

1971

## State Level Transportation Management

James A. Hardee

Follow this and additional works at: [https://scholarship.law.uwyo.edu/land\\_water](https://scholarship.law.uwyo.edu/land_water)

---

### Recommended Citation

Hardee, James A. (1971) "State Level Transportation Management," *Land & Water Law Review*. Vol. 6 : Iss. 2 , pp. 701 - 713.

Available at: [https://scholarship.law.uwyo.edu/land\\_water/vol6/iss2/12](https://scholarship.law.uwyo.edu/land_water/vol6/iss2/12)

This Comment is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

## COMMENTS

### STATE LEVEL TRANSPORTATION MANAGEMENT

Transportation has historically been an important issue in the economic growth of the United States. The problems involved traditionally centered around rate making, fair competition, and regulation for the public welfare. Since these problems were usually handled on an *ad hoc* basis, there emerged a patchwork of agencies whose functions were specialized and which were largely independent of one another.<sup>1</sup> To overcome the problems of such a system, recent shifts in national policy and ideology have produced a movement toward a managerial approach to the regulation and development of transportation. With this shift toward management many demands and innovations will be required of state governments. If states desire to maintain a viable position in the directing of the transportation system, they must be ready to respond to the new approach with adaptable organizations and policies.

#### THE FEDERAL SHIFT IN POLICY

The shift to transportation management was significantly manifested for the first time on the federal level with the creation of the federal Department of Transportation (DOT).<sup>2</sup> Prior to the creation of this cabinet-level department, transportation had been regulated by individual agencies which had been created with one or both of two organizational policies in mind.

The first policy which appears to have influenced the creation of transportation agencies was that an agency should be concerned with only one type or mode of transportation.<sup>3</sup> Apparently the theory behind such a policy is that an agency organized along modal lines would be able to develop a higher degree of expertise if it concentrated upon the problems and techniques peculiar to the mode being regulated than if it

---

Copyright© 1971 by the University of Wyoming

1. D. BLOOD, R. BARCOCK & J. HARDEE, *TRANSPORTATION IN THE ROCKY MOUNTAIN WEST*, I-4 (1970).
2. 80 STAT. 935, 49 U.S.C. § 1651 (1966).
3. 117 CONG. REC. § 220 (daily ed. Jan. 26, 1971).

were required to become expert in the problems of many modes.<sup>4</sup>

The second policy which has influenced national transportation regulation is the concept that there are certain functions which can be better regulated if they are not limited to modal lines. In the past the influence of this type of policy has been minimal compared to the use of the modal approach. The Congressional treatment of air carriers may serve as an example. The regulation of interstate carriers is a functional task which was assigned to the Interstate Commerce Commission (I.C.C.).<sup>5</sup> But, when air carriers became a significant portion of the interstate transportation system Congress did not follow the functional approach and delegate the regulation of air carriers to the I.C.C. Instead, Congress created a separate and modally independent agency to regulate air carriers—the Civil Aeronautics Board.<sup>6</sup>

The modal approach to transportation organization should not be disregarded when considering efficient administration of any complex transportation system. Its value may be great or small depending upon where it is in relation to the complete picture. The new shift, however, is placing more emphasis upon the coordination of efforts among modes and the combining of functions when it is beneficial to an overall transportation system. The Department of Transportation Act<sup>7</sup> expressed the new concept in its declaration of purpose:

[A] Department of Transportation is necessary in the public interest and to assure the coordinated, effective administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service . . . .<sup>8</sup>

Although the above excerpt does not specifically mention the combining of functions to benefit overall transportation, the act itself recognized this functional type of approach. Essen-

4. The author realizes this is a naive justification of this principle in light of political reality. It is intended only as a clarification of the policy and not an in depth study of its origin.

5. 24 STAT. 379, 383, 49 U.S.C. §§ 1-22 (1964).

6. 52 STAT. 973, 72 STAT. 731, 49 U.S.C. § 1324 (1964).

7. 49 U.S.C. § 1651 (1966).

8. *Id.*

tially the act sought to coordinate the functions of promotion of transportation and safety regulation under a single administrative department which could coordinate the efforts of the individual agencies and combine those functions which could be better achieved by a unified administrative entity. The DOT organizational structure allowed the existing promotional agencies to remain distinct and merely subject to the coordination of the department.<sup>9</sup> The safety regulation function was organized under a more unified approach. The act created the National Transportation Safety Board<sup>10</sup> as an autonomous agency responsible for the safety function for all transportation. Equally indicative of the functional view taken by the act is the exclusion of economic regulation from the DOT through specific omission.<sup>11</sup>

Aside from the coordination of the existing framework, the Secretary of Transportation was also charged with the duty to develop a national transportation plan.<sup>12</sup> Once a plan, or portion thereof, has been developed the Secretary must then submit it to Congress before any action can be taken.<sup>13</sup>

The first dramatic result of this charge upon the Secretary was the passage of the Rail Passenger Service Act of 1970.<sup>14</sup> The act created a national corporation to receive and manage rail facilities for the purpose of creating an efficient and self-sustaining network for inter-city carriage of rail passengers. The most important part of the legislation from the viewpoint of regulation of transportation, aside from the nationalization aspect, is that the Congress removed the new corporation from the control of the I.C.C. with relation to regulation of rates, fares, charges, abandonment, extensions, routes and service.<sup>15</sup> The removal of these functions from I.C.C. control would appear to be a complete abandonment of the functional approach in favor of the single mode (rail) theory. Before accepting that theory, however, reference should be made to the fact that the corporation will be subject

---

9. 49 U.S.C. §§ 1652, 1655 (1966).

10. 49 U.S.C. § 1654 (1966).

11. 49 U.S.C. § 1655 (1966).

12. 49 U.S.C. § 1653(a, b) (1966).

13. 49 U.S.C. § 1653(b) (1966) prohibits the adoption of any national plan without authorization from Congress.

14. Pub. L. No. 91-518 (1970).

15. Pub. L. No. 91-518 § 306 (1970).

to the Secretary of Transportation in the designation of the rail passenger system and in obtaining funding. In addition the I.C.C. will still have jurisdiction in all other areas in which it would formerly have had jurisdiction.<sup>16</sup> In effect the corporation will be similar to an operating agency of the DOT.

Further evidences of the movement toward a coordinated management approach to transportation are shown by past and present congressional bills to abolish the highway trust fund<sup>17</sup> in favor of a national transportation trust fund.<sup>18</sup> This action would allow integration of agencies which are presently unequal in terms of funding. In addition there are proposals to consolidate the existing federal economic regulatory agencies into a single unit.<sup>19</sup> These proposals have been embodied in Senate bill 784 which is presently under consideration.<sup>20</sup>

#### IMPLICATIONS OF THE FEDERAL SHIFT FOR STATE TRANSPORTATION

The influence of this change in federal emphasis upon the states can be no less than extreme. Although not all states, including Wyoming, may be ready to adopt a unified transportation approach when the state itself is not fully developed in terms of capitalization, they may be more inclined to do so when federal funding is offered. The most recent example of favorable state reaction to federally funded programs by Wyoming was the creation of a state aeronautics commission<sup>21</sup> in response to a federally sponsored program to aid airport construction. The creation of the commission was to comply with the statutory requirement that the state designate one agency to receive and disburse the federal funds.<sup>22</sup>

In addition to the pressure to align the state agency structure with that of the federal government in order to facilitate efficient distribution of funds, the states are also being required to assume new transportation planning responsibil-

16. Pub. L. No. 91-518 §§ 201, 302, 303, 306, 308, 601, 602, 701 (1970).

17. 23 U.S.C. § 120nt. (1964).

18. The current bill is S. 295. Introduced Jan. 26, 1971.

19. Reilly, *Our National Transportation System*, 37 I.C.C. PRAC. J. 55 (Nov.-Dec. 1970).

20. 117 CONG. REC. § 1319 (daily ed. Feb. 11, 1971).

21. WYO. STAT. § 10-15 (Supp. 1969).

22. 49 U.S.C. § 1101 (1964).

ities which may require agency reorganization. The Secretary of Transportation has recently initiated a program designed to create a National Transportation Plan.<sup>23</sup> The target date for submission of an initial plan to Congress is early 1972, after which there will be biennial updating. The plan is designed to cover all modes of transportation with an emphasis on developing a multi-modal framework capable of supporting a coordinated planning function. Hopefully, the plan will provide a comprehensive transportation picture, improve the quality of transportation planning, and increase the use made of the planning function at all levels of the transportation structure. The plan also hopes to provide an informed basis for policy decisions and incorporate the present public and private processes for planning rather than eliminating them. Once these objectives have been achieved, the DOT will seek to have the present system, in which most of the planning is done at the private level, modified to facilitate comprehensive transportation planning.<sup>24</sup>

The role of the states in this undertaking is to supply the DOT with a number of transportation development alternatives based upon consistent economic and demographic information keyed to different levels of federal funding.<sup>25</sup> In effect, state participation in the national planning program will dictate that each individual state must adapt its present systems of data collection to fulfill the national requirements. The magnitude of the adaptation required is to enlarge when it is recognized that the initial plan will generate new data demands which must be met in future years.

The complexity of the initial plan itself is a challenge to any state. The initial data submitted by the state should project the transportation system in terms of changes in levels of use and service, changing demand patterns, evolutionary development of the system, emergency transportation needs, pollution problems, social cost, the institutional setting and recommended changes in policy and legislation.<sup>26</sup> The need

---

23. Letter from Secretary Volpe to Gov. Samuelson of Idaho. Reproduced *supra* note 1 at II-3.

24. DOT, GENERAL STUDY DESIGN, 1972 NATIONAL TRANSPORTATION PLAN: WORKING PAPER No. 1 (1970). Reproduced *supra* note 1 at I-12.

25. DOT, GENERAL STUDY DESIGN, 1972 NATIONAL TRANSPORTATION PLAN: WORKING PAPER No. 2 (1970). Reproduced *supra* note 1 at I-12.

26. *Supra* note 24.

for a coordinated system within the state to shoulder the widening state responsibilities under the new federal programs seems inescapable. The DOT recognized the need for single unit organization when it placed the burden upon the governor of each state to appoint a single agency to administer the state participation in the transportation plan. In the absence of an acceptable agency the DOT will attempt to provide funds for hiring at least one professional transportation planner to oversee the project within a state.<sup>27</sup> In any case the federal shift has definitely been in favor of coordinating and combining different functions to create unified and efficient systems for transportation regulation and development. With the large influence which the federal government exerts over the states, they should decide now what benefits they desire to be in a position to receive and what priorities they want to pursue.

#### LEVELS OF TRANSPORTATION DEVELOPMENT

The traditional concerns of the state in regard to transportation have been to provide economic regulation, promotion of transportation through capital investment and development, and to provide safety regulation of the individual modes. The emphasis of the new shift to management of transportation has imposed the added requirement of professional and authoritative planning and coordination of the traditional functions.

Because the organizational requirements of any important field are constantly in a state of evolution, the structure of a given state's transportation agencies may be far in advance or trailing far behind the level at which the federal government is functioning. To determine where a state is and where it may be going a look at the three levels of evolution in transportation is necessary.

The first or *modal* level concentrates upon developing each individual mode in terms of capital investment and system development within the political unit. For this purpose states have found that separate agencies which are responsible

---

27. *Supra* note 25.

for each mode in the areas of promotion and safety are adequate and essential.<sup>28</sup> Surprisingly, in contrast to the federal government, states have had little trouble concentrating the economic regulation of carriers into a single agency without regard to modal preferences. In the Rocky Mountain states only Montana has created a separate agency for the regulation of air carriers<sup>29</sup> as an exception to the regulation of all carriers by a Public Service type of commission.

The second or *entity* level treats transportation as a separate and distinct entity which must be regulated as a whole. The usual organizational approach is a department of transportation which manages transportation as a body consisting of unique but coordinated parts. This level is being reached by an increasing number of states<sup>30</sup> and by the federal government.<sup>31</sup>

The third or *component* level analysis of transportation is as a part or component of the entire economic system of a political unit. Movement in this direction is denoted by state created departments of economic planning and development.<sup>32</sup> Although this type of department has not yet included the transportation component as an entirety, transportation's influence upon other economic factors within a state should eventually require incorporation of transportation within the economic management concept. In order for transportation to operate effectively as a component at this level, however, it should pass through the second level so that the coordination of transportation as an entity may be accomplished. The possible use of this treatment of transportation has been foreshadowed by recent Presidential statements concerning consolidation of federal cabinet positions.<sup>33</sup>

In considering the evolutionary levels set forth, the fact that no state will be found to exist entirely at one level or

---

28. See, WYO. STAT. §§ 10-15, 37-1 to 235, 24-29 to 42.1 (1957).

29. REV. CODES MONT. §§ 1-323 (Supp. 1967). Those states consolidating are Colorado, Idaho, New Mexico, Utah and Wyoming.

30. *E.g.*, Hawaii. See, COUNCIL OF STATE GOVERNMENTS, BOOK OF THE STATES 328 (1970-71).

31. The federal DOT is indicative of this level of development.

32. In Wyoming, See WYO. STAT. § 9-160.23 (Supp. 1969).

33. The proposed merger would combine the DOT into one or more of four departments—Human Resources, Community Development, Natural Resources and Economic Development. N.Y. Times, Jan. 24, 1971, at E1, col. 1.



another. Different sections of a state's organization will evolve faster or slower than others. The awareness that needs are changing and should be evaluated is far more valuable than a static determination of the state's status at a point in time.

#### CONSIDERATIONS FOR LEGISLATIVE ACTION

Since the requirements of transportation are constantly evolving, no structural framework should be taken at face value as being representative of the development of transportation within a state. In evaluating the effectiveness of the present organization or in determining the best avenues for change, considerations of public policy and economic influence should guide the evaluator. Some of those considerations include intergovernmental coordination, adequacy of the structure, and economic benefits and costs.

#### Intergovernmental Coordination

The main consideration in this area thus far has been the coordination of the state and the federal government. The importance of this function has been discussed both in terms of efficiency of funding and in terms of efficiency of research and development efforts with regard to a National Transportation Plan.<sup>34</sup> These considerations alone should encourage the states to realize that they can no longer afford to look only within the boundaries of the state when formulating state transportation policy. States must now view themselves as part of a coordinated national transportation system.

Given the fact that every state will have its own interests at heart to some degree in formulating recommendations to be incorporated in a national system, the state should seek to create a structure which will afford the greatest degree of effectiveness in gathering and presenting data on behalf of the state. A corollary to the single state interest is the recent rise of multi-state regional units<sup>35</sup> which are designed to act as agents of the states in putting forth ideas on a regional

---

34. *Supra* note 23.

35. Wyoming participates in the National Governor's Conference, the Western Governor's Conference and the Federation of Rocky Mountain States.

scale. The possible effectiveness of such regional organizations was recognized in the Rail Passenger Service Act<sup>36</sup> which allowed regional organizations to deal directly with the rail corporation to obtain extensions of rail service.<sup>37</sup>

Whatever form a state may decide is best to coordinate with governmental functions of other jurisdictions, the mechanism should be able to be easily represented, adaptable to planning needs and innovations, and capable of coordinating the entire transportation system within the state. Without these attributes the mechanism would be incapable of bringing a state transportation system into harmonious cooperation with the systems of other states.

### Overkill vs. Flexibility

One practical consideration which will be included in a decision on structural transportation changes is balancing the need to provide an adaptable and organizationally-adequate mechanism for coordination against the present and future needs of the presently existing transportation system. Placing a complex state DOT, with its demands for data and coordination information, in charge of an undeveloped transportation system might seem roughly akin to hunting flies with a shotgun when seen strictly on the state level. But, when such a department is viewed in terms of its function of eliminating duplication of effort among agencies, providing consistent data for both state and federal planning, and acting in concert with the national and regional transportation systems, the scope of its impact seems no more than minimal as a burden upon the state system and essential for dealing outside the state. The effect of a coordinated organization upon state development will also be enhanced by the state's increased ability to obtain federal funding.

### Economic Benefit

As a final consideration, any change in transportation structure should take into account the benefits and costs which will accrue to the state economy. Although most of the great

---

36. Pub. L. No. 91-518 (1970).

37. Pub. L. No. 91-518 § 403(b) (1970).

influences upon the economy will arise on a case by case basis, any new organization of transportation should provide procedures whereby the differing interests within the economy can be heard. Rate regulation should take possible uses of alternative modes into account in hearing applications for routes, rates and service. Provision should be made for inclusion of the non-carrier user of the system to exert proportionate influence. Analysis of costs to the economy as a whole and not necessarily to specific interests should enter into the determination of regulations. These types of considerations cannot be made in the abstract. Their influence upon transportation, however, must be recognized and weighed against the other considerations which are relevant to structural change.

#### ALTERNATIVES FOR CHANGE

The alternative devices for meeting the evolutionary needs of a state's transportation system are not new. They can be used to move from the *modal* stage to the *entity* stage or from there to the *component* stage.

Transitional devices are simply a means of attempting movement without a total jump from one level to another. The attempt is to maintain the same authority lines as existed under the old system and hope that those who are exercising the authority will see fit to use it in achieving the desired ends. Basically, the transitional devices consist of either one individual who is designated to gather and disseminate information among agencies<sup>38</sup> or a committee of those in authority which attempts to reach mutual goals by common agreement.<sup>39</sup> These attempts may meet with some success,<sup>40</sup> but generally suffer from the fault that any attempt at coordination will ultimately create conflicts among the agency heads. Since they are of equal status little influence can be brought to bear with consistency.<sup>41</sup>

State level DOT's generally parallel the degree of unification reached by the federal DOT and create a single unit,

38. For detailed analysis see, *supra* note 1, at VII-15 to 24.

39. *Id.*

40. See, *supra* note 1 at VII-18.

41. *Supra* note 38.

with appropriate divisions, to perform all state functions pertinent to transportation. Like the federal government, most have left economic regulatory agencies outside the department.<sup>42</sup> The majority of the states which have created such departments to date have done so by merely consolidating the existing state agencies under a cabinet-level official. A planning function and an administrative function have then been grafted into the organization.

The major problem with creating a state DOT is the inequality of the existing state agencies which has arisen because of differences in fundings and administration. The most consistent example of this type of inequality within the Rocky Mountain region is the dominance of state highway departments. Although considerable justification for the prominence of highway departments in this region arises from the need for these states to develop highway systems, the dominance of the departments is also guaranteed by the existence of the highway trust fund.<sup>43</sup> With guaranteed funding which is usually far in excess of that provided to other transportation agencies the highway departments of the region are rarely equalled in any area by other state transportation agencies. The position of the highway departments is even stronger since five of the region states, including Wyoming,<sup>44</sup> constitutionally protect the trust fund from non-highway use.<sup>45</sup>

This type of inequality among existing agencies may result in either overreaching by the stronger agencies or, taking an optimistic view, provide organized leadership in undertaking the new responsibilities of coordination. The trend toward a general transportation fund on both the state<sup>46</sup> and federal<sup>47</sup> levels may serve to overcome this type of problem.

---

42. *Supra* note 30.

43. *Supra* note 17. During the 1969 Wyoming legislature no funds were appropriated for highway use with the exception of funds for the Highway Patrol. LAWS 1969.

44. WYO. CONST. art. 15 § 16.

45. Colorado, Idaho, Montana, Utah and Wyoming.

46. Maryland created a state general transportation fund in 1970 at the expense of foregoing substantial highway trust fund allocations from the federal government. Council of State Governments, State Government News, Vol. 13, No. 5 (May 1970).

47. *Supra* note 18.

## CONCLUSION

The time has passed when states can formulate their own transportation policies solely in terms of what is necessary to regulate transportation development within state borders. While the fragmented and independent regulation of modes or distinct functions has served well in the past as a means of stimulating growth of the developing transportation system within a state, such a structure can no longer serve the needs of a system which is maturing nationally. States must now view themselves as both a promoter of the state needs and as a member of the national transportation system.

The demands of a state's intrinsic interests require methods of planning and regulation which can operate effectively to promote the objectives of the state as a member of the national system and in conjunction with regional organizations. At the same time, state resource limitations require that a state's regulatory agencies provide the maximum benefit for the least cost. This would also include the burden of being equipped to most adequately take advantage of federal funds or other non-state fund sources. In addition, the economic needs of a state can only be served if the state system of transportation is regulated in a manner conducive to growth and efficiency.

At present the solution to providing the maximization of each of the above considerations appears to lie primarily in structural reorganization. A coordinated transportation entity would be able to promote efficient representation in relations with other governmental units, both in terms of data correlation and in terms of funding; provide maximum yield for the least cost by eliminating duplication of efforts and providing an overall planning function; analyze and react quickly to eliminate hindrances to economic growth caused by defects in the transportation system; and cope more effectively with the new and growing responsibilities which are and will be placed upon the state governments to provide original data for the national transportation plan.

The task of reconciling the demands and requirements of a state in promotion and regulation of transportation must be

recognized as a continuing process. The current federal and state trend toward coordination and centralization of transportation regulation may continue to revolve around the *entity* level or it may quickly evolve to the *component* level. In any event, states must be willing to seriously consider the steps which are necessary to maintain effective forms of regulation and promotion of transportation. They must be ready to respond to new approaches with adaptable organizations and flexible, comprehensive transportation policies.

JAMES A. HARDEE