the maintenance, construction, reconstruction, and operation of streets; and,

70% of the amount thereof to the State Highway Department Fund for the maintenance, construction, reconstruction, and operation of the State Highway System, for the operation of the State Highway Department, or as determined by the Commission under the provisions of this Code. 76-333(d), 76-334(C), 13-527, 13-531(C)

Section 4. Disbursement of County Aid and Municipal Aid Funds. 76-334, 76-334(A)

a. All highway revenues transferred to the County Aid Fund under the provisions of this Article shall be paid over by the State Treasurer to the treasurers of the respective counties of this

State for credit to the County Highway Fund. The State Treasurer shall, on or before the 10th day next following the last day of each calendar month, make distribution of such revenues on the following basis:

(1) Thirty-one percent (31%) of such amount according to area, with each county to receive the proportion that its area bears to the area of the State.

(2) Seventeen and one-half percent (17½%) of such amount according to the amount of State motor vehicle license fees collected in the calendar year next preceding any such distribution, as certified to the State Treasurer by the Commissioner of Revenues, with each county to receive the proportion that the total of such fees collected from such county bears to the total of such fees collected in the State.

(3) Seventeen and one-half percent (17½%) of such amount according to population, based upon the most recent decennial federal census, with each county to receive the proportion that its population bears to the population of the State.

(4) Thirteen and one-half percent (13½%) of such amount according to rural population, based upon the most recent decennial federal census, with each county to receive the proportion that its rural

population bears to the rural population of the State.

(5) Twenty and one-half percent (20½%) of such amount shall be divided equally among the seventy-five counties.

b. All highway revenues transferred to the Municipal Aid Fund under the provisions of this Article shall be paid over by the State Treasurer to the treasurers of the respective cities of the first and second class and incorporated towns for credit to the Street Fund. The State Treasurer shall, on or before the 10th day next following the last day of each calendar month, make distribution of such funds on the following basis. 76-334(B)

On the basis of population according to the most recent Federal Census; with the amount to be paid over to each such city or incorporated town to be in the proportion that its population bears to the total population of all such cities and towns.

Section 5. Cross Reference to Related Statutes.

Reference is hereby made in the application of this Article to Ark. Stat. §§ 13-520, 13-522, -- and Article V of this Chapter.

ARTICLE III. COUNTY REVENUES. 76-701, 76-702, 76-708, & 76-709.

Updates

the 1871, 1899, & 1901 Acts.

Section 1. Levy and Collection of Road Tax.

It shall be the duty of the County Judge in each county to

notify the County Board of Election Commissioners in writing at least thirty (30) days prior to the date of each biennial general election, to place the question of the levy of the three (3) mill road tax on the ballot at such election, and it shall be the duty of the County Board of Election Commissioners in each of the several counties to cause the question of the levy of the three (3) mill county road tax to be placed on the ballot in each county at such biennial general election, and the said Board of Election Commissioners shall canvass the vote cast on the levy of such tax and declare the results thereof the same as other returns. The collector shall keep such road and bridge taxes separate and pay into the county treasury the amount collected, taking the county treasurer's receipt for the same as so much money paid on account of roads. If the said taxes are not paid, the property against which same is levied shall be sold in the same manner as other property is sold for the nonpayment of taxes.

Section 2. Separate Account.

The county treasurer shall keep a separate account of all moneys received on account of such road and bridge tax,

76-703 (Updates Act 200 of 1899 to delete requirement of keeping separate account for "each road district by number.")

receipting therefor to the collector, and at the proper term of the county court, annually, present his account for all moneys received and disbursed from said account.

Section 3. Allocation to Municipalities.

76-704, 76-705, & 76-706.

From the amount collected under the county road tax, the county courts shall allocate to each municipality one-half, except where a greater amount is now allowed by law, of the amount collected upon property within the corporate limits of such municipality for the maintenance, construction, reconstruction, and operation of the municipal street system. Said allocation shall be made annually and immediately paid into the treasury of the municipality. This Article shall not repeal, alter, change, or affect any special act heretofore passed, under which any city, town, or municipality is now receiving any greater or less amount of the three mill county road tax.

Section 4. Appropriation of Funds.

76-710.

The county and quorum courts shall have the power, and are required, to appropriate all moneys collected under this Article as road tax except funds allocated and paid to municipalities as required hereunder, for use by the county for the construction, reconstruction, maintenance, and operation of the county road system.

Section 5. Three Mill County Road Tax - Majority Voting Against - Voluntary Tender.

Hereafter, whenever a majority of the qualified electors of any county voting on the issue shall vote "against" the three (3) mill county road tax provided for by Constitutional Amendment Number 3 of the Arkansas Constitution of 1874, at the general election for state and county officers preceding such levy, the county tax collector is hereby authorized to receive any voluntary tender of said tax by any taxpayer in such county. Provided, however, that such tax shall not be levied and collected upon a compulsory basis in any county unless a majority of the qualified electors of the county voting on the issue shall have voted "for" such tax at the preceding general election.

Section 6. Cross Reference to Related Statutes.

Reference is hereby made in the application of this Article to Ark. Stats. §§ 13-520, 13-522, 20-216 and Article V of this Chapter.

ARTICLE IV. MUNICIPAL REVENUES.

Section 1. Use of Parking Meter Revenues to Issue Revenue Bonds. Act 269/51, Act 156/65

19-3524

Any municipality in the State of Arkansas owning and operating parking meters may use the net revenues derived from such ownership and operation for the purchase of real estate to be used for parking lots; for the purchase of rights-of-ways for the construction of public streets, alleys, and boulevards or for the construction of, widening, straightening, paving, resurfacing, lighting or otherwise improving streets, alleys and boulevards; for the purchase, development and improvement of public parks located within or without the corporate limits of such municipality; for the purchase of fire fighting apparatus and fire alarm systems; for the purchase of sites for, construction of and equipment of city halls, prisons; for buildings for housing of fire fighting apparatus; for buildings for the police department; for the construction and equipment of any municipal complex.

Provided, however, that nothing herein shall be construed to authorize any municipality to use such revenues to issue or sell revenue bonds for the purpose of purchasing, condemning, or otherwise acquiring any utility, plant, property, or facilities owned or operated by a regulated utility.

a. Revenue Bond Issues Secured by Parking Meter Funds - Ordinance - Election. - Whenever the legislative body of any municipality shall determine to exercise the power granted by this Act (§§ 19-3523-19-3532), it shall state the purpose and cause an estimate to be made of cost of such purpose, and if the cost is greater than the legislative body deems should be paid in a single year, it shall, by ordinance, provide for an election to be called for the issuance of revenue bonds under the provisions of this Act. Such ordinance shall set forth a brief description of the purpose of the bond issue, and if for more than one purpose, provision shall be made in said ordinance for balloting on each separate purpose; the estimated cost thereof; the amount of the bond issue; the rate of interest; time of payment; and other details in connection with the issuance of bonds. Said election shall be held and conducted and the vote thereof canvassed and the result declared under the law and in the manner now or hereafter provided for municipal elections, so far as the same may be applicable, except as herein otherwise provided. Notice of said election shall be given by the presiding officer of the legislative body of the issuing municipality by advertisement once a week for four (4) consecutive weeks in some newspaper published in said municipality, or if no

newspaper is published therein, in a newspaper having a bona fide and general circulation therein, the first publication to be not less than thirty (30) days prior to the date of said election, and this shall be the sole notice required for said election.

Only qualified voters of said municipality shall have the right to vote at said election. The result of said election, after the vote has been canvassed by the county board of election commissioners, shall be proclaimed by the presiding officer of the legislative body and his proclamation shall be published one time in some newspaper published in said municipality, or if none is published therein, in a newspaper having a bona fide circulation therein, and the result as proclaimed shall be conclusive unless attacked in the courts within thirty (30) days after the date of the publication of such proclamation. The expenses of such election shall be paid in the manner now prescribed by law. In the event a majority of electors voting in the election approve the issuance of such bonds, the legislative body shall then have power to issue bonds which shall bear interest at not more than five per centum (5%) per annum, payable semi-annually, and shall be payable at such times, not exceeding thirty (30) years from their date, as shall be prescribed by the ordinance authorizing their issuance.

b. Form of Bonds - Sale. - Bonds issued under the provisions of this Act (§§ 19-3523-19-3532) shall be negotiable instruments and shall be executed by the presiding officer and clerk or recorder of the legislative body of the issuing municipality, and shall be sealed with the corporate seal of such municipality, and in the case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Said bonds may be sold at not less than ninety cents (90¢) on the dollar, and they may be sold with the privilege of converting to a lower interest rate provided that by such conversion the municipality shall receive no less and pay no more than it would receive or pay if the bonds were not converted. The bonds shall be sold at a public sale after advertisement once a week for three (3) weeks in some newspaper published in the county in which the municipality lies, the first publication to be not less than twenty (20) days before the date fixed for the sale. The bonds shall be sold for cash and the proceeds derived therefrom shall be used exclusively for the purpose for which said bonds are issued. The bonds may be sold and issued all at one time or they may be sold and issued in parcels as funds are needed. 19-3526

c. Bonds Payable from Parking Meter Funds. - Bonds issued under the provisions of this Act (§§ 19-3523-19-3532) shall be payable solely from the net revenues derived by the municipality from the ownership and operation of the parking meters, which net revenues may be pledged for the payment of these bonds, and the revenue bonds shall not in any event constitute an indebtedness of such municipality within the meaning of the constitutional provisions or limitations, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this Act and that it does not constitute an indebtedness of such municipality within any constitutional or statutory limitation. 19-3527

d. Pledge Not to Discontinue Operation of Parking Meters. - A municipality issuing revenue bonds for the payment of which it pledges the net revenues derived from the ownership and operation of parking meters shall, by the favorable vote at the election for the purpose of issuing said revenue bonds, be construed to have made a binding contract with the holders of said bonds that the said municipality will not remove or discontinue the operation of said parking meters until the revenue bonds and all interest thereon for the payment of which the net revenues have been pledged have been paid in full. 19-3528

e. Default in Payment of Bonds - Receiver. - If there be a default in the payment of the principal of or interest on any of the revenue bonds authorized by this Act (§§ 19-3523-19-3532), any court having jurisdiction in any proper action may appoint a receiver to take charge of and operate the parking meters, with power to charge and collect rates sufficient to provide for the payment of the said bonds and interest thereon after providing for the payment, if any, of the operating expenses of such property, and to apply the income and revenues derived from such property in conformity with this Act and the ordinance providing for the issuance of such bonds. When such default has been cured the receivership shall be ended. This suit may be brought by the holder of any bond issued under the provisions of this Act or of any coupon representing interest accrued thereon. 19-3529

f. Acceleration of Maturities in Case of Default - Priorities Between Successive Issues. - The ordinance authorizing the issuance of the revenue bonds may contain provisions for the acceleration of the maturities of all unmatured bonds in the event of default in the payment of any principal or interest maturing under said bond issue, or upon failure to meet any sinking fund requirements, or in any other event stipulated in said ordinance; and such provisions will be binding. The priorities as between successive issues of revenue bonds may also be controlled by the provisions of said ordinance. 19-3530

g. Act Exclusive. - This Act (§§ 19-3523-19-3532) shall, without reference to any other statute, be deemed full authority for the issuance and sale of the bonds authorized by this Act, and no petition or election or other or further proceedings in respect to the issuance or sale of bonds under this Act and no publication of any resolution, ordinance, notice or proceeding relating to such issuance or sale of such bonds shall be required except such as are prescribed by this Act, any provisions of other Statutes of the State to the contrary notwithstanding. 19-3531

h. Liberal Construction. - This Act (§§ 19-3523-19-3532) being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purposes thereof. 19-3532

Section 2. Municipal Street and Parking Revenue Bond Act. Acts 1967, No. 317

This Act may be referred to and cited as the "Municipal Street and Parking Revenue Bond Act" and is sometimes referred to herein as the "Act" or "this Act". 13-1701

a. Municipalities - Scope of Power Pertaining to Street and Parking Projects. - Municipalities (first class cities, second class cities and incorporated towns) are hereby authorized and empowered to acquire (by purchase or exercise of eminent domain) sites and rights of way for and to construct, reconstruct, widen, extend and maintain streets, alleys and roadways of every nature (including, 13-1702

without limitation, bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, access roads and any other work of whatever nature incidental thereto) and to acquire (by purchase or exercise of eminent domain) sites and rights of way for and to construct, reconstruct, widen, extend and maintain and operate off-street parking facilities, herein sometimes collectively referred to as "street and parking projects".

b. Revenue Bond Issues for Street and Parking Projects - Authorization - Costs - Expenses. - Municipalities are hereby authorized and empowered to issue revenue bonds from time to time in principal amounts sufficient to pay the costs (hereafter defined) of street and parking projects. More than one street or parking project, or combination thereof, may be involved as to any issue of revenue bonds hereunder and there may be more than one issue for a particular street or parking project, or combination thereof, or there may be one (1) issue sold and delivered in series. The costs of a street or parking project, or combination thereof, as the case may be, may include all costs incurred in connection with the accomplishing of the project, an amount covering interest on bonds during construction and for a period up to one (1) year thereafter, any amounts determined to be desirable by

13-1703

the municipality for funding debt service and maintenance reserves and all expenses incurred in connection with the authorization and issuance of bonds. The unqualified reference to "bonds" in this Act shall mean bonds issued under the authority of this Act.

c. Issuance of Bonds - Sale. - Bonds shall be authorized by ordinance of the governing body of the municipality. They may be coupon bonds, payable to bearer, or may be registrable as to principal only with interest coupons, or may be registrable as to both principal and interest without coupons, and may be made exchangeable for bonds of another denomination, which bonds of another denomination may in turn be either coupon bonds, payable to bearer, or bonds registrable as to principal only with coupons, or bonds registrable as to both principal and interest without coupons; the bonds may be in such form and denominations; the bonds may have such date or dates; the bonds may mature at such time or times and in such amount or amounts, provided that no bonds may mature more than forty (40) years from date; the bonds may bear interest payable at such times and at such rate or rates, provided that no bonds may bear interest at a rate exceeding six percent (6%) per annum; the bonds may be payable at such place or places within or without the State of Arkansas; the bonds may be subject to such terms of redemption in advance of maturity at such prices, including such premiums; 13-1704

and the bonds may contain such other terms and provisions, all as the municipality issuing the bonds shall determine. The authorizing ordinance may contain any other terms, covenants and conditions that are deemed desirable by the municipality including, without limitation, provisions controlling the priority between successive issues, those pertaining to the custody and application of bond proceeds, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties and obligations of the municipality and of the holders and registered owners of the bonds. Bonds may be sold in such manner as the municipality involved may determine to be in its best interest, and may be sold for such price, including, without limitation, sale at a discount, but in no event shall the municipality involved be required to pay more than six percent (6%) interest on the amount received, computed with relation to the absolute maturity of the bonds in accordance with the Standard Tables of Bond Values. The bonds may be sold with the privilege of conversion upon such terms and conditions as the municipality involved shall specify but in any event such that the municipality involved receive no less and pay no more than it would receive and pay if the bonds were not converted.

d. Execution of Bonds and Coupons - Seal. - Bonds shall be executed by the manual or facsimile signature of the Mayor of the municipality and by the manual signature of the Clerk or Recorder of the municipality. Coupons attached to the bonds shall be executed by the facsimile signature of the Mayor. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officer before the delivery of the bonds or coupons, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the municipality issuing the bonds. 13-1705

e. Bonds shall be Special Obligations Payable from Street and Parking Revenues. - The bonds shall not be general obligations of the municipality involved, but shall be special obligations payable solely from the revenues specified in Section 7 (§ 13-1707) of this Act (herein collectively referred to as "street and parking revenues"). The principal of and interest on all bonds issued under the authority of this Act shall be secured solely by a pledge of, and shall be payable solely from, street and parking revenues. The ordinance authorizing the issuance of bonds together with this Act shall constitute a contract by and between the municipality and the holders and registered owners of all bonds issued by the municipality 13-1706

under the authority of this Act, which contract, and all covenants, agreements and obligations therein shall be promptly performed in strict compliance with the terms and provisions of the contract, and the contract and all rights of the holders and registered owners of the bonds and the obligations of the municipality may be enforced by mandamus or any other appropriate proceeding at law or in equity. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this Act.

f. Use of Street and Parking Revenues for the Payment of Bonds Issued. - The municipality involved may pledge and use all or any part of the following street and parking revenues for the payment of bonds issued by it hereunder: 13-1707

(1) In the case of a parking project or of a street and parking project, the municipality is authorized to fix charges for the use of the off-street parking facilities and to pledge to, and use the net revenues derived therefrom for, the payment of the principal of and interest on the bonds. In that event, the municipality shall include a covenant in its contract with the bondholders that it will always operate the off-street parking facilities as a revenue-producing undertaking so long as any bonds issued by it under the authority of this Act shall be outstanding, and that it will fix and collect

charges for the use of the off-street parking facilities which will produce revenues at least sufficient to provide for the payment of any operation and maintenance expenses of the off-street parking facilities and leave a balance of funds which, together with other street and parking revenues specified in this section which it may pledge, will provide for the payment of the principal of, interest on and paying agent's fees in connection with the bonds as the same become due, and for the maintenance, at the required level, of a debt service reserve, if one is provided for.

(2) In the case of a street project or of a street and parking project, the municipality is authorized to pledge and use all or any part of the net parking meter revenues derived from any or all parking meters in the municipality. The phrase "net parking meter revenues", as used herein, is defined to mean gross revenues derived from the operation of the parking meters, less the total of the following:

(i) the amounts, if any, required to be paid on a current basis on any indebtedness incurred in the acquisition of the parking meters,

(ii) the amounts of the costs of operating and maintaining the parking meters, and

(iii) if there are outstanding bonds to which a pledge of parking meter revenues has been made, the amounts required to be used for the timely payment of the principal, interest and paying agent's fees on the outstanding bonds and for the maintenance at the required levels of any reserves or other funds specified in the authorizing ordinance or in the pledge securing the outstanding bonds.

In the event net parking meter revenues are pledged and used, as in this section authorized, the municipality shall include a covenant in the contract with the bondholders that it will always operate its parking meters as a revenue-producing undertaking so long as any bonds issued by it under the authority of this Act shall be outstanding, and that it will fix and collect parking meter revenues in such amounts that net parking meter revenues, together with any other street and parking revenues specified in this section which it may pledge, will provide for the payment of the principal of, interest on and paying agent's fees in connection with the bonds as the same become due, and for the maintenance, at the required level, of a debt service reserve, if one is provided for.

(3) In the case of a street project or of a parking project, or of a combination thereof, the municipality is authorized to pledge and use all or any part of the amounts at any time due it from highway revenues (highway revenues being the taxes levied and collected under the Motor Fuel Tax Law and the Special Motor Fuels Tax Law and the fees collected by the State for the registration and licensing of motor vehicles) under the applicable provisions of the Arkansas Highway Revenue Distribution Law, as that law is now in effect or as it may from time to time be amended, or under any law replacing or intended as a substitute therefor which specifies the distribution of motor fuel taxes and motor vehicle registration and licensing fees (herein called "applicable highway revenue distribution law"). Such amounts as are at any time due the municipality are herein called "municipal highway turnback revenues". Municipal highway turnback revenues due any municipality which shall have pledged the same to the payment of its bonds issued under the authority of this Act are hereby declared to be cash funds restricted in their use and dedicated and to be used solely as authorized in this Act. Notwithstanding the provisions of the applicable highway revenue distribution law, municipal highway turnback revenues, subject to the subsequent

provisions hereof, shall not be paid into the State Treasury but shall be paid directly to the municipality and shall be and become part of the street and parking revenues. The municipal highway turnback revenues shall be so paid by the Commissioner of Revenues to the municipality only after other highway revenues shall have been deposited in the State Treasury each month in amounts sufficient to satisfy in full the monthly requirements of the Highway Bond and Interest Fund (the same being $896,875 for each month of the first eight months of the State's fiscal year) and all other prior allocations of highway revenues, as specified in the applicable highway revenue distribution law, shall have been made. The provisions of this Section 7 pertaining to municipal highway turnback revenues shall be applicable only to a municipality which shall have issued bonds under this Act and which shall have pledged its municipal highway turnback revenues to the payment of the principal of, interest on and paying agent's fees in connection with the bonds. To the end that the Commissioner of Revenues may have a record as to all such municipalities, each municipality issuing bonds hereunder and pledging its municipal highway turnback revenues thereto shall, immediately after its enactment, file a certified copy of its bond ordinance with the Commissioner of Revenues, and when all such bonds have been paid, or the required provision made therefor,

the municipality shall immediately notify the Commissioner of Revenues by an appropriate writing of that fact. The Commissioner of Revenues, for the purposes thereof, shall rely upon the ordinance and the appropriate writing, referred to above, as to the municipalities concerning which municipal highway turnback revenues are to be handled as in the Act specified. The Commissioner of Revenues shall, by appropriate writing, advise the disburing officer of municipal highway turnback revenues of the amounts of cash funds paid over by him to the respective municipalities in order that the said disburing officer may take the same into account in making distribution of such of the revenues as are not pledged to the payment of bonds issued under the authority of this Act. So long as any bonds issued under the authority of this Act shall be outstanding, if any changes are made by the General Assembly in municipal highway turnback revenues, or in the applicable highway revenue distribution law, the changes must be such that substantially the same amount of municipal highway turnback revenues pledged to outstanding bonds will be received by the municipality involved as would have been received had there been no such changes.

g. Refunding Bonds - Issuance - Proceeds - Priority of Lien - Sale. - Revenue bonds may be issued for the purpose of refunding 13-1708

any bonds issued under the authority of this Act. Such refunding bonds may be combined into a single issue with revenue bonds issued for a street and parking project. Refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement thereof, as shall be specified by the municipality in the ordinance authorizing and securing the refunding bonds. The ordinance authorizing the refunding bonds may provide that the refunding bonds shall have the same priority of lien on street and parking revenues pledged for their payment and (as) was enjoyed by the bonds refunded thereby. Refunding bonds shall be sold and secured in accordance with the provisions of this Act pertaining to the sale and security of revenue bonds.

h. Tax Exemption for Bonds - Exception. - The principal of and interest on bonds issued under the authority of this Act shall be exempt from all State, County and Municipal taxes, except property taxes, and this exemption shall include income, inheritance and estate taxes. 13-1710

i. Revenue Bonds Made Securities - Investment - Deposit. - 13-1709
Revenue bonds issued under the authority of this Act are hereby made securities in which insurance companies, turst (trust) companies, banks, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. Any municipality or county, or any board, commission or other authority duly established by any such municipality or county, or the Boards of Trustees, respectively, of any retirement fund or retirement system created by or pursuant to authority conferred by the General Assembly of the State of Arkansas may, in its discretion, invest any of its funds not immediately needed for its purposes in bonds issued under the authority of this Act, and bonds issued under the authority of this Act shall be eligible to secure the deposit of public funds.

j. Purpose and Construction. - This Act shall be construed 13-1711
liberally. All acts and activities of the municipality performed pursuant to the authority of this Act are hereby legislatively deter-

mined and declared to be essential governmental functions. In this regard, it is hereby determined and declared that this Act is the sole authority necessary for the performance of the acts authorized hereby including, without limitation, the issuance of bonds. There is hereby conferred upon the municipalities of this State the authority to take such action and to do or cause to be done such things as shall be necessary or desirable to accomplish and implement the purposes and intent of this Act according to the import hereof.

k. Supplemental to Existing Law. - The provisions of this Act shall be cumulative, insofar as the authority conferred and the subject matter dealt with is concerned, to all other laws dealing with the accomplishing of similar work to that embodied in street and parking projects dealt with in this Act and to the financing and operation thereof by municipalities or agencies or authorities of municipalities. See also Article V, Section 8, et seq. of this Chapter.

Act 317/67, § 13

Section 3. Delinquent Taxes for Opening or Improving Streets or Alleys.

19-3810

Upon direction of the governing body of the municipality, the

clerk thereof shall certify any delinquent tax heretofore or hereafter assessed by the municipality for opening, constructing, grading, improving, maintaining, or repairing any street, public way, road, bridge, or any other portion of the municipal street system in said municipality, to the clerk of the county in which said municipality is located, and which tax, so certified, shall be placed on the tax records of the county and collected in the same manner as other state and county taxes.

Section 4. Street Improvements without Improvement District. Acts 1967, No. 252

Supplemental to other Laws. - The procedure prescribed herein 19-3842
for the construction of street improvements and the financing thereof shall be supplemental to all other laws of this State with respect thereto and shall not be construed to amend, repeal or otherwise affect said laws.

a. Street Improvements-Cost Studies-Resolution of Findings and 19-3836
Determinations. - When the governing body of any city or incorporated town in this State shall deem it desirable to enter into a street improvement program in such city or town or any defined area or areas thereof, the said governing body of such city or town may cause studies to be made of the needs for street improvements; including grading, paving, curbing, guttering, drainage and storm sewers in such city or town or the designated area or areas thereof, and may cause studies

to be made of the approximate cost of such improvements, the means available for financing the same, the portion thereof which the municipality is willing and able to pay, taking into account any funds available to such city for street improvements including federal funds, and the approximate assessment which would be made against each lot or parcel of property in the defined area to reimburse the city for the cost of the improvements to be borne by the property owners in the area.

Upon the completion of the study and determination as provided for in Section 1 (this section) hereof, the governing body of said municipality may adopt a resolution setting forth such findings and determinations and agreeing to make such improvements and pay for the same out of funds available to the municipality for such purposes provided the property owners in the municipality or defined area or areas thereof agree to repay such municipality the cost of such improvements or a prescribed percentage thereof through uniform, ad valorem (according to value) assessed benefits upon each lot or parcel of property in the municipality or defined area or areas thereof. The governing body of the municipality shall cause such resolution to be published once in a newspaper of general circulation in the municipality.

b. Petition to Undertake Improvements-Public Hearing-Notice of Hearing. - If within sixty (60) days after the adoption and 19-3837

publication of such resolution by the governing body of the municipality, petitions are filed with the clerk or recorder of the municipality containing the signatures of a majority in value of the real property owners in the municipality or the defined area or areas thereof requesting that such improvements be undertaken and financed in the manner as stated in the resolution adopted by the governing body of the municipality as authorized in Section 1 (§ 19-3836) hereof, the clerk or recorder shall set a date and place for a public hearing on the sufficiency of said petitions. Notice of such public hearing shall be published once in a newspaper of general circulation in the municipality not less than five (5) days prior to the date fixed for the hearing. The governing body of such municipality may hold a special meeting for the purpose of conducting such hearing.

c. Hearing on Petition-Findings-Assessment. - At the time and 19-3838
place stated in the notice, the governing body of the municipality shall meet and hear all owners of real property of the designated area or areas in the municipality who wish to be heard on the question of whether the petitions contain the signatures of a majority in value of the real property owners of the designated area or areas in the municipality and shall make a finding and ruling as to whether

the petitions contain the signatures of a majority in value of said real property owners and shall publish such finding once in a newspaper of general circulation in the municipality. The finding and ruling of the governing body of the municipality with respect to the sufficiency of the petitions shall be final and conclusive unless questioned by action filed in the Chancery Court of the county in which the municipality is located within thirty (30) days after the date of publication of such findings. If the governing body of the municipality determines that the petitions and signatures thereon are sufficient, it shall cause an assessment to be made against each lot or parcel of real property in the municipality or the designated area or areas, based upon the cost of the improvements to be borne by the property owners in the district and the benefits accruing to each such lot and parcel of property because of said improvements, with all such assessments on property in the municipality or designated area or areas to be ad valorem (according to value of benefits) and uniform. A copy of the assessed benefits shall be filed with the city clerk or recorder. Notice that the assessed benefits have been filed with the city clerk or recorder shall be published once in a newspaper of general circulation in the municipality, and such assessments shall be final and conclusive unless questioned by action filed in the Chancery Court within thirty (30) days after the date

of publication of notice of the filing assessed benefits.

d. Payment of Assessments. - All such assessments on the real property in the district shall be payable to the city or town collector in the manner and within the time prescribed by the governing body of the municipality. Property owners may be given the option to pay the amount of the assessments in one (1) lump sum payment, or to pay the same in installments, within such time and at such rate of interest as may be prescribed by the governing body of the municipality. 19-3839

e. Lien of Assessment. - The assessment against each lot or parcel of property shall constitute a lien on such property in favor of the municipality. When any annual assessed benefit against any lot or parcel of property has not been paid for two (2) years from the date due such delinquent assessment plus a ten (10) per centum penalty shall be certified by the mayor to the county clerk and the clerk shall place the same on the tax book as delinquent taxes and shall be collected accordingly, and the amount, when so collected, shall be paid to the city by the collector. 19-3840

f. Disposition of Assessments Collected. - All funds derived from assessments upon real property under the provisions of this Act 19-3841

shall be funds of the municipality and shall at all times be kept separate and apart from other funds of the municipality, and shall be used solely to reimburse the municipality for expenses incurred in making the study and survey provided for in Section 4a hereof, and for funds expended by the municipality for the street improvements made pursuant to the provisions of this act.

Section 5. Cross-Reference to Related Statutes.

Reference is hereby made to 19-3901/3905, 20-216, and to Article V of this Chapter.

ARTICLE V. MOTOR VEHICLE TAX FOR LOCAL HIGHWAYS. Act 446/65 & Act 372/67

Section 1. Authority of Counties and Municipalities to Levy Vehicle Tax for Privilege of Using Public Roads, Streets and Other Public Ways. 76-2301

In addition to such taxes as are now or as hereafter may be levied by the State of Arkansas for the privilege of using and operating motor vehicles on the public roads and highways of this State, the several counties of the State, and municipalities therein under the conditions hereafter set forth, are hereby authorized, respectively, to levy a tax, to the maximum amount in Section 3 (§ 76-2303) hereof specified, upon the owners of vehicles for the

privilege of using and operating said motor vehicles upon the public roads, streets and other public ways in the County or municipality; and the levy of the tax authorized by this Act (§§ 76-2301-76-2314) to be made by a County shall be by resolution duly adopted by the Quorum Court of the County, and by a municipality by resolution duly adopted by the governing body of the municipality. The tax herein authorized to be levied shall be designated and known as the "County and Municipality Vehicle Tax" (herein sometimes called "vehicle tax" or "tax").

Section 2. Tax Levies-Restrictions-Procedure.

The several counties of the State shall have the first opportunity to levy the vehicle tax. Any levy by a County may be upon owners residing everywhere in the County or only upon owners residing within the County but outside the corporate boundaries of all municipalities in the County (that is, the County tax must cover the entire County or the area outside all municipalities and cannot cover some municipalities and omit others), and such levy may be in any amount not exceeding the authorized maximum. A municipality in a County is authorized to levy the vehicle tax only if the County Quorum Court by the time of adjournment of its regular annual session in any calendar year has failed to levy the vehicle tax upon the owners

76-2302

residing within the corporate limits of the municipality or if so, has not levied the full amount of the authorized vehicle tax for the next calendar year at said regular annual session or at any special session held in any calendar year prior to its regular annual session in said calendar year. Each levy by the County Quorum Court or by the governing body of the municipality shall be for collection during the calendar year next following the year in which the levy is made, and except in the case where bonds are issued, as hereafter authorized, unless the levy is again made the tax shall drop at the expiration of the calendar year for which collected and shall not again be collected until levied by the County Quorum Court by the time of adjournment of the regular annual session of the County Quorum Court or thereafter by the governing body of a municipality, as aforesaid.

Notwithstanding other provisions of this Act (§§ 76-2301-76-2314), before the vehicle tax levied by any County Quorum Court, upon owners residing everywhere in the County or only upon owners residing within the County but outside the corporate boundaries of all municipalities in the County, and before the vehicle tax levied by the governing body of any municipality upon vehicle owners residing in the municipality, may be collected, the county court, or the mayor, as the case may be shall, upon the first levy of such tax by the County Quorum Court,

and upon the first levy thereof after July 1, 1967, by the governing body of the municipality, call a special election to be held not less than 20 nor more than 30 days from the date of the adoption of the levy of said tax by the Quorum Court or the governing body of the municipality, at which the qualified electors of the area to be affected by such tax, shall vote on the question of the levy of such tax. If, at such special election, a majority of the qualified electors of the area affected by the tax voting on said issue at such special election shall vote for the levy of such tax, the tax may be thereafter levied in such area in the manner authorized herein and it shall not be necessary that an election be called again in said area on the question of levying such tax. If a majority of the qualified electors of the affected area voting on the issue at such special election, shall vote against the levy of such tax, said tax shall not be levied in said area. Provided, the Quorum Court of the County at any subsequent annual meeting, or the governing body of the municipality at any time after the expiration of one (1) year from such election in the municipality, may propose the levy of such tax and the election thereon shall be called as provided herein. Special election held pursuant to this Act shall be conducted in accordance with the election laws of this State and the form of

the ballot, the method of voting, the counting, tabulation, and certification of the election results shall be in the manner provided by law.

Section 3. Classification of Vehicles-Maximum of Tax. 76-2303

The resolution of the County Quorum Court or of the governing body of a municipality, as the case may be, may contain therein a classification of vehicles by types, and the rate of tax levy, stated in dollars and cents, to be collected from the owners of such vehicles coming within such classifications. Provided, that no such classification shall, at the time of the adoption of any such resolution, include any vehicle for the use of which a State tax or fee for the registration or licensing of motor vehicles is not, at the time, levied upon the owner. Provided, further, that the maximum vehicle tax which may be levied and collected shall not exceed five dollars ($5.00) per year per vehicle, irrespective of its classification; and the owner of a vehicle, having paid the vehicle tax in any one County or municipality for a particular year, shall not be required to pay the vehicle tax for the use of the same vehicle in any other County or municipality for the same year. If the County Quorum Court levies the full five dollars ($5.00) per year per vehicle for the next calendar year throughout the County, then no municipality in that County shall levy any tax for the same year, it being here-

by declared that the maximum amount that shall be paid by any owner for any vehicle for any year under this Act shall be five dollars ($5.00). If the County levies the vehicle tax but excludes the municipalities therein, then any municipality may levy any amount up to the maximum amount of five dollars ($5.00). If the County levies the vehicle tax throughout the County but levies less than five dollars ($5.00), then any municipality may levy any amount up to the maximum amount which, together with the amount levied by the County Quorum Court, will not exceed five dollars ($5.00).

Section 4. Payment of Vehicle Tax-Penalties-Exemption. 76-2304

The vehicle tax shall be due and payable, without penalty, during the month of January of the calendar year next following the year in which the levy is made. Penalty for delinquent payment of the tax shall be one dollar ($1.00) per vehicle per month for each month's delinquency; and any owner of any such vehicle, delinquent in the payment of the vehicle tax for more than five (5) months, who thereafter shall use and operate any such vehicle upon the public roads, streets and other public ways within the County or municipality levying the vehicle tax, or who shall knowingly permit the same to be so used and operated by another,

shall be guilty of a misdemeanor and, upon conviction, shall be fined any sum not less than twenty-five dollars ($25.00) and not more than fifty dollars ($50.00) for each such violation; and the fine so assessed shall be in addition to the aforementioned tax and penalty. The owner of any such vehicle, first acquired or first used in the County after July 1 of the taxable year, shall be required to pay only one-half (1/2) of the annual rate of the vehicle tax for the remainder of the calendar year, and such tax may be paid, without penalty, during the thirty (30) day period next following the date of such first acquisition or first use. Provided, that no such tax shall be required of the owner if the vehicle tax for the particular year has been paid by a former owner, whether or not in the same County or municipality.

Section 5. Collection of Vehicle Tax-Receipts. 76-2305

The vehicle tax, in the case of a levy by the County, shall be collected by the County Tax Collector. The Collector's commission for collecting such tax shall be three percent (3%) of the total amount collected. Consecutively numbered receipts, printed in duplicate, shall be used by the Collector to acknowledge payment of the tax. Each such receipt shall have printed on it the name of the County, the name of the tax, the year of the tax, and space for

indicating the name and address of the taxpayer, the date of payment, the amount of tax, the amount of penalty, and the total amount collected, the make and year model of the vehicle, the state motor vehicle license number at the time attached to the vehicle, and space for the signature of the Collector. At the time of issuing his receipt, the Collector shall also deliver to the taxpayer a windshield sticker, metal tag or other type of identification to be attached to the vehicle by the owner. A new series of receipts shall be issued for each year's tax. A separate receipt shall be issued for each vehicle, the original of which shall be given to the taxpayer at the time of the payment of the tax. The duplicate receipt shall be retained by the Collector for accounting and auditing purposes. In the case of municipalities levying the tax, the municipal officer designated by ordinance shall collect the tax and shall follow, insofar as practicable, the same procedure as set forth above with reference to collection by the County Tax Collector for the County.

Section 6. Disposition of Vehicle Tax Revenues. 76-2306

For the purpose of segregating and keeping apart the revenues derived from the vehicle tax from the other revenues of the County

or the municipality, as the case may be, there shall be established a separate account, styled "_____ County Vehicle Tax Account", in the case of a County, and "_____ Municipality Vehicle Tax Account", in the case of a municipality, in a bank that is an authorized depository of County funds in the case of a County and municipal funds in the case of a municipality, and all revenues derived from the tax shall be deposited in said separate account. Withdrawals shall be made from said separate account only for the purpose of paying the cost of duplicate receipts, windshield stickers, or other types of identification to be attached to vehicles as required hereunder, payment of the Collector's commission, and thereafter transmittal to the County Treasurer in the case of the County tax and to the treasurers of the respective municipalities in the County in the case of the municipal tax.

Section 7. Disbursement of Vehicle Tax Revenues. 76-2307

In the case of the County tax, the County Treasurer, not later than the tenth day next following the end of each calendar month, shall distribute the revenues so received by him as follows:

(a) Each municipality shall receive (by deposit with the

municipal treasurer) the full amount paid by taxpayers residing, at the time of payment, as reflected by the address of the taxpayer on the receipt referred to in Section 5 (§ 76-2305) of this Act, within the corporate limits of said municipality.

(b) The County shall receive the full amount paid by taxpayers residing, at the time of payment, as reflected by the address of the taxpayer on the receipt referred to in Section 5 (§ 76-2305) of this Act, in the County but outside of the corporate limits of any municipality in the County. Except in the case of the issuance of bonds, as hereafter provided, proceeds of the vehicle tax shall be handled as follows: (1) proceeds of the vehicle tax received by the County Treasurer shall be credited to the County Highway Fund, there to be used for the maintenance, construction and reconstruction of roads, bridges and other public ways in the County highway system; provided, that the County Treasurer shall be entitled to a commission of two percent (2%) for handling such funds; (2) proceeds of the tax received by the treasurer of each municipality from collections pursuant to the levy by the County Quorum Court shall be credited to the Street Fund, there to be used for the maintenance, construction and reconstruction of streets and other public ways in the municipality; and (3) proceeds received from a levy made directly by the governing body of a municipality, pursuant to the authority and subject to

the conditions set forth in this Act (§§ 76-2301-76-2314), shall be credited by the treasurer of the municipality to the Street Fund, there to be used for the maintenance, construction and reconstruction of streets and other public ways in the municipality. All vehicle tax revenues received by the County and the municipality shall be revenues of the year in which received by the respective treasurers thereof.

Section 8. Authority of Counties and Municipalities to Issue Revenue Bonds for Construction and Reconstruction of Roads-Procedure. 76-2308

(a) Counties and municipalities are hereby authorized to issue revenue bonds and to use the proceeds thereof either alone or together with other available funds and revenues for, in the case of the counties, the construction and reconstruction of roads, bridges and other public ways in the County Highway System, including, without limitation, the acquisition of rights of way, and, in the case of municipalities, the construction and reconstruction of streets and other public ways in the municipality, including, without limitation, the acquisition of rights of way, and, in either case, to pay necessary incidental expenses, to pay the expenses of the bonds, and to provide for interest on bonds until revenues are available for the

payment thereof. The issuance of revenue bonds shall be by ordinance in the case of a municipality and by order of the County Court in the case of a County. Revenue bonds may be issued only with the approval of a majority of the qualified electors of the municipality or county voting at an election called for that purpose. An election on the question of issuing revenue bonds shall be held at such time as the governing body of the municipality or the County Court of a county shall designate by ordinance or order. Such ordinance or order shall specifically state the purpose for which the bonds are to be issued, the total amount of the issue, and the date upon which the election is to be held, which date shall not occur earlier than thirty (30) days after the passage of said ordinance or the entering of said order. The election shall be held and conducted, the vote canvassed and the results declared in the manner now and hereafter provided for municipal or county election, so far as the same may be applicable, except as herein otherwise provided. Notice of the election shall be given by the governing body of the municipality or the county in a newspaper of general circulation within the municipality or county once a week for four (4) consecutive weeks, with the last publication to be not less than ten (10)

days prior to the date of said election. Only qualified electors of the municipality or county shall have a right to vote at said election and the results of the election shall be proclaimed by the governing body of the municipality or county, and shall be conclusive unless attacked in the courts within thirty (30) days after the date of such proclamation.

(b) The bonds may be coupon bonds, payable to bearer, or may be made registrable as to principal only with interest coupons, or may be made registrable as to both principal and interest without coupons, and may be made exchangeable into bonds of another denomination, which bonds of another denomination may in turn be either coupon bonds payable to bearer, or coupon bonds registrable as to principal only, or bonds registrable as to both principal and interest without coupons; may be in such form and denomination; may have such date or dates; may be stated to mature at such times; may bear interest payable at such times and at such rate or rates; may be made payable at such places within or without the State of Arkansas; may be made subject to such terms of redemption in advance of maturity at such prices; and may contain such terms and conditions, all as the County Court, in the case of bonds issued by a County, and the governing body of the municipality, in the case of bonds issued by a municipality, shall determine.

(c) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration of ownership, as set forth above.

(d) The bonds may be issued in one or more series, and there may be successive bond issues for the purpose of accomplishing the authorized purposes, subject, however, to the provisions and restrictions set forth in the authorizing order or ordinance, as the case may be, controlling priority between and among issues and successive issues as to security. The order or ordinance may provide for the execution by the County or municipality of an indenture which, among other matters, defines the rights of the bond holders and provides for the appointment of a trustee for the bond holders. Such indenture may control the priority between and among issues and successive issues and may contain any other terms, covenants and conditions that are deemed desirable, including, without limitation, those pertaining to the custody and application of the proceeds of the bonds, the disposition of pledged revenues, the maintenance of various funds and reserves, the nature and extent of the security, the rights, duties and obligations of the County or the municipality and the trustee for the holders and registered owners of the bonds, and the rights

of the holders and registered owners of the bonds. In the event the County Court of the County or the governing body of the municipality, as the case may be, determines that an indenture is not necessary or desirable, then the details set forth above which may be included in the indenture may, in lieu of the indenture, be included in the authorizing order of the County Court or the authorizing ordinance of the municipality, as the case may be.

(e) It shall not be necessary for any municipality to publish any indenture if the ordinance authorizing the indenture is published as required by law governing the publication of ordinances of a municipality and the ordinance advises that a copy of the indenture is on file in the office of the clerk or recorder of the municipality for inspection by any interested person and the copy of the indenture is filed with the clerk or recorder of the municipality.

Section 9. Sale of Bonds-Terms and Conditions-Rate of Interest. 76-2309

All bonds issued under this Act (§§ 76-2301 - 76-2314) may be sold for such price, including, without limitation, sale without discount, and in such manner as the County or municipality may determine, but in no event shall the County or the municipality be

required to pay more than four and one-half percent (4½%) interest on the amount received, computed with relation to the absolute maturity of the bonds in accordance with the standard tables of bond values. The bonds may be sold with the privilege of conversion into an issue bearing a lower rate or rates of interest, upon such terms and conditions as the County or municipality shall determine, but each such determination shall include the condition that the County or municipality receive no less and pay no more than it would receive and pay if the bonds were not converted, and the conversion shall be subject to the approval of the County Court in the case of bonds issued by the County and to the approval of the governing body of the municipality in the case of bonds issued by the municipality.

Section 10. Execution of Bonds-Signatures. 76-2310

Bonds shall be executed by the manual or facsimile signature of the County Judge and by the manual signature of the County Clerk in the case of County bonds, and by the manual or facsimile signature of the mayor and the manual signature of the Clerk or Recorder in the case of bonds issued by a municipality, and coupons attached to the bonds shall be executed by the facsimile signature of the County Judge in the case of bonds issued by a County and by the facsimile

signature of the Mayor in the case of bonds issued by a municipality. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds or coupons, such signatures shall nevertheless be valid and sufficient for all purposes.

Section 11. Bonds Not General Obligations-Provisions for Payment of Principal and Interest. 76-2311

(a) Revenue bonds issued under this Act (§§ 76-2301 - 76-2314) shall not be general obligations of the County or of the municipality, but shall be special obligations, and in no event shall the revenue bonds issued hereunder constitute an indebtedness of the County or the municipality within the meaning of any constitutional or statutory limitation. It shall be plainly stated on the face of each bond that the same has been issued under the provisions of this Act, and that it does not constitute an indebtedness of the County or municipality within any constitutional or statutory limitation.

(b) The principal of and interest on the revenue bonds shall be payable from the net revenues derived from collections of the vehicle tax. Net revenues are hereby defined as the revenues which are available to the County Treasurer and the municipal treasurer after payment of the cost of duplicate receipts, windshield

stickers or other types of identification attached to vehicles as required hereunder, and payment of collector's commissions, all as in this Act above specified. In this regard, provision may be made for the depositing of said net revenues in a special trust fund to be used for no other purpose than as specified in the authorizing Order of the County Court or the authorizing ordinance of the municipality.

(c) Provision may be made in said authorizing order or said authorizing ordinance, or in any indenture provided for therein, for the pledging of all or a specified portion of the proceeds of said net revenues to a particular bond issue, with or without provision for subsequent issues payable from said net revenues on such terms and pursuant to such conditions as may be specified, or a specified portion of said net revenues may be set aside for a particular bond issue, with that bond issue having no call or pledge on the remaining portion of said net revenues which shall then be available for the purposes authorized by this Act or for the pledging to subsequent bond issues.

(d) Once any bonds are issued by a County or by a municipality then the tax, the net revenues of which are pledged to said bonds,

shall constitute and be deemed to be a continuing annual tax which shall not and cannot be made to terminate and which must be collected each year thereafter, without the necessity for any further or additional action by the levying body, for as long as shall be necessary to pay in full, the entire principal of and interest on all revenue bonds issued hereunder to the payment of which said revenues are pledged. In this regard, however, if a municipality has issued bonds and pledged thereto the revenues received by it under Section 7 (a) (§ 76-2307) hereof, the vehicle tax levied by the County shall be a continuing annual tax only in the municipality or municipalities that have pledged the revenues to bonds to the extent of the pledge and if the County Quorum Court does not levy the County tax for any year thereafter, the continuing annual tax applicable to a municipality shall ipso facto become a municipal tax to be collected and handled under the applicable provisions of this Act as though levied by the municipality hereunder.

Section 12. Refunding Bonds May Be Issued-Status of Refunding Bonds. 76-2312

(a) Revenue bonds may be issued hereunder for the purpose of refunding any obligations issued hereunder. Such refunding bonds may be combined into a single issue with bonds issued under the provisions of this Act (§§ 76-2301 - 76-2314) for the purpose of providing funds

for financing additional construction and reconstruction work above specified. When bonds are issued for refunding purposes, such refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may be either applied to the payment of the bonds being refunded or deposited in escrow for the retirement thereof.

(b) All bonds issued under this section shall in all respects be authorized, issued and secured in the manner provided for other bonds issued under this Act and shall have all the attributes of such bonds. The order or ordinance under which such refunding bonds are issued may provide that any of the said refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

Section 13. Bonds and Interest Exempt From State Taxes-Legal Investments. 76-2313

Interest on all bonds issued under this Act (§§ 76-2301 - 76-2314) shall be exempt from State Income Taxes and the principal thereof shall be exempt from State Inheritance and Estate Taxes. The bonds shall be eligible to secure deposits of all public funds, and shall be legal for the investment of bank, fiduciary, insurance company and trust funds.

Section 14. Construction of Act. 76-2314

This Act (§§ 76-2301 - 76-2314) shall be liberally construed to accomplish the purposes hereof. (See also Article III and Article IV, Section 3, of this Chapter.)

Section 15. Additional Uses of Vehicle Tax Authorized. 76-2315

Any county or municipality levying a motor vehicle tax as authorized in Act 446 of 1965 (§§ 76-2301 - 76-2314), as amended, may in addition to the uses authorized in said Act, use revenues derived from such tax for the purpose of providing ambulance services in such county or municipality, and for purchasing fire fighting equipment, and for providing municipal parks.

Section 16. Municipalities May Not Tax Motor Vehicle Carriers. 73-1729

No city or town shall impose any tax or license upon any motor vehicle carrier licensed under the provisions of this act.

ARTICLE VI. REVENUE BONDS FOR CONSTRUCTION OF BRIDGES AND FERRIES ON THE STATE HIGHWAY SYSTEM.

Section 1. Revenue Bonds for Construction of Bridges and Ferries-Definitions. 76-617

The following terms, when used in this Act (§§ 76-617 - 76-633), shall have the following meanings, unless the context clearly requires otherwise:

(a) "Commission" shall mean the State Highway Commission of the State of Arkansas; Acts 1953, No. 104

(b) "Construction" and "Constructing" when said with reference to ferry shall include the term "purchase" and "purchasing", respectively;

(c) "Revenue" shall mean revenue or income derived solely from tolls, rents, fees and other charges imposed by the Commission for services rendered by a bridge constructed or reconstructed, or by a ferry constructed, under the provisions of this act, and shall not be deemed in any event to include any revenues or funds of the State of Arkansas;

(d) "General Bridge Authority Act" has reference to Title 33, USCA, Sections 525ff (F. C. A., tit. 33, §§ 525-533).

Section 2. Authority to Issue Bonds - Use of Funds. 76-618

Whenever the Commission shall determine, on the basis of a traffic and engineering survey, that the public convenience and necessity require the construction or reconstruction of a bridge, or the construction of a ferry, to facilitate interstate or intrastate traffic, the construction or reconstruction of which bridge, or the construction of which ferry, will entail expense in an amount found by the Commission to hinder and retard highway construction within the State, the Commission is authorized to issue bonds to be known as "State Highway_____ River

Bridge (Ferry) Revenue Construction Bonds". The proceeds of such bonds shall be paid into the State Treasury to the credit of the State Highway Bridge Revenue Construction Fund, which fund is hereby created, to the credit of the State Highway_____ River Bridge (Ferry), and shall be used, in addition to any other available funds, for paying the cost of construction and reconstruction of any such bridge, and the acquisition, construction and reconstruction of approaches thereto, or for paying the costs of constructing any such ferry and the acquisition and construction of approaches thereto, except that the accrued interest paid when the bonds are delivered shall be credited to the sinking fund provided by the Commission for the payment of the principal of and interest on the said bonds and the fiscal agency charges in connection therewith. Such costs of construction and reconstruction and acquisition of approaches shall be deemed to include the costs of such construction, reconstruction and acquisition; the costs of all property, rights, easements, and franchises deemed necessary or convenient therefor; interest upon the bonds prior to and during the construction, reconstruction, or acquisition and for twelve (12) months after completion thereof; engineering

and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the construction, reconstruction, or acquisition, and administrative expenses; and such other expenses as may be necessary or incidental to the financing herein authorized.

Section 3. Form of Bonds-Issuance of Temporary Bonds-Negotiable Instruments-Seal. 76-619

The bonds shall be in such form and denominations; shall have such dates and maturities not exceeding forty (40) years from their date; shall bear interest payable at such times and at such rates; shall be payable at such places within or without the State; shall contain such provisions as to registration of ownership, if it thinks registration is desirable, all as the Commission shall determine. The bonds shall be signed with the facsimile or lithographed signature of the Chairman of the Commission, and by the manual signature of the Secretary of the Commission. The coupons attached thereto shall be signed with the facsimile or lithographed signature of the Chairman of the Commission. The delivery of the bonds so executed shall be valid, notwithstanding any change in such officers occurring after their execution. Temporary notes or bonds conform- Acts 1953, No. 104, 1957, No. 15

ing to this Act (§§ 76-617 - 76-633), exchangeable for definitive bonds, may be issued in the discretion of the Commission. All such bonds and notes issued under the provisions of this act shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the negotiable instruments law of the State. The Commission is authorized to adopt and use a seal in the execution and issuance of bonds authorized under the provisions of this Act.

Section 4. Redemption Before Maturity. 76-620

All bonds issued under the provisions of this Act (§§ 76-617 - 76-633) maturing on and after ten (10) years from their date may, in the discretion of the Commission, contain a provision authorizing their redemption before maturity at the option of the Commission in such manner as it may elect at par plus accrued interest, upon notice published for one (1) insertion not more than sixty (60) days and not later than thirty (30) days before the date of such redemption in a newspaper of general circulation published in the City of Little Rock, Arkansas, and in a financial journal published in the Borough of Manhattan, City and State of New York.

Section 5. Sale at One Time or In Installments-Investment in Federal or State Obligations. 76-621

The Commission is authorized to sell all the bonds of each issue issuable under this Act (§§ 76-617 - 76-633) at one time, or it may from time to time sell installments of the bonds of each issue in principal amounts to be determined by the Commission. The bonds of each issue may be delivered all at one time, or from time to time. The Commission is further authorized to invest such portions of the proceeds from the sale of the bonds, as in its judgment may not be required for immediate use, in direct general obligations of the United States of America or of the State of Arkansas. Acts 1953, No. 104; 1957, No. 15

Section 6. Sale of Bonds-Conversion-Fiscal Agents-Tax Exemption. 76-622

All bond sales shall be public on sealed bids, after notice published by the Commission's Secretary for one (1) insertion not more than thirty (30) days, nor less than fifteen (15) days before the date of such sale, in the news mediums specified in section 4 (§ 76-620) of this Act; provided, however, this requirement shall not apply to a sale of bonds made to an agent or instrumentality of the United States Government including corporations, the capital stock of which is subscribed by the United States Government. Acts 1953, No. 104; 1957, No. 15.

Bonds may be sold at less than par, and the bonds of each issue, as sold, may be converted into an issue of bonds bearing a lower rate or rates of interest, but only on the condition that the Commission receive no less and pay no more than it would have received and paid if the bonds had not been converted, and on the condition that the conversion be approved by the Commission. In no event, however, shall the Commission be required to pay more than six percent (6%) interest on the amount received for bonds sold under the provisions of this Act (§§ 76-617 - 76-633), computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values. The Commission shall have the right to refuse any and all bids. The Commission may employ one (1) or more fiscal agents for the sale of the bonds and pay a reasonable fee for the services of such agent or agents.

The bonds issued under this Act shall be exempt from the state income taxes.

Section 7. Sinking Fund for Payment of Bonds. 76-623

At or before the issuance of any such bonds, the Commission shall by resolution provide for a sinking fund for the payment of

the principal of the bonds and the interest thereon, and the payment of the charges of banks or trust companies for making payment of such principal and interest, and shall set aside and pledge a sufficient amount of the gross revenues of the bridge or ferry to be paid by the Commission into said sinking fund at intervals to be determined by the resolution of the Commission prior to the issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due, (b) the necessary fiscal agency charges for paying principal and interest, (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time, and (d) a margin for safety.

Section 8. Operation and Maintenance Fund. 76-624

All revenues of the bridge or ferry not required under the provisions of this Act (§§ 76-617 - 76-633) to be paid into the sinking fund provided in the resolution authorizing the issuance of bonds shall be paid into an operation and maintenance fund and be used by the Commission in the operation and maintenance of the bridge or ferry; provided, however, that all moneys in

any such operation and maintenance fund in excess of an amount deemed by the Commission sufficient for operation and maintenance for an ensuing period of not less than twelve (12) months shall be paid into the sinking fund.

Section 9. Tolls, Rates, and Fees. 76-625

The Commission is hereby authorized, and it shall be its duty, by resolution to establish, maintain, and collect just and equitable tolls, rates, fees and other charges for the use of, and the services rendered by such bridge or ferry; and the Commission may change and readjust such tolls, rates, fees and other charges from time to time to such extent as will not render insecure the rights of the holders of revenues bonds, or violate any sinking fund agreement, or other lawful agreements, with such bondholders. Such tolls, rates, fees and other charges shall be sufficient in each year for the payment of the sums herein required to be paid into the sinking fund and for the payment of the proper and reasonable expenses of operation and maintenance of the bridge or ferry, and of the approaches thereto. Revenues collected pursuant to this section shall be deemed the revenues of the bridge or ferry. The aggregate of tolls, rents, fees, and other charges shall always be sufficient for such sinking-fund payments, and for such expenses of operation

and maintenance. If there be default in the payment of the principal of and/or interest upon any of said bonds issued under the provisions of this Act (§§ 76-617 - 76-633), any court having jurisdiction in any proper action may appoint a receiver to operate and manage said bridge or ferry on behalf of the Commission, with power to charge and collect tolls, rents, fees and other charges sufficient to provide for the payment of said bonds and interest thereon, and for the payment of the operating expenses and to apply the income and the revenues in conformity with this Act, and the resolution providing for the issuance of such bonds.

Section 10. Bonds Payable Solely from Bridge or Ferry Revenues. 76-626

Bonds issued under the provisions of this Act (§§ 76-617 - 76-633) shall be payable solely from the revenues derived from such bridge or ferry, and such bonds shall not in any event constitute an indebtedness of the State of Arkansas within the meaning of the constitutional provisions or limitations, and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this Act and that it does not constitute an indebtedness of the State of Arkansas within any constitutional or statutory limitation.

Section 11. Additional Bond Issues-Equality. 76-627

The Commission may provide in its resolution authorizing the issuance of the bonds, or in the trust indenture executed in connection therewith, that additional bonds may thereafter be authorized and issued, at one time, or from time to time, when necessary for the completion of the construction or reconstruction of any such bridge, and the acquisition, construction and reconstruction of approaches thereto, or for the completion of the construction of any such ferry and the acquisition and construction of approaches thereto; and such additional bonds will be secured and be payable from the revenues of the said bridge or ferry equally with all other bonds issued pursuant to said resolution, without preference or distinction between any one bond and any other bond by reason of priority of issuance or otherwise.

Section 12. Right of Eminent Domain. 76-628

For the purpose of acquiring any land, rights, easements, franchises, or other property, real or personal, deemed to be necessary or convenient for the construction and reconstruction of any such bridge or ferry, or for the acquisition of the approaches thereto, the Commission shall have the right of eminent domain, as is provided in Sections 76-518 to 76-521, Ark.Stats.

Section 13. Act is Full Authority for Acquisition, Construction and Issuance of Bonds. 76-629

This Act (§§ 76-617 - 76-633) shall, without reference to any other statute, be deemed full authority for the construction or reconstruction of any such bridge, and the acquisition, construction and reconstruction of approaches thereto, for the operation and maintenance thereof, and for the construction of any such ferry, and the acquisition and construction of approaches thereto, for the operation and maintenance thereof, and for the issuance and sale of the bonds of this Act authorized, and shall be construed as an additional and alternative method therefor and for the financing thereof, and no petition or election, or other or further proceeding in respect to such construction, reconstruction and acquisition, or to the issuance or sale of bonds under this act, and no publication of any resolution, notice, or proceeding relating to such construction, reconstruction, or acquisition or sale of such bonds shall be required except such as are prescribed by this Act, any provision of other statutes of the State to the contrary notwithstanding.

Section 14. Contracts with United States or Agencies of Other States. 76-630

For the purpose of carrying into effect the objects and purposes of this Act (§§ 76-617 - 76-633), the Commission shall have full

power and authority to negotiate and enter into contract or contracts with the United States of America and any of its agencies, and with the State Highway Commission or other comparable authority of any adjoining state where said bridge or ferry, or the approaches thereto, may be located, and to contract for the joint ownership of any such bridge or ferry and the approaches thereto, and the means and manner of operating and maintaining said bridge or ferry and the approaches thereto.

Section 15. No Rights Arise Until Bonds Issued and Sold. 76-631

This Act (§§ 76-617 - 76-633) shall not create any right of any character, and no right of any character shall arise under or pursuant to it unless and until the bonds authorized by this Act have been issued and actually sold by the Commission.

Section 16. Bridges and Ferries Subject to Federal Law. 76-632

All interstate bridges constructed or reconstructed under the terms of this Act (§§ 76-617 - 76-633), and all tolls, rents, fees and other charges established for services rendered by such bridge or ferry shall be subject and conform to the terms and provisions of the Act of Congress known as "General Bridge Authority Act",

approved August 2, 1946, and any act amendatory thereto.

Section 17. Liberal Construction. 76-633

This Act (§§ 76-617 - 76-633) shall be liberally construed to effectuate the purposes thereof.

ARTICLE VII. TURNPIKE AND TOLLWAY FINANCE

Section 1. See pertinent Sections of this Code in

CHAPTER 14. ARKANSAS TURNPIKE AUTHORITY 76-2401/2424

CHAPTER 15. MUNICIPAL TOLLWAYS AUTHORITIES 76-261 et seq.

CHAPTER 11. ACCESS AND LAND USE CONTROL 11-1

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Proposed Code

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Chapter 11. ACCESS AND LAND USE CONTROL.

Article I. Access Control.

In order to assure the safe and efficient use and the orderly appearance of State Highways, the General Assembly finds that it is necessary and in the best interests of the public to plan, regulate, and protect the roadsides through the imposition of reasonable disciplines upon the right of access from the roadside to the public right-of-way.

This is new.

Section 1. Definitions.

(a) Controlled-Access Facility. For the purposes of this Chapter, a controlled-access facility is any highway, street, road, freeway, expressway, arterial parkway, or other thoroughfare on which the traffic is such that the State Highway Commission has found, determined, and declared it to be necessary, in the interest of the public safety, convenience, and general welfare, to prohibit entrance upon and departure from the facility except at places specially designated and provided for such purposes.

This replaces Ark. Stat. § 76-2202 and adds a definition of frontage road, which is new and considered necessary for purposes of clarity.

(b) Frontage Road. Frontage road means a way, road, or street which is auxiliary to and located on the side of another highway, road, or street for service to abutting property and adjacent areas and for the control of access to such other highway, road, or street.

Section 2. Abutting Owners.

This replaces part of Ark. Stat. § 76-2202.

After the designation of a controlled-access facility, the owners or occupants of abutting lands shall have no right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason, except only the regulated right of access.

Section 3. Authority to Establish Controlled-Access Facilities.

This replaces Ark. Stat. §§ 76-2203 and the first sentence in Ark. Stat. § 76-2207.

The State Highway Commission, hereinafter called the Commission, may designate, establish, abandon, improve, construct, maintain, and regulate controlled-access facilities wherever the Commission

determines that traffic conditions, present or future, justify such controlled-access facilities or the abandonment thereof, and may include therein existing streets or highways.

Section 4. Authority to Regulate Traffic.

The Commission is authorized to so design any controlled-access facility and to so regulate, restrict, or prohibit access as best to serve the traffic for which such facility is intended. In this connection, the Commission may divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, or stripes, and the proper lane for such traffice by appropriate signs, markers, stripes, and other devices, and to erect, maintain, and abandon fences, signals, traffic-control

This replaces Ark. Stat. § 76-2204, and has been expanded.

devices, or other appurtenances along the right-of-way of any controlled-access facility. No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time.

This replaces Ark. Stat. §§ 76-2207.

Section 5. Elimination of Intersections.

The Commission shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing highways, roads, and streets, by grade separation or frontage road, or by closing off such roads and streets at the right-of-way boundary line of such controlled-access facility; and after the establishment of any controlled-access facility, no highway, road, or street which is not a part of said facility shall intersect the same at grade. No highway, road, or street or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the Commission.

Section 6. Jurisdiction over Frontage Roads.

Ark. Stat. § 76-2209 is replaced by this section.

In connection with development of any controlled-access facility, the Commission is authorized to plan, design, establish, use, regulate, alter, improve, maintain, and vacate frontage roads or to designate as frontage roads any existing way, road, street, or facility in and connection therewith, and to exercise jurisdiction over frontage roads in the same manner as authorized over controlled-access facilities if, in its opinion, such frontage roads are necessary or desirable. Such frontage roads shall be of appropriate design and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the Commission.

Section 7. Access to Other Highways.

This is a new section.

The Commission shall adopt and publish rules and regulations allowing reasonable access from abutting property to the State Highway System, hereinafter called the System, without causing undue hardship to an abutting land-user or hazard to road-users. The rules and regulations adopted shall have the force and effect of law and shall govern such reasonable access to all highways,

roads, and streets under the jurisdiction of the Commission, except those designated as fully controlled-access facilities to which direct access is denied.

It shall be the intent of these rules and regulations to establish design standards whereby orderly and safe movements of traffic in and out of private properties may be made within ways which will constitute a minimum interference and hazard to highway traffic; and to regulate the use of drainage structures and/or other appurtenances necessary to preserve the physical structure of the highways.

Article II. Control of Rights-of-Way.

The rights-of-way provided for the System shall be held inviolate for their essential purposes, except as hereinafter provided, and no physical or funcational encroachments, installations, signs other than uniform traffic-control signs and devices, posters, billboards, roadside stands, motor fuels pumps, or other structures or uses shall be permitted within the right-of-way limits; except that political subdivisions, rural electric cooperatives, rural telephone cooperatives, public utilities, and private utilities of the State may use any right-of-way or land, property, or interest therein for the purpose of laying, constructing, or erecting pipelines, sewers, wires, poles, ditches, railways, or any other purpose in accord with the provisions of this Code, under existing agreements or permits, or such agreements or permits hereinafter made, or under existing laws, provided such use does not interfere with the public use of such property for highway purposes.

Section 1. Limitation on Use of Rights-of-Way.

Except as provided herein, no physical or functional encroachments, structures, or uses of any type, including commercial

This is new. In the statutory compilation, we listed "Use of Highways by Public Utilities" as a separate chapter. There is not enough law on this, either presently existing or necessitated, for it to constitute a separate chapter. We have therefore included it here as an article under this chapter. This article prepetuates Ark. Stat. Sec. 76-544 and 76-2211 but rewords and enlarges them. The first statute was considered under eminent domain but it is not appropriate to place this article under eminent domain. Section 1 excludes encroachments, etc., which are not covered hereunder. From a practical

enterprises or activities, shall be permitted on, above, or below highway rights-of-way. Any improper use of highway rights-of-way or facility shall constitute trespass and the offender may be assessed damages therefor; and any person negligently damaging any element or appurtenance of the rights-of-way or facility shall be liable therefor.

Section 2. Use by Utilities, Cooperatives, and Other Public Agencies.

Public or private utilities, rural utility cooperatives, Rural Electification Administration, and governmental subdivisions or agencies, whether federal, state, or local, may be permitted to use or encroach upon the rights-fo-way of any State Highway for specified public or quasi-public purposes by obtaining a written permit from the Commission or by entering into written agreements

standpoint, however, if the AHD wished to "permit" a non-conforming use of or encroachment on the right-of-way (such as that by a private individual or corporation) by simply not requiring removal of same, it could do so. If the AHD does not protest, who would? The words, "on, above, or below" make this provision applicable to interference with the air space over a right-of-way. This section and those which follow would supersede Ark. Stat. Secs. 35-301, 35-601, 35-913, 73-1801, and 76-544, insofar as highway, road, or street rights-of-way were concerned. However, as per committee recommendation, those statutes would remain

with the Commission upon such terms and conditions as the Commission may view as reasonable under the circumstances and upon the terms and conditions expressly provided for herein.

unrepealed and would still have applicability to the extent to which they are not superseded hereby.

Section 3. Required Terms and Conditions.

In addition to such reasonable rules, regulations, terms, or conditions as the Commission may choose to adopt or require with regard to the erection of encroachments, structures, or other property on, above, or below, or excavation of or use of the state highway right-of-way, the following terms and conditions shall be mandatory and shall be a part of every permit or agreement concerning right-of-way usage, whether or not expressed in such permit or agreement:

This is new. The Commission may require such reasonable rules, regulations, etc., as it may choose, but this statute provides for some specific terms and conditions which are deemed essential. These automatically become a part of every permit whether expressed or not.

a. Occupancy, use of, or the erection of encroachments, structures, or other property on, above, or below, or the excavation of any state highway right-of-way, when permitted hereunder, shall be at the sufferance of the Commission; and upon receipt of written notice thereof, the utility, cooperative, or governmental subdivision or agency occupying or using said right-of-way shall,

within ninety (90) days of notice of termination of such permit, cease such occupancy or use and remove any encroachment, structure, or property, whether on, under, or above the right-of-way, at the expense of said utility, cooperative, or governmental subdivision and without compensation from the Commission.

b. In the event notice is given in the manner described in Subsection a, but the utility, cooperative, or governmental subdivision involved shall fail or refuse to cease such occupancy or use and to remove therefrom or relocate any and all of its encroachments, structures, or property and restore said right-of-way at its expense within the prescribed period, the Commission may proceed to terminate such use and occupancy by removal or relocation of the encroachments and restoration of said right-of-way, and the said utility, cooperative, or governmental subdivision shall be liable for the actual cost and expense of such removal or relocation and restoration and shall reimburse the Commission for this amount plus an additional $100.00 per day penalty for each day in excess of the period specified hereinabove until such removal or relocation and restoration has been effected.

c. No encroachment or structure or other such property placed on, above, or below any right-of-way shall in any manner obstruct, impede, or interfere with the use of the state highway right-of-way; provided, however, that in the construction of such encroachment, structure, or other property, or in the placement of any necessary lines, wires, poles, pipes, cables, or any other structures or appurtenances thereto, the Commission may temporarily close such highway and re-route traffic until such construction or the placement of any necessary lines, wires, poles, pipes, cables, or any other structures or appurtenances thereto has been concluded. All costs incidental to such obstruction, impedence, or interference shall be borne by the permittee.

d. Because the construction or erection of such encroachments, structures, or other such property, or the placement of lines, wires, poles, pipes, cables, or any other structure or appurtenance thereto, on, above, or below any state highway right-of-way constitutes a gratuity for which no compensation will be paid to the Commission by the utility, cooperative, or governmental subdivision involved, there shall be no compensation due from the Commission to the utility, cooperative,

See Ark. Stats. Sec. 76-546. The committee recommended that the owner bear the removal expense.

or governmental subdivision in the event removal thereof is required in the manner provided hereunder.

e. If any damage to a state highway right-of-way should result from the construction or erection thereon of encroachments, structures, or other property, or the placement of lines, wires, poles, pipes, cables, or any other structures or appurtenances thereto, the utility, cooperative, or governmental subdivision involved shall reimburse and compensate the Commission for the actual damage, or, in lieu thereof, such utility, cooperative, or governmental subdivision shall itself repair and restore such right-of-way in a manner satisfactory to the Commission.

f. Following the construction or erection thereon of encroachments, structures, or other property, or the placement of lines, wires, poles, pipes, cables, or any other structures or appurtenances thereto, pursuant to this Code, the utility, cooperative, or governmental subdivision performing such construction or erection shall restore the right-of-way to a condition satisfactory to the Commission.

Section 4. Deposit May be Required.

The Commission may, prior to beginning any construction or excavation on, above, or below the state highway right-of-way, require the person, firm, partnership, corporation, or governmental subdivision involved to deposit a bond, cashier's or certified check, or cash, which shall be refunded if the work is performed according to the specifications of the Commission and in the manner prescribed by law; and if all damages are paid for or otherwise provided for, and the right-of-way is restored to a condition satisfactory to the Commission; and which deposit may be applied to reduce any damages or to compensate the Commission for any expenses resulting from such construction or excavation if the aforesaid conditions are not met.

This section is in line with committee recommendations that a deposit be or might be required. This leaves it up to the owner.

Section 5. Inspection Fee May be Required.

Prior to granting a permit hereunder, the Commission may require an inspection or permit fee of a reasonable amount not to exceed Fifty Dollars ($50.00) to defray the actual

This section is necessitated in order that the inspection fee will not be deemed to be actual payment for the encroachment

cost and expense incurred by the Commission in inspecting the right-of-way before, during, and after the utility construction and in the preparation and issuance of such permit; and such fee shall not constitute payment for the privilege of use of such right-of-way, nor amount to the purchase of any legal or equitable interest therein.

(thereby constituting an equitable interest in the land).

Section 6. Excavation or Construction Unlawful Without Authorization.

This replaces Ark. Stats. Sec. 76-531, which will be repealed.

It shall be unlawful for any person, firm, partnership, corporation, or cooperative to construct or erect encroachments, structures, or other property on, above, or under, or to place lines, wires, poles, pipes, cables, or any other structures or appurtenances thereto, on, above, or under, or to excavate or otherwise use, any state highway right-of-way without the authorization and written consent of the Commission as herein provided or as otherwise provided by law. Violations of this provision shall result in a fine of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000.00) and the payment of actual damages for the removal of any encroachments, structures, or

other such property, lines, wires, poles, pipes, cables, or any other structures or appurtenances thereto and for the restoration of the right-of-way to a condition satisfactory to the Commission.

Section 7. Existing Utility Facilities Lawful.

Existing utility facilities, consisting of lines, wires, poles, pipes, cables, or any other structures or appurtenances thereto, placed or situated on state highway rights-of-way prior to the effective date of this Article without the written consent or permission of but by the sufference of the Commission, if otherwise conforming to existing law and regulations at the time of placement shall not be in violation of this Code nor subject to its penalties; provided, however, that the owner of such utility facilities shall secure the written consent or permission of the Commission prior to performing additional excavation or construction in connection with such utility facilities on the state highway right-of-way upon which such existing utility facilities are located. Any permit so issued shall cover both the proposed excavation or construction and the existing facilities connecting thereto and occupying the existing right-of-way.

Such permit applicant shall not be required by the Commission to make any deposit nor pay an inspection fee, except as appropriate to cover the additional excavation or construction work to be done. Failure to make such application for a permit when additional work is to be performed shall constitute sufficient grounds for denial by the Commission of such additional use and occupancy of the state highway right-of-way.

Section 8. Unlawful to Reimburse for Adjustment, Relocation or Rearrangement of Utility Facilities.

The Commission shall not reimburse for the adjustment, relocation, or rearrangement of utility facilities located on lands, property interest or rights-of-way owned by the Commission when such use and occupancy of the right-of-way by the utility is by permission or sufferance of the Commission.

CHAPTER 12. FEDERAL AID

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CHAPTER 12. FEDERAL AID.

Section 1. Assent to Federal Aid.

The State of Arkansas and the General Assembly of the State of Arkansas hereby assent to all the provisions of Title 23, United States Code Annotated, relating to Federal Aid for highway, road, and street purposes, together with all Acts amendatory and supplemental thereto.

To assure Arkansas full ability to participate in benefits made available by Federal-aid legislation, the present State law governing this matter has been analyzed in light of current provisions of the Federal statutes and has been revised to eliminate outmoded matter and make the present structure current. Ark. 76-522, 76-201.5 (c).

Section 2. Authority of the Commission.

The State Highway Commission is hereby authorized:

(1) To enter into all contracts and agreements with the United States Government relating to the construction of Federal-aid highways.

(2) To submit programs for the construction of Federal-aid highways as may be required.

(3) To take all actions necessary to carry out the cooperation contemplated and provided for by the Federal-aid Highway Acts, and specifically to do all things necessary to secure the full benefits of all apportionments to the State for Federal-aid construction.

Section 3. The Federal-aid Systems

a. The National System of Interstate and Defense Highways is that portion of the Arkansas State Highway System of highest importance to the Nation, which connects the principal urban areas and cities, including important routes into, through, and around urban areas. All interstate routes automatically become a part of the Federal-aid primary system. The system is designated by the Arkansas State Highway Department and approved by the Federal Highway Administrator.

b. The Federal-aid primary highway system is that portion of the Arkansas State Highway System that consists of routes of the National System of Interstate and Defense Highways and other important routes, with their urban extensions. The system is designated by the Arkansas State Highway Department and approved by the Federal Highway Administrator.

c. The Federal-aid secondary highway system consists of the principal secondary and feeder routes in rural and urban areas. Portions of the system are located on the State Highway System and portions on the County Road System. It is designated by the State Highway Department and the appropriate local road officials, in cooperation with each other and approved by the Federal Highway Administrator.

New

Coordinating the State Systems and the Federal-aid Systems to comply with Federal legislation.

Sec. 103, Chapter I, Title 23.

This section follows the recommendations made in the Classification report entitled "The System Plan" to insure full use of Federal funds for construction.

Section 4. Administration for Federal aid

a. The State Treasurer is hereby designated as the proper authority of the State of Arkansas to receive any amount heretofore paid and not disbursed or hereafter paid by the United States Government for the improvement of roads in Arkansas. Any and all money so received shall be credited to the State Highway Department Fund.

Modification of Ark. Stat. 76-522 to conform with Federal statute and its requirements.
See Sec. 121(e) of Chapter 1, Vol. 1 Title 23, U.S. Code

b. The State Highway Department is hereby authorized to furnish without cost to the counties, plans and engineering services necessary on county contracts for Federal-aid road projects, and the costs of all such plans and engineering services shall be included in the cost of such projects and not chargeable to the respective counties needing the same.

Eliminates the mandatory aspects of Ark. Stat. 76-462.

Section 5. Federal-aid Agreements and Requirements.

Where any political subdivision of the State of Arkansas has entered into an agreement with the United States Government, any agency or subdivision thereof, or the State Highway Commission, to maintain a project or projects constructed off the State Highway System with Federal Funds, and where the Bureau of Public Roads gives notice in writing that such project or projects is or are being insufficiently maintained according to the agreement, the State Highway Commission shall immediately proceed to investigate such report and determine the cost necessary to properly maintain the project or projects. The determination of the Commission shall be final. After such determination, the Commission shall give notice of the facts to the State Treasurer, who shall immediately withhold payment of funds available under Article I of Chapter 10 Finance of this Code until the amount determined by the Commission is fully satisfied.

Sec. 121c, U.S. Code

The provisions of Arkansas Statutes 76-416 through 76-420 have been adopted and combined, but necessary changes have been made to coincide with and conform to other provisions of the code.

See Section 121c of Title 23 U.S. Code on project agreements required for Federal-aid projects.

See Section 116 of Title 23 U.S. Code on maintenance agreements for Federal-aid projects.

Section 6. States Pledge of Good Faith.

a. The good faith of the State is hereby pledged to make available sufficient funds to match Federal-aid highway funds apportioned to the State and to provide adequate State funds and provisions for the maintenance of roads so constructed on the State Highway System.

This is a revision of Ark. Stat. 76-522 and meets the maintenance requirements for State Highway improved with Federal-aid funds. See Sec. 116 of Chap. 1 Vol. 1 Title 23 U.S. Code.

b. When necessary, the State Highway Department may expend Department funds for the maintenance and repair of roads, streets or highways, not a part of the State Highway System, but which have been constructed with Federal-aid highway funds.

Clarification of Ark. Stat. 76-508. This meets the maintenance requirements for County Roads improved with Federal-aid funds. See Sec. 116(b) of Chapter 1 Vol. 1 Title 23 U.S. Code.

CHAPTER 13. ROAD AND STREET IMPROVEMENT DISTRICTS

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Affected Sections and Comments

CHAPTER 13. ROAD AND STREET IMPROVEMENT DISTRICTS.

The term improvement district as used in the Code is limited to those districts organized for the improvement, repair, or maintenance of highways, roads, streets, alleys, bridges, ferries, overpasses, underpasses, parking facilities, or other facilities appurtenant thereto, not a part of the State Highway System.

Article I. Establishment and Formation.

Section 1. Establishment.

Improvement districts to construct, improve, repair, or maintain roads, streets, alleys, bridges, ferries, underpasses, overpasses, parking facilities, or any other facilities relating or pertaining thereto, may be established by counties, municipalities, or groups of owners of real property.

This is a new provision and, in effect, a purpose clause explaining the Chapter.

Section 2. Exclusive Method for Formation, Operation, and Dissolution.

Counties and municipalities, either by one acting alone or by two or more acting together, and groups of individual owners

In order to effectuate this Chapter, Section 2 must be included, else controversy with respect to evidently

of real property shall hereafter form, operate, and dissolve such improvement districts only in accord with the method set out herein for the formation, operation, and dissolution of such improvement districts. All other acts relating to the establishment, formation, operation, and/or dissolution of improvement districts, for the purposes set out in Section 1 hereof, are hereby superseded and repealed. However, this shall in no wise affect or pertain to improvement districts presently in existence; which districts shall continue to operate under the Act or Acts by which they were created.

Section 3. Definition of Terms.

Whenever used in this Chapter, the term "area" or "area covered" or "real estate" or "realty" or "real property" shall mean all lands, appurtenances, and hereditaments, improvements thereon, and fixtures attached to the land so as to become a part of the realty, located within the improvement district. Provided, however, that no part of the State Highway System shall be included in an improvement district without prior approval of the Highway Commission.

conflicting sections and statutes involving other unrelated improvement districts may arise, which do not pertain specifically to roads, streets, or highways.

Section 4. Formation by Counties.

A County, when establishing an improvement district, shall follow this procedure in forming the improvement district:

When petitioned by two-thirds in value as shown by the last County assessment of owners of real property of the area which the improvement district is to encompass, the County Court of the County in which the proposed improvement district is located shall issue an Order setting forth the purposes for which the proposed improvement district is being formed, describing in detail the area to be included therein, and setting a date, time, and place for a public hearing in connection therewith. Such Court Order shall be filed with the County Clerk, who shall cause notice thereof to be published once each week for a period of two (2) consecutive weeks in a newspaper having general circulation in the County. Said notice shall state the date, time, and place of the public hearing on said order, describe the land affected thereby, set forth the purposes for which the improvement district is being formed, and clearly state that prior to and during said hearing, any owner of real estate within the area included in the proposed district may file with the clerk a written objection to the formation of such district; provided, however, that such public hearing shall be never less than fifteen (15)

original to provide for the establishment of county road districts. This is not formed by the County unless proposed by individuals. The County Court cannot initiate an improvement district.

days, nor more than thirty (30) days, after the date of the second publication of notice.

If more than one-third of the owners-in-value-of-real-estate in the area included in the proposed improvement district, as shown by the latest County assessment rolls, object to the formation of such district, the County Court shall either cause said Order to be rescinded or cause to be held an election thereon within the area included in the proposed improvement district, and in the latter event if a majority of the owners-in-value-of-real-estate within the said area shall favor the formation and establishment of the improvement district, then the same shall be deemed to be established without the necessity of further action by the County Court. If less than one-third of the owners-in-value-of-real-estate within the area included in the proposed improvement district object in writing to its formation at or before the public hearing, then said improvement district shall be deemed to be established as of the date of said hearing.

Section 5. Formation by Municipalities.

A Municipality, when establishing an improvement district, shall follow this procedure in forming the improvement district:

The Section is new, in order to allow new municipalities, in proper cases, to establish and

The governing body of the Municipality, acting upon its own initiative or when petitioned by five or more landowners, shall by Resolution set forth the purposes for which the improvement district is to be formed, describe the area in detail which is to be included therein, and provide a date, time, and place for a public hearing thereon. Such Resolution shall be filed with the Municipal Clerk, who shall cause notice thereof to be published once each week for a period of two (2) consecutive weeks in a newspaper having general circulation in the Municipality. Said notice shall state the date, time, and place of the public hearing on said Resolution, describe the land affected thereby, set forth the purposes for which the improvement district is being formed, and clearly state that prior to and during said hearing, any owner of real estate within the area included in the proposed district may file with the clerk a written objection to the formation of such district; provided, however, that such public hearing shall be never less than ten (10) days, nor more than thirty (30) days, after the second publication of notice.

form improvement districts within municipal or corporate limits.

Section 6. Formation Jointly by Municipalities and Counties.

An improvement district may be formed jointly by:

a. All or portions of two or more adjacent municipalities.

b. All or portions of two or more adjacent counties.

c. All or portions of one or more municipalities and one or more counties, each of which is an element in a contiguous series.

Each County acting in these joint ventures shall follow the procedure provided in Section 4 hereof; and each Municipality acting in these joint ventures shall follow the procedure set out in Section 5 hereof. Separate public hearings shall be held in each County and/or Municipality participating in the joint venture.

If for any reason or in any manner provided herein, one of the Municipalities or Counties involved should reject or withdraw from the improvement district proposal, the other participating Counties and/or Municipalities may proceed with the improvement district, insofar as their governmental jurisdiction extends. The determination of whether such other participating governmental units shall proceed with the

The same comment applies to this Section as to Sections 4 and 5.

organization of the improvement district within their jurisdiction shall be made by the County Court, in the case of Counties, and by the Municipal governing body, in the case of Municipalities. In the event it is determined that the particular governmental unit involved shall not proceed further with the improvement district, a Court Order by the County Court or Resolution of the Municipal governing body rescinding and revoking the improvement district proposal formerly enacted by them shall be effective to dissolve the improvement district within that particular governmental jurisdiction; provided, however, that such Order or Resolution of rescission and revocation shall become effective only after all indebtedness, if any, incurred by the improvement district shall have been discharged by payment of same.

Nothing in the joint establishment of improvement districts shall ever be interpreted either to extend County jurisdiction into a Municipality or to extend Municipal jurisdiction beyond the corporate limits of the Municipality, other than as intended under existing provisions of law relating to Municipal Planning Commissions.

Present law permits a suburban improvement district to include property inside the corporate boundaries as long as the area does not exceed 50% of the area of the entire district.

Section 7. Formation by Individuals.

Without proceeding under a Court Order or Municipal Resolution in the manner hereinbefore set out, an improvement district may be formed in the following manner, by individual landowners owning land within the area proposed for inclusion in the district: If two-thirds of the owners-in-value-of-real-estate in the area proposed for inclusion in the proposed improvement district shall file with the County Clerk an instrument setting forth the purposes for which the proposed improvement district is being formed, a detailed description and a map of the specific area included, a list of all individuals owning real estate within said area, and a time, place, and date for the first meeting of such landowners, then the Clerk shall cause notice thereof to be published, once each week for a period of two (2) consecutive weeks, in a newspaper having general circulation within the area included in the proposed district. Said notice shall set forth the purposes, the designated area, and the names of the landowners within the area, giving them notice of the proposed formation of such district along with the time, place, and date of the first meeting of landowners within the area of the district for the purpose of

In substance, this Section is patterned after and follows Ark. Stat. §§ 20-104 et seq. and 20-1201 et seq. pertaining to street improvement districts and road improvement districts, but has been streamlined and simplified, with the elimination of matters relating to or pertaining to functions and improvements other than roads or streets.

electing commissioners to administer the affairs of the district and acting upon other pertinent organizational matters; provided, however, that said meeting of landowners shall in no event be less than ten (10) days nor more than thirty (30) days after the date of the second publication of notice.

Section 8. Recordation.

It shall be the duty of the County Recorder, or the Circuit Clerk as ex officio recorder, to file for record in a book kept for such purposes all petitions, notices, orders, ordinances, or instruments pertaining to the establishment of improvement districts, in accord with Title 16 and Title 12, Chapter 10, Arkansas Statutes of 1947, as amended.

It shall be the duty of the Municipal Clerk and County Clerk to deliver to the County Recorder, or the Circuit Clerk as ex officio recorder, for recordation a certified copy of all ordinances, notices, orders, or other instruments passed, promulgated, filed, or published by the Municipality or County or by any individual landowners in connection with the formation of improvement districts.

In effect, this Section is only consistent with the intent of the previous Sections and is basically a requirement of ministerial acts.

Section 9. Suits and Appeals.

The establishment of any improvement district hereunder may be challenged by any owner of real estate or any interest therein lying within the particular improvement district through the filing of a petition in the Chancery Court of the County within which the land is located, seeking an order, judgment, and decree setting aside the formation of said improvement district; provided, that wherever an improvement district encompasses land in more than one County, the venue for such action shall be in the County in which the larger part of the land is located, and the Chancery Court for such County shall have jurisdiction to adjudicate the rights of all landowners and lands involved, regardless of where situated. Any suit challenging the formation of an improvement district must be brought within thirty (30) days of the establishment thereof.

Where irreparable injury or harm might result to any owner of land or any interest therein if said improvement district were to proceed with the contemplated improvements or to incur any indebtedness, prior to the adjudication of the suit challenging the formation of such district, the Chancery Court may in its discretion enjoin the commissioners of the improvement

This Section is designed to clarify procedures, rights, and remedies in respect to establishment and formation of improvement districts and the rights of landowners. No prior statute specifically designating any method of remedy exists.

district from proceeding with any improvements or incurring any indebtedness until after adjudication of the pertinent lawsuit.

Appeals from the Chancery Court to the Supreme Court shall proceed in the same manner as in other civil appeals, as provided for same by law.

Section 10. Correction of Errors and Irregularities in Formation of Districts.

Upon discovery of any error or irregularity in the formation of a district, the commissioners shall file within thirty (30) days after such discovery an appropriate amendment to the original petition or instrument establishing or seeking formation of the district, and notice of the filing and the substance thereof shall be served by certified mail, return receipt requested, upon all landowners within the district, and those who are not so served shall be notified by publication of a notice containing the amendment, which notice shall be published once each week for two (2) consecutive weeks in a newspaper of general circulation within the district. Unless one-third or more of the owners-in-value-of-real-estate within the district shall protest to the commissioners in writing within thirty (30)

This Section is new but covers the procedure for correction of errors and irregularities set forth in Ark. Stat. § 20-1101. Ten (10) people can file for a correction under existing law.

days of the receipt of notice thereof, or within thirty (30) days of the second publication of notice thereof, whichever is applicable, said amendment shall take effect. If one-third or more of the owners-in-value-of-real-estate within a district shall protest such amendment, a public meeting of the landowners shall be held following reasonable notice of the time, place, and date of such meeting, and said proposed amendment shall be accepted or rejected by a vote of the majority of the owners-in-value-of-real-estate within the area included in the district.

Section 11. Failure to Make Improvements or to Complete Formation.

If the petitioning or filing parties withdraw or otherwise fail to establish an improvement district, any and all costs incurred shall be borne by the petitioners and applicants, jointly and severally. If a district is established, but the improvements, construction, repairs, or maintenance, specified as the purpose for the establishment of such district, are not made or commenced, or amendment or alteration of said purpose is not effected, all costs and expenses incurred in petitioning for

In part this Section is new, but it also incorporates the substance of Ark. Stat. §§ 20-1221. See also Ark. Stat. 20-301.

the establishment and formation, as well as all construction costs and the expenses of liquidation and dissolution, shall be borne, jointly and severally, by the petitioning parties or persons.

Article II. Commissioners.

Section 1. Selection of Commissioners.

This Section is new

Where the area of a district created by the County Court lies entirely outside a Municipality, the commissioners of the district shall be appointed by the County Court from among the resident real property holders of the district, and shall be at least five in number. Where the area of a district created by Municipal Ordinance lies entirely within a Municipality, the commissioners of the district shall be the members of the governing body of the Municipality. Where the district is created by individuals, the commissioners shall be resident real property holders of the district elected at the initial meeting of those forming the district. Where an improvement district created by a County Court Order or Orders and by a Municipal Resolution or Resolutions or by individuals embraces County and Municipal areas, the commissioners named by the County Court and the governing body of the Municipality shall serve jointly as commissioners of the district.

Section 2. Organization of the Commission.

Within thirty (30) days after the formation and establishment of the district, the commissioners shall meet and elect a chairman, secretary, and treasurer. The commissioners shall designate a bank or trust company licensed by the State Banking Commission and authorized to do business within this State as a depository for all funds of the district. The commissioners may retain and employ such agents, employees, engineers, attorneys, and others as they deem advisable and fix the compensation of such individuals.

At present, in case of most improvement districts, there is no statute which formally sets forth the organization and composition of the commissions and their officers. This Section is designed to fill such void and has been patterned somewhat after Ark. Stat. § 20-1203.

Section 3. Powers and Duties.

The commissioners of an improvement district formed under the provisions of this Chapter shall have all powers necessary and proper to carry out the purposes for which the district has been formed and established; provided, however, that no action taken shall conflict or interfere in any way with plans and projects of the State Highway Commission or any County Road or Municipal Street authority. The following powers and duties are specifically vested in the commission:

a. To negotiate and enter into contracts for the

This Section is new but complies with the established case law. No previous statutory enactment exists granting commissioners of an improvement district either broad, general, or specific powers, and, consequently, it is believed necessary and proper to include this general provision. Also, by no means should an improvement district

planning, design, construction, improvement, operation, and maintenance of or pertaining to any project or projects for which the district was formed.

b. To determine and establish assessment rates on all real property within the district to pay any indebtedness incurred in making the improvements for which the district was formed.

c. To purchase, borrow, rent, lease, control, and manage all personal property needed in the operation of the improvement district and to sell or otherwise dispose of all property owned by the district which is no longer necessary or useful in connection with the operation of said district.

d. To purchase, exchange, or otherwise acquire or receive by gift, dedication, devise, or in any other manner any real property within the district, or any rights, interests, estates, or title therein, and to exercise the right and power of eminent domain in the manner and following the procedures provided in Chapter 6, Article IV, of this Code, for use by the district, and to dispose of any property that has been determined to be surplus.

e. To issue bonds as provided by law for paying

be empowered, implicitly or otherwise, with the plans or projects of the State Highway Commission.

all or any part of the cost of improvements made by the district.

f. To approve and alter or change any designs, plans, and specifications pertaining to improvements to be made by the district in the manner and following the procedures set forth elsewhere in this Chapter.

g. To receive, administer, and disburse funds appropriated for use by the improvement district from any agency or governing body and all funds derived from the issuance of bonds, from real property assessments within the district, and from the Federal Government.

h. To give notice, in the manner provided herein, to any public utility which will be affected in any manner by the improvements planned.

Section 4. Reports of the Commissioners.

The commissioners of the district shall file an annual report on or before the first day of February with the governing body of the Municipality and/or the County Court, as the case may be, in which the district is located, which said report shall set forth all matters in respect to contracts entered into, work completed, work still in progress, and a full accounting and financial statement of the operations of the district for the

This section is new and is included in conform with similar requirements imposed on other public agencies.

preceding year, and which said report shall be kept as a permanent record, open for public inspection, by the respective Clerk or Clerks of the Municipality or County Court, as the case may be.

Section 5. Conflict of Interest.

Ark. Stat. § 20-1203.

No commissioner, agent, or employee of a district shall have any financial or beneficial interest, either directly or indirectly, in any contract for the construction, improvement, repair, or maintenance of any facility or improvement in the district, and violation of this provision shall render the violator subject to the same penal provisions provided herein for contracts entered into by the State Highway Commission, a County Court, or a Municipal Government.

Section 6. Liability of Improvement District Commissioners.

The purpose of this provision, which is new although in effect already embodied in the law, is to protect the commissioners personally from harassment in

No commissioner of an improvement district may be held personally liable, in any manner, for damage resulting from the official action of the improvement district commission, or for damage resulting while acting in his official capacity, unless

it shall have been proven that such commissioner acted with willful and malicious intent in causing the alleged damage or injury.

their official duty. Ark. Stat. § 20-1216 is precedent in this Section.

Article III. Financing Improvements.

Section 1. Assessments of Real Property.

The district shall assess all real property within the district to pay for the cost and expense of construction, improvement, repair, and maintenance work to be performed within the purposes for which the district has been established, in the amount and as determined by the commissioners prorated on the basis of the assessed valuation of the property. Notice of assessment to owners of real estate shall be made by certified mail, with return receipt requested, to the last known address of such persons, and in the event any such notices of assessment are returned undelivered, then notice of such assessment, giving the name or names of the owner or owners and the amount of the assessment or assessments, shall be published in a paper of general circulation within the area once each week for two (2) consecutive weeks, following which publication the notice shall be conclusively deemed to have been given.

Basically, Secs. 1, 2, 3, and 4 are new. They incorporate all of the many statutes enacted pertaining to assessments for the benefit of improvement districts. Section 1 replaces Ark.Stat. §§ 20-1204, 20-1205, and 76-1032.

Section 2. Assessments to Constitute Liens.

All assessments so made shall constitute a lien against the property on which it is assessed from and after the date of said assessment until fully paid; and in addition to this specific lien, all property within the district shall be subject to a continuing lien which shall run with the land to secure the payment of all assessments levied against said property by the commissioners of the district and all bonds issued by the district, and such liens shall continue until all indebtedness of the district has been paid. Any purchaser of any land within the district, including the State or Federal government or any subdivision or agency thereof, shall take said land subject to this continuing lien and to any specific outstanding liens for payment of an assessment for a particular year.

Section 3. Levy and Collection of Tax.

Section 3 replaces Ark. Stat. §§ 20-1209.

The commissioners shall appoint a district assessor, who shall prepare a roll of all real property encompassed in the district and extend thereon (a) his assessed value of the land before improvements are made, (b) his estimated assessed value of the land after improvements are made, and -- on the basis of

the relationship between (a) and (b) -- (c) the assessed benefits, or (d) the assessed damages. Then the commissioners shall have equalized the assessment and entered upon its records an order levying upon the real property of the district a tax sufficient to pay the estimated cost of the improvement plus an additional reasonable amount, not to exceed ten percent (10%), to cover unforeseen contigencies, the district assessor shall extend the amount levied upon his roll of the real property of the district in payments not to exceed ten percent (10%) per year and shall file a copy with the County Clerk; provided, that property owners shall always be given the option of payment of the assessment in one lump sum payment at any time prior to October 1st of the year in which the County Collector billed the first installment of the levy. It shall be the duty of the County Clerk to extend the tax annually upon the taxbooks of the County until the levy is exhausted. The improvement district tax shall be billed and collected by the County Collector in the same manner and at the same time as other State, County, and Municipal taxes. Provided no single improvement shall be undertaken which alone will exceed in cost eighty percent (80%) of the value of the real property in such district as shown by the last County assessment, but in computing the said eighty percent (80%), interest on money borrowed shall not be treated as part of the cost.

Section 4. Delinquent Taxes.

This replaces Ark. Stat. ss ss 76-1207, 76-1208, and 20-728.

Delinquent improvement district taxes shall not be listed by the Collector in tax sale lands but shall be reported, instead, to the improvement district commissioners, who shall add a twenty-five percent (25%) penalty to the delinquent improvement

district tax and shall enforce the collection by a foreclosure action brought in the Chancery Court of the County. Sixty (60) days after judgment and the entering of an appropriate Court Order shall be allowed for collection of the judgment. At the end of the sixty (60) day period, interest shall begin to run, at the rate of six percent (6%) per year on the total amount of the delinquent taxes, the twenty-five percent (25%) penalty, and the costs of the chancery suit. The improvement district commissioners may then sell said property at public auction in the manner and utilizing the procedure provided by law for mortgage foreclosures; provided, however, that there shall be personal service of summons and a copy of the petition upon the defendant, whenever personal service may be had, and whenever personal service cannot be obtained, there shall be publication of notice of such action in the manner provided by law in the case of mortgage foreclosures; and provided further, that the landowner shall have a period of two (2) years from the date of confirmation of sale of said property pursuant to the Order of the Chancery Court, as provided herein, within which to redeem said property by making payment to the purchaser at such sale in the amount paid by him for said property and other taxes or assessments paid by said

purchaser, and interest thereon at the rate of ten percent (10%) per annum from the date of said sale, and in such event the Court shall enter its Order setting aside said sale, but if not payment be made to said purchaser within the time stated, then title shall vest absolutely in the purchaser at said judicial sale. Attorneys' fees, not to exceed ten percent (10%) of the assessment and accrued interest thereon, and all court costs, shall be assessed against the landowner in the event of foreclosure of the assessment lien as provided hereinabove.

No statute of limitations shall operate to bar any action hereunder.

Section 5. Bonds.

A district formed hereunder is authorized to issue bonds for the purpose of paying all or any part of the cost of improvements made by it. The principal and the interest of such bonds shall be payable out of the funds received and collected by the district, and such bonds shall constitute a continuing lien upon all property owned by the district and upon all real estate situated in the area covered by the district in the proportion

In some cases heretofore, improvement districts have been authorized to issue bonds, as in the case of viaduct improvement districts (Ark. Stat. § 76-1301 et seq.) but the acts have been fragmentary, and this Section has been developed to be

each individual tract of real estate bears in value to the total established and assessed valuation of the real estate in the district. The bonds shall be dated, shall bear interest at rates not exceeding six percent (6%) per annum, shall mature at such time or times as may be determined by the commissioners of the district, but in no event later than thirty (30) years after the date thereof, and said bonds may be made redeemable before maturity, at the option of the commissioners, at such price or prices and under such terms and conditions as may be fixed by the commissioners prior to the issuance of the bonds. The commissioners shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination and the place or places of payment of principal and interest. All bonds issued hereunder shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code. The bonds may be issued in coupon or in registered form, or both, and provision may be made for the registration of any coupon bonds as to principal alone, within the determination of the commissioners, and for the reconversion into coupon bonds or any bonds registered as to both principal and interest.

comprehensive and afford a permissible, though not mandatory, method of financing for a district. The present appropriate statutes affecting bonded indebtedness of improvement districts, in particular, are Ark. Stat. ss ss 76-1203, 76-1204, 76-1205, 76-1206, 20-1215, 20-1218, 20-1219, 76-1219, 76-1220, 76-1221, 76-1222, 76-1223, 76-1224.

All bonds issued pursuant hereto shall be approved and sold in the same manner as municipal bonds are approved and sold in Arkansas, and the notice of the proposed sale and the terms thereof shall be published once a week for two (2) consecutive weeks, with the second such publication to appear at least ten (10) days before the date fixed for the receipt of bids, in a newspaper having a general circulation in the area of the district. If no bid is received upon such published notice which is acceptable, the bonds may be sold at private sale at any time within thirty (30) days after the date set for receiving bids given in such notice. The bonds may be sold at less than par and accrued interest, but no such sale shall be made at a price so low as to require the payment of the interest on the money received therefor at more than six percent (6%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid or redemption of any such bonds prior to maturity.

Section 6. Allotment of County and/or Municipal Funds.

County Courts and Municipal Governments may make available to any improvement district within their respective jurisdictions, formed and established in accordance with the provisions of this Code, an equitable portion of funds received or collected from road taxes, motor vehicle taxes, Municipal or County aid funds, general revenues, or from federal sources, as such governmental body may deem appropriate. All improvement districts formed and established in accordance with the provisions of this Code are authorized to receive and accept any part of any funds that may now or hereafter be made available by any agency of the United States Government, or the State or any subdivision thereof, for improvements made or to be made by the district, under such terms, conditions, and provisions as may be required or deemed appropriate.

The source of this Section is Ark. Stat. § 20-1224 and in effect is an enabling act and necessary to permit flexible financial operation. It is permissible but not mandatory in its scope.

Article IV. Operation of District.

Section 1. Consultation Required.

After an improvement district is formed and established, the commissioners may consult the Arkansas Highway Department to secure information and advice concerning the planning, engineering, and/or construction of each project for which the district has been formed.

All street improvements shall be made to lines and grades specified by the governing body of the Municipality involved.

The commissioners shall also consult any planning commission or board having jurisdiction within the area included in the improvement district, and no improvements shall be made which are contrary to the overall and long-range plans for the area.

The purpose of this Section is to allow and afford greater coordination in the way of planning between districts and the Department, so that roads and streets constructed by districts will fit into the overall transportation system. The Section is patterned somewhat after Ark. Stat. §§ 76-1211, but relieves the Department from the mandatory requirement of furnishing such services.

Section 2. Contracts.

All contracts let or entered into for construction, improvement, repair, or maintenance shall be made only in accordance with the terms, provisions, and conditions provided in this Code for contracts of the State Highway Commission, a County, or a Municipal Government.

See Ark. Stat. §§ 20-1213.

Section 3. Contractors' Bonds.

Performance bonds shall be required from all contractors and must be given in accordance with the provisions and requirements set forth in Chapter 7, Art. I, Sec. 2, of this Code for contractors with the State Highway Commission.

To coordinate and provide consistent standards and requirements for construction, maintenance, improvement, and repair, this Section is incorporated. It replaces a part of Ark. Stat. Sec. 20-1213.

Section 4. Payment to Contractors.

Payment to contractors shall be made in accordance with the provisions and procedures set forth in this Code for payment to persons, firms, partnerships, or corporations contracting with the State Highway Commission.

The same comment in respect to the next preceding Section applies to this Section. This replaces a part of Ark. Stat. § 20-1214.

Section 5. Purchases by District.

A district is empowered, in the discretion of the commissioners, to purchase any property at foreclosure sales conducted by reason of delinquent payment of assessments levied hereunder, upon such terms and conditions as the commissioners deem feasible, and which bid or purchase shall be in the name of the commissioners and their successors in office acting for and on behalf of the district.

Such authorization as is contained in Ark. Stat. 76-1210 is herein retained in shorter and simpler forms.

Section 6. Irregularities.

No informality or irregularity in the holding of any meeting by the commissioners of a district, or in any description, valuation, or assessment of real estate within the area of the district, or in the name of the owner thereof, the acreage stated, or the manner of assessment, shall be a valid defense against the district as to any cause of action asserted by it, nor shall the same be the basis for any cause of action asserted against it; provided, however, that such irregularities, informalities, or errors must not be such as would deprive a landowner of legally acceptable notice as required by any provisions herein.

The same comment applies to this Section as regards Section 6, Article II. The most important and valuable provisions contained in Ark. Stat. § 76-1209 have been incorporated herein.

Section 7. Alteration of Plans.

If at any time the commissioners determine the original or any other plan or plans of improvement(s) within the district not to be feasible or advisable, then the commissioners shall cause to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the area in which the district is located a notice, declaring the intention to alter or abandon such planned project(s), which notice shall specify

The procedure set forth is original but in substance the Section embodies Ark. Stat. §§ 20-1222.

that all owners of real estate in the area covered by the district may within the time fixed by the notice (which shall be not less than ten (10) days nor more than thirty (30) days from the second publication thereof) object or signify their approval, and which notice shall summarize any amended or altered additions or changes to the original plan as determined by the commissioners. If one-third or more of the owners-in-value-of-real-estate in the district object and request in writing a hearing, then a public hearing thereon shall be held at a date, time, and place set by the commissioners, and notice thereof shall be given by publication of notice inserted once each week for two (2) consecutive weeks in a newspaper having general circulation within the area in which the district is located, provided that the hearing shall be held not less than ten (10) days nor more than thirty (30) days from the date of the second publication of such notice. In the event such public meeting is held, a majority of the owners-in-value-of-real-estate within the district must accept the proposed amendment or alteration in order for it to go into effect.

Section 8. Notice to Utility Companies Prior to Making Improvements.

The commissioners shall give notice to any public utility which will be affected in any manner by the improvements planned. Such notice shall fix a reasonable time, not less than thirty (30) days, during which the public utility may make such alterations or excavations as are necessary to maintain its service. Thereafter, it shall be unlawful for any public utility, which has been given notice, to make any such alteration or excavation which may hamper the district in its work without prior consent of the commissioners and without agreement by the utility to restore the area to the condition it was in before such alteration or excavation was made. Violation of this provision shall, upon conviction, subject the utility to a fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100) for each day such alteration, excavation, or restoration was in progress.

This Section is new. Principally, this Section is based upon the requirements contained in Ark. Stat. § 20-310.

Section 9. Damage or Dislocation to Highway, Road, or Street System.

No improvement district shall commence construction of any improvement which will physically affect any portion of the State

This Section is new and believed to be vital and of considerable significance.

Highway System, any County Road System, or any Municipal Street System, without having first obtained the written permission of the State Highway Commission or the County Court or the governing body of the Municipality having jurisdiction over said highway, road, or street, as the case may be. Any damage to or dislocation of any highway, road, or street forming a part of any of these said systems shall be repaired or corrected by the improvement district to the satisfaction of the administrators of the system so affected and at the expense of the improvement district, and the improvement district involved shall be assessed a penalty of one hundred dollars ($100) per day for every day such damage or dislocation remains in disrepair or uncorrected.

Article V. Continuance or Dissolution of Districts.

Section 1. Continuance.

Highway, road, or street improvement districts shall not be required to cease to exist upon the completion of the improvement for which it was established but may continue to exist for the purpose of preserving it and keeping it in repair. Such decision to continue the district shall be determined by the provisions set out in Section 7 of Article IV of this Chapter relating to the Alteration of Plans.

Section 2. Dissolution.

Upon payment of all indebtedness of a district, its affairs shall be completed and terminated, and it shall be dissolved in the following manner: The commissioners shall file a petition with the Chancery Court in the County in which the district is located, setting forth such facts. In the event the district is located in more than one County, the petition shall be filed in the Chancery Court of the County in which the major portion of the land within the improvement district is located. Notice of filing of such petition shall be published by the Clerk of the

Presently, no consistent procedure for dissolution or termination of improvement district exists. In fact, there is no statutory authority pertaining to most improvement districts, the only real one being Ark. Stat. §§ 20-136 in respect to municipal improvement districts. In the case of road

Court in a newspaper of general circulation in each County in the area of the district once each week for two (2) consecutive weeks, stating in substance the allegations of the petition and the date, time, and place set for hearing the petition. If it is established that all debts of the district have been paid and its affairs completed, then an order shall be entered, dissolving the district. The order dissolving the district shall direct that the property of the district be transferred to either the County or Counties or to the governing body of the Municipality or Municipalities, in an equitable manner, depending upon which one would normally and properly have jurisdiction over the public ways involved, and upon transfer, the respective streets, roads, or other improvements shall become a part of the road or street system of the jurisdiction to which transferred.

Section 3. Surplus Funds and Property.

All property, equipment, and funds in the hands of the commissioners of a district, remaining after all indebtedness of the

and street improvement districts, for example, Ark. Stat. § 20-718 and § 20-1217 could in effect make the district perpetual and impossible of dissolution. Accordingly, this Section has been drafted to provide a clear and ordinary method for dissolution and termination of a district where it has served its purpose and need for its existence is no longer required, either by way of payment of all indebtedness and completion of the contemplated and planned improvements, or assumption of its functions by a responsible governmental authority.

The same comment in respect to Section 2 applies to this Section. In addition, for

district has been paid, shall be transferred by the order of Road or Street Fund of the dissolution to the/governing authority, or authorities, of the area encompassed by the district, and if there be more than one, the Chancery Court shall divide such property, equipment, and funds to each governing authority according to valuation of the real estate situated in the area over which such governing authority has jurisdiction.

reference, see Ark. Stat. §§ 20-1112, which contains similar provisions and is precedent.

Section 4. Power of Counties and/or Municipalities to Take Over Districts.

Counties and/or Municipalities within their discretion, and in the manner herein provided, may take over and assume control of all property, real and personal, and including contracts, improvements, work in progress, and all matters relating to or forming a part of the affairs of a district lying wholly within their governmental jurisdiction. In such event, the County or Municipality shall be responsible for completing and carrying out all contracts entered into by the district; shall be obligated to pay all bonds and other indebtedness incurred by the district when due; and shall, in every way, be substituted for and supplant the district and its commissioners. Such intention to assume the responsibility, assets, and liabilities of the

This Section is new and is permissive, not mandatory.

district shall be effected by written notification to each commissioner of the district, sent by certified mail, return receipt requested, and within thirty (30) days after receipt of such notice, the commissioners of the district shall account for and report to the County Court or governing body of the Municipality as to all contracts let and entered into, indebtedness incurred, bonds outstanding, assets held, work completed, and progress of work underway. If such report is satisfactory to the County Court or governing body of the Municipality, then upon written notification to the district's commissioners, the County or Municipality shall be deemed to have assumed full control and responsibility for the affairs, obligations, and responsibilities of the district. Within sixty (60) days after the assumption, written notice of said assumption shall be given to the bondholders and other creditors of the district and shall be filed for record in the office of the County Recorder or Circuit Clerk as ex officio recorder in all Counties in which all or any part of the district is located.

If an improvement district be situated within the jurisdiction of two or more governmental units, all Counties and/or Municipalities involved must act jointly to take over and assume

control of said district upon the conditions and by following the procedure set out herein, and in such event, each governmental body shall assume control over that portion of the district lying within its jurisdiction, and the assets, property, obligations, and liabilities of such district must be proportionately divided among the various governmental bodies by mutual agreement in advance of such assumption of jurisdiction, and disposition of same must be stated in the notice filed for record and in the notice to bondholders and creditors; provided, however, that such division shall be deemed legally acceptable only in situations in which it is equitable and fair and not harmful to the rights of bondholders and other creditors.

Section 5. Power of the State to Take Over Districts.

The State Highway Commission may, at any time within its discretion, take over and assume control of an improvement district upon the same conditions and following the same procedure as provided herein for the takeover and assumption of control of districts by Counties and Municipalities.