

## Chapter 366

### State Highways

#### Chapter 366

ATTY. GEN. OPINIONS: Authority to donate state park to federal agency for a monument, (1970) Vol 35, p 56.

#### 366.005

ATTY. GEN. OPINIONS: Construing "public highway" in scenic area law, 1964-66, p 283; application of regulations under the Scenic Waterway Law to state highways, (1971) Vol 35, p 445.

#### 366.105

#### NOTES OF DECISIONS

The commission is nothing more than an arm of the state, and is not a citizen within the meaning of the diversity statutes. *DeLong v. Oregon State Hwy. Comm.*, (1964) 233 F Supp 7, aff'd, 343 F2d 911.

#### 366.110

ATTY. GEN. OPINIONS: Compatibility of the offices of State Senator and state highway commissioner, 1942-44, p 386.

#### 366.140

ATTY. GEN. OPINIONS: Civil service status of the auditor of the State Highway Commission, 1948-50, p 419.

#### 366.155

#### NOTES OF DECISIONS

The books and records of the highway engineer are public records so that citizens of the state were presumed to know his survey and plan of a proposed road. *Clark v. Hood River County*, (1914) 73 Or 336, 143 P 897.

Under former statutes, rendering assistance to the county authorities on estimates, and furnishing plans and specifications without cost to them, were duties of the engineer. *Peterson v. Lewis*, (1916) 78 Or 641, 154 P 101.

ATTY. GEN. OPINIONS: Filing surveys conducted by the commission with the county surveyor, 1946-48, p 137.

#### 366.205

#### NOTES OF DECISIONS

See also cases under ORS 366.775.

The commission had authority to prevent encroachment on state highways that would prove deleterious to the highways, or detrimental to the use thereof by the general public. *Postal Tel. Co. v. State Hwy. Comm.*, (1921) 276 Fed 958.

The maintenance and use of a road constructed with the aid of the United States was primarily imposed on the state unless the use was made so arbitrary as to defeat the

purposes for which the contribution had been made. *Morris v. Duby*, (1927) 274 US 135, 47 S Ct 548, 71 L Ed 966.

The permissible weight of a truck and load at the time of an agreement between the national and state governments does not thereby become a binding requirement upon the state to continue the permission. *Id.*

The authority of the highway commission is purely statutory. *United Contracting Co. v. Duby*, (1930) 134 Or 1, 292 P 309.

FURTHER CITATIONS: *Tomasek v. Ore. Hwy. Comm.*, (1952) 196 Or 120, 248 P2d 703; *Harland v. Chandler*, (1956) 208 Or 167, 300 P2d 412.

ATTY. GEN. OPINIONS: Lawfulness of landing of aircraft on ocean beaches without the permission of the commission, except in emergencies, 1946-48, p 517; highways using beds of navigable rivers, 1960-62, p 391; authority to allocate funds for scenic railway, 1962-64, p 55; authority of commission to comply with Highway Beautification Act, 1964-66, p 336; authority of commission to convey state park land to the United States, 1966-68, p 60; state control of sand removal from ocean beach, (1969) Vol 34, p 441; application of regulations under the Scenic Waterway Law to state highways, (1971) Vol 35, p 445.

LAW REVIEW CITATIONS: 22 OLR 371; 1 WLJ 148, 152.

#### 366.220

CASE CITATIONS: *Harland v. Chandler*, (1956) 208 Or 167, 300 P2d 412.

#### 366.256

ATTY. GEN. OPINIONS: Highways using beds of navigable rivers, 1960-62, p 391.

#### 366.305

ATTY. GEN. OPINIONS: Specifying material of domestic manufacture for construction contracts, (1969) Vol 34, p 451.

#### 366.320

#### NOTES OF DECISIONS

It was not essential to the exercise of the power of eminent domain that the use or benefit extend to the whole public. *Moody v. Benson*, (1923) 109 Or 414, 220 P 561.

Whether a road was to be established as a state highway was within the discretion of the commission. *Id.*

The commission had no authority to proceed by condemnation to appropriate a tract of land which the evidence indicated was unnecessary as a part of a right of way. *State Hwy. Comm. v. Pac. Shore Land Co.*, (1954) 201 Or 142, 269 P2d 512.

ATTY. GEN. OPINIONS: Constitutionality of using highway funds to compensate for exclusion of land from irriga-

tion districts, 1960-62, p 201; authority of commission to comply with Highway Beautification Act, 1964-66, p 336; use of highway funds for parking facilities connected with public transportation facilities, (1971) Vol 35, p 686.

LAW REVIEW CITATIONS: 36 OLR 180.

**366.321**

CASE CITATIONS: State Hwy. Comm. v. Clackamas Water Dist., (1967) 247 Or 216, 428 P2d 395.

**366.325**

ATTY. GEN. OPINIONS: Discontinuance of cemetery as one unit, notice, effect on title of lots, condemning right of way through cemetery for street, 1950-52, p 338.

**366.330**

NOTES OF DECISIONS

The commission had no authority to proceed by condemnation to appropriate a tract of land which the evidence indicated was unnecessary as a part of a right of way. State Hwy. Comm. v. Pac. Shore Land Co., (1954) 201 Or 142, 269 P2d 512.

**366.333**

ATTY. GEN. OPINIONS: Condemning land to exchange for utility property, 1964-66, p 202.

**366.335**

ATTY. GEN. OPINIONS: Power of State Highway Commission to exchange real property for a present railroad right of way, 1950-52, p 283; condemning land to exchange for railroad property, 1964-66, p 202.

**366.340**

NOTES OF DECISIONS

The failure or refusal of the state to institute condemnation proceedings does not bar the injured property owner from bringing suit for just compensation against the state. Tomasek v. Ore. Hwy. Comm., (1952) 196 Or 120, 248 P2d 703.

When condemnation is instituted after condemnor is already in trespassory possession, compensation is determined by evaluation at time of entry. State Hwy. Comm. v. Stumbo, (1960) 222 Or 62, 352 P2d 478, 2 ALR2d 1028.

ATTY. GEN. OPINIONS: Authority of commission to comply with Highway Beautification Act, 1964-66, p 336; use of highway funds for parking facilities connected with public transportation facilities, (1971) Vol 35, p 686.

LAW REVIEW CITATIONS: 36 OLR 180.

**366.360**

LAW REVIEW CITATIONS: 46 OLR 129-156.

**366.365**

CASE CITATIONS: State Hwy. Comm., v. Goodwin, (1956) 208 Or 514, 303 P2d 216.

LAW REVIEW CITATIONS: 46 OLR 129-156.

**366.395**

ATTY. GEN. OPINIONS: Prohibiting billboards on property disposed of by commission, 1956-58, p 6; authority of commission to convey state park land to the United States, 1966-68, p 60; authority to donate state park to federal agency for a monument, (1970) Vol 35, p 56.

**366.400**

NOTES OF DECISIONS

1. Under former similar statute

The contractor was not bound to pay for labor and materials not furnished for the prosecution of the work undertaken. State v. Johnson Contract Co., (1927) 120 Or 633, 253 P 520.

Where a contract delegated to the engineer the powers of an arbitrator, the commission could not set aside the engineer's award. United Contracting Co. v. Duby, (1930) 134 Or 1, 292 P 309.

FURTHER CITATIONS: State v. United States Fid. & Guar. Co., (1928) 125 Or 13, 265 P 775; Morrison v. State Hwy. Comm., (1960) 225 Or 178, 357 P2d 389, 85 ALR2d 203.

ATTY. GEN. OPINIONS: Specifying material of domestic manufacture for construction contracts, (1969) Vol 34, p 451.

**366.405**

NOTES OF DECISIONS

1. Under former similar statute

Specification in advance of the particular kind of paving was unnecessary. De Neffe v. Duby, (1925) 115 Or 511, 239 P 109.

An illegal "chilling the bids" resulted from a contract to perform a contract at 10 percent less than the contract price, where another party was to bid. Newport Constr. Co. v. Porter, (1926) 118 Or 127, 246 P 211.

The commission was not divested of all discretion in the matter of alterations or changes in plans and specifications. Pyle v. Kernan, (1934) 148 Or 666, 36 P2d 580.

An alteration which was made under a reservation in the contract expressly providing therefor was not of such a character as to require readvertisement of a call for bids. Id.

After the acceptance of a bid, the successful bidder had a clear legal right to have a contract executed. Id.

Any contract having a natural tendency to bring about a circumvention of the statute — by whatsoever scheme or plan — is contrary to public policy. Id.

A contract between a successful bidder and an assignee whereby the latter agreed to pay to the former money expended under the contract prior to its subsequent modification was not void as against public policy. Id.

ATTY. GEN. OPINIONS: Specifying material of domestic manufacture for construction contracts, (1969) Vol 34, p 451.

**366.415**

ATTY. GEN. OPINIONS: Payment of retainages after 1969 amendment, (1969) Vol 34, p 839.

**366.435**

ATTY. GEN. OPINIONS: Status of vouchers signed by the secretary of the State Highway Commission, 1950-52, p 234; approval of expenses of Oregon Historical Society before payment from Highway Fund, 1964-66, p 200.

366.455

ATTY. GEN. OPINIONS: Authority of commission to comply with Highway Beautification Act, 1964-66, p 336.

366.505

## NOTES OF DECISIONS

Interest earned on this fund prior to the adoption of Ore. Const. Art. IX, §3 should be credited to the General Fund and thereafter to the fund. State ex rel. Sprague v. Straub, (1965) 240 Or 272, 401 P2d 29.

FURTHER CITATIONS: Sprague v. Fisher, (1948) 184 Or 1, 203 P2d 274.

ATTY. GEN. OPINIONS: Using highway funds to reimburse certain districts for cost of relocating facilities, 1960-62, p 366; crediting interest on invested funds, 1964-66, p 31; power of Emergency Board to authorize expenditure of fund by State Board of Health and State Police, 1964-66, p 277; advancing funds to county for roads, (1969) Vol 34, p 476; authority to donate state park to federal agency for a monument, (1970) Vol 35, p 56; use for highway funds for retirement fund for police officers, (1970) Vol 35, p 374.

366.512

ATTY. GEN. OPINIONS: Authority to donate state park to federal agency for a monument, (1970) Vol 35, p 56.

366.515

ATTY. GEN. OPINIONS: Running of the statute of limitations on claim against the state highway fund, 1944-46, p 131; power of Emergency Board to authorize expenditure of fund by State Board of Health and State Police, 1964-66, p 277; using State Highway Fund for snow removal on public or private access roads and parking places, 1966-68, p 73; advancing State Highway Fund to county for roads, (1969) Vol 34, p 476; authority to donate state park to federal agency for a monument, (1970) Vol 35, p 56.

366.518

ATTY. GEN. OPINIONS: Advancing State Highway Fund to county for roads, (1969) Vol 34, p 476.

366.525

ATTY. GEN. OPINIONS: Including funds from the Use Fuel Tax in apportioned funds, 1960-62, p 338; authority to veto part of HB 2044 (1965), 1964-66, p 215; use of State Highway Fund money except on county roads, 1966-68, p 571; advancing State Highway Fund to county for roads, (1969) Vol 34, p 476; use of grants to aid nonprofit private museum, (1970) Vol 34, p 1108; use for highway funds for retirement fund for police officers, (1970) Vol 35, p 374.

366.530

ATTY. GEN. OPINIONS: Advancing State Highway Fund to county for roads, (1969) Vol 34, p 476.

366.535

ATTY. GEN. OPINIONS: Advancing State Highway Fund to county for roads, (1969) Vol 34, p 476.

366.540

ATTY. GEN. OPINIONS: Advancing State Highway Fund to county for roads, (1969) Vol 34, p 476.

366.705

ATTY. GEN. OPINIONS: Computation of tax base, 1954-56, p 127.

366.710

ATTY. GEN. OPINIONS: Using State Highway Fund for snow removal on public or private access roads and parking places, 1966-68, p 73.

366.735

## NOTES OF DECISIONS

Under a former similar statute, the selling of bonds was discretionary and could not be compelled by mandamus, at least in the absence of allegations of special facts. Benson v. Olcott, (1920) 95 Or 249, 187 P 843.

366.770

ATTY. GEN. OPINIONS: Using State Highway Fund for snow removal on public or private access roads and parking places, 1966-68, p 73; advancing State Highway Fund to county for roads, (1969) Vol 34, p 476.

366.775

## NOTES OF DECISIONS

The legislature has not vested in the commission all the control formerly vested in cities over streets which become a part of the state highway system. Cabell v. City of Cottage Grove, (1943) 170 Or 256, 130 P2d 1013.

It is a reasonable inference that the jurisdiction and control over city streets which have become part of the highway system was not intended by the legislature to vest the commission with power to impose traffic regulations. Id.

ATTY. GEN. OPINIONS: Using State Highway Fund for snow removal on public or private access roads and parking places, 1966-68, p 73; advancing State Highway Fund to county for roads, (1969) Vol 34, p 476.

366.785 to 366.820

ATTY. GEN. OPINIONS: Use of revised certificate of census board in distribution of funds, 1960-62, p 153.

366.785

ATTY. GEN. OPINIONS: Use of figures from a special federal census, 1952-54, p 189; distribution of highway revenues to cities over 100,000, 1956-58, p 9.

366.790

ATTY. GEN. OPINIONS: Use of highway funds to clean litter from beaches and parks, (1970) Vol 35, p 235; use for highway funds for retirement fund for police officers, (1970) Vol 35, p 374.

366.800

ATTY. GEN. OPINIONS: Including funds from Use Fuel Tax in apportioned funds, 1960-62, p 338; authority to veto part of HB 2044 (1965), 1964-66, p 215; use of highway funds to clean litter from beaches and parks, (1970) Vol 35, p 235; use for highway funds for retirement fund for police officers, (1970) Vol 35, p 374.