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Reservation of Highway and Street Rights-of-Way by Official Maps

LONDO H. BROWN*

The power of a state to enact laws providing that its highway department, or its political subdivisions, can map the right-of-way of a proposed highway or street and protect the land included in the mapped right-of-way from encroachment prior to acquisition is somewhat uncertain. This procedure is sometimes referred to as official mapping power, and will, for the sake of convenience, be referred to in this paper as mapping power.

These laws often provide that if the owners improve the land included in the mapped area they cannot recover the cost of the improvement if the land is later purchased by the state or political subdivision or taken thereby in an eminent domain proceeding. If the laws provide for compensation to the owners for the loss of the full use of their property, no problem of due process of law is involved. If, however, there is no provision for such compensation, there is a serious question as to whether this is a taking of an interest in property without due process of law in violation of federal and state constitutional provisions.

The mapping power is very much like the power to zone. Both powers are based upon the police power of the state, which includes such reasonable conditions as may be deemed necessary by the governing body to be essential to the health, safety, morals and general welfare of the community.

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In considering zoning laws, the courts have had to consider whether they were arbitrary or unreasonable in their conception and application. The modern tendency is to uphold zoning laws which formerly would have been held unconstitutional. This is in line with the general policy of making inroads upon private rights in order to promote the health, safety, morals and general welfare of the public as a whole.

Several states have enacted statutes giving their highway departments or political subdivisions the power to map future highways or streets and protect the proposed future highways or streets from encroachment prior to acquisition by the governmental agency or subdivision. These statutes fall roughly into four types or classes as follows:

1. If the owner of land included in the mapped area improves that land after the official map has become effective he will not be compensated for the improvement if the land is later purchased or taken by the governmental agency. No time limitation is placed upon the effectiveness of the map.

2. The same as Number 1, except that these statutes provide that if the governmental agency does not move to acquire the property included in the mapped area within a stated period of time, the map is no longer effective.

3. No improvement can be made on land included in the mapped area by the owner thereof without a permit which will not be granted except in hardship cases.

4. The governmental agency has a certain period of time to acquire the mapped land without paying for improvements placed thereon after the official map becomes effective, but if the owner of land included in the mapped area notifies the agency of his intention to improve the land, the agency must move to acquire that land within a short period of time, and if it does not do so, it must compensate the owner for the improvement placed thereon pursuant to the notice if it does later acquire the land.

The constitutionality of mapping statutes has not been conclusively tested, although cases involving municipal mapping ordinances, enacted pursuant to such statutes, have been before the courts several times.

times. These cases indicate that they, like zoning laws, which are of a similar nature, have a better chance of being held valid if they are not too severe and have saving provisions to take care of hardship cases.

Whether or not such statutes are valid depends upon the extent and scope of the state's police power. Although constitutional guarantees cannot be transgressed, possession and enjoyment of rights are subject to the police power, but the return for the sacrifice of private rights should be the attainment of some public object of sufficient necessity and importance to warrant the exercise of the police power. Police power regulations may not be declared void merely because they are deemed contrary to natural justice and equity, but only because they violate a constitutional right. Even so, police power regulations are not void because they incidentally violate some right guaranteed by the constitution. The Fourteenth Amendment to the United States Constitution does not take from the states the right to duly and properly exercise the police power. Nevertheless, the police power is not without limitations. It may not be employed in disregard of constitutional inhibitions.

Mapping statutes and ordinances based thereon are substantially similar to set-back or building line restrictions usually found in zoning laws. Such restrictions have often been held valid. However, in Fruth v. Board of Affairs of the City of Charleston, the Supreme Court of Appeals of West Virginia held that a municipal ordinance establishing a building line on a certain street and inhibiting abutting property owners from encroaching thereon, based merely upon aesthetic considerations, was not within the police power of the city and was invalid. The court made the following statement in the syllabus of that case:

"Wherefore anything done by a state or its delegated agent, as a municipality, which substantially interferes with the beneficial use of land, depriving the owner of lawful dominion over it or any part of it, and not within the general police power of the state, is the taking or damaging of private property without compensation inhibited by the Constitution."

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7 75 W. Va. 456, 84 S.E. 105 (1915).
Such an ordinance was also held invalid by the Supreme Court of Pennsylvania in *Appeal of White*,\(^8\) where the court stated:

"Where a statute or ordinance interferes with the use and control of property without rational relation to public safety, health, morals or general welfare, or is a palpable invasion of rights secured by fundamental law, the enactment cannot be sustained as a legitimate exercise of the police power."

However, since the decision of the Supreme Court of the United States in *Gorieb v. Fox*,\(^9\) the constitutionality of setback and building ordinances has been generally recognized. The court in that case held that such ordinances have a substantial relation to the public health, safety, morals and general welfare in that they reduce fire hazard by keeping buildings farther apart, promote health by keeping dwellings farther from street noises, dust and fumes, etc.

In *Quesenberry v. Estep*,\(^10\) and *Carter v. City of Bluefield*,\(^11\) the West Virginia court stated that a statute or ordinance may not, under the guise of the police power, impose arbitrary or unreasonable restrictions upon the use of private property or the pursuit of useful activities, and to be valid it must bear some reasonable relation to the public health, safety, morals or general welfare of the area affected.

The courts generally agree that zoning cannot be used as a substitute for eminent domain proceedings so as to defeat the constitutional requirement that just compensation must be paid in the case of a taking of private property for public use by depressing values and so reducing the amount of damages to be paid.\(^12\)

The above cases indicate that the courts recognize that the interference by the government with the full use and enjoyment of a citizen's property is a taking of property which the government must pay for unless it is justified under the police power. Justice Musmanno, of the Supreme Court of Pennsylvania, indicated that he thought such interference amounts to a taking when he made the following statement in his dissent in *Petition of Lakewood Memorial Gardens*:

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\(^8\) 287 Pa. 259, 134 Atl. 409 (1926).
\(^9\) 274 U. S. 603 (1915).
\(^10\) 142 W. Va. 426, 95 S.E. 2d 832 (1950).
“Prohibiting the property owner from improving his property between June 14, 1949, when the resolution was passed, and June 8, 1950, when the bond was filed, means depriving him of the full enjoyment and use of his property without the just compensation envisaged by the Pennsylvania Constitution. The Majority meets this obvious injustice by stating that ‘the owner is entitled to damages from the date of the condemnation for detention of payment which is the equivalent of the use of the appropriated property for which he is also indemnified at its market value as of the date of the condemnation.’ But it is still fact that the owner may not enjoy to the fullest extent the use of his property during the period it is darkened by the legal eclipse which may or may not pass into renewed liminance. Full use of one’s property includes exploitation of the land in such a manner as to extact therefrom the highest measure of profit.”

While mapping statues and ordinances are similar to zoning laws in their relation to the police power, there are differences between them in that respect. Zoning laws are enacted to generally promote the public health, safety and general welfare of the communities in which they are effective.

The freezing provisions of mapping laws attempt to assure that presently unimproved land needed for future highways and streets will be available when desired at bare land prices. They have great advantages so far as public moneys are concerned.

If the only relation to the public health, safety and general welfare found in the freezing provisions of mapping laws is the fact that the public will be saved money if the owners of land within the mapped area are not to be compensated for future improvements thereon if the property is later acquired by the government, they are probably invalid. While the balance between the police power and due process of law is more or less in a state of unstable equilibrium, changing with the social and economic development, the saving of money for the government at the cost of taking away a part of a citizen’s property is yet beyond the ordinary concept of the police power.

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13 381 Pa. 46, 64, 112 A.2d 135, 144 (1955).
In Pennsylvania Coal Co. v. Mahon, Mr. Justice Holmes, speaking for the Supreme Court of the United States made the following statements:

"The rights of the public in a street purchased or laid out by eminent domain are those that it has paid for. If in any case its representatives have been so shortsighted as to acquire only surface rights, without the right of support, we see no more authority for supplying the latter without compensation than there was for taking the right of way in the first place, and refusing to pay for it because the public wanted it very much. The protection of private property in the 5th Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. * * * When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States. The general rule, at least, is that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking. * * * We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

The money-saving feature of such laws is probably not their only relation to the public health, safety and general welfare. They are designed to promote orderly growth and development so as to prevent haphazard and incompatible development, including the installation of service facilities which bear no relationship to future highways and streets, control speculation in land, and to give direction and pattern to the future growth of the community.

Several existing mapping statutes provide that municipalities may map future streets and thereafter landowners may not build on areas within the platted rights-of-way under penalty of losing the cost of the improvement if the land is later taken by the municipalities. As previously stated, cases involving municipal ordinances enacted pursuant to such mapping statutes have been before the courts several times. The tendency of the courts in recent years has been to uphold the ordinances.

16 280 U. S. 393 (1922).
In a case decided in the middle of the last century, the Court of Appeals of Maryland held that a Baltimore ordinance, which provided that no person should be entitled to damages for any improvement made or erected in a street or alley unless the same should have been made or erected before the laying out or locating of such street or alley, was unconstitutional and void because it denied the owner the use of his land without compensation and was in fact an act of confiscation. In a fairly recent case, the Maryland court discussed to some extent the present Maryland statute which gives municipalities mapping powers, but did not arrive at any conclusions as to its validity since that issue was not before the court.

In Forster v. Scott, the New York Court of Appeals held a municipal mapping ordinance invalid. The court stated that if the ordinance was valid, land in the mapped area could not be used for building purposes except at the risk that the owner might lose the cost of the building at some time in the future. Many years later, the same court, in Headley v. City of Rochester, refused to hold invalid a municipal ordinance which provided that no permit should be issued for a building in the mapped area except in certain hardship cases, and held that permits issued for such buildings could contain reasonable requirements as a condition to the granting of the permit. The court, in the latter case, did not overrule the Forster case, but distinguished the two cases from each other. The ordinance in the Forster case provided that no compensation should be allowed for improvements constructed in the mapped area after the map became effective. The court in the Headley case, in speaking of the ordinance under attack in that case, stated:

"The only restrictions upon the use of any part of the plaintiff's land while title remains in the plaintiff result indirectly from the conditions which the statute attaches to the grant thereafter of a permit to erect a building upon the small portion of plaintiff's land, which as shown upon the map, will lie in the bed of the street on which plaintiff's land abuts, if or when at some time in the future the city may desire to carry out its intention to widen the street."
The court in the *Headley* case found that the plaintiff had failed to allege or prove that the ordinance had damaged him or interfered with any use to which he desired to put his land. The Court then stated:

"Whether the state may impose conditions for the issuance of permits in order to protect the integrity of the plan of a city where it appears that such conditions interfere with a reasonable use to which the land would otherwise be put or diminishes the value of the land should not now be decided. Without proof that the imposition of such conditions has deprived an owner of land of some benefit he would otherwise derive from the land, there can be no deprivation of property for which payment should be made."\(^{23}\)

The Supreme Court of Pennsylvania has held that municipal street mapping ordinance are valid as merely an inchoate taking of property, and that the owner cannot obtain compensation until the taking is completed by proceedings to open or widen the proposed street.\(^{24}\)

Nevertheless, in the later case of *Miller v. City of Beaver Falls*,\(^{25}\) decided in 1951, the same court held that a municipal mapping ordinance involving parks and playgrounds was invalid even though there was a three-year limitation upon the effect of the ordinance as to any particular parcel of land. The court in that case quoted the *Forster* case as follows:

"'What the legislature cannot do directly it cannot do indirectly, as the constitution guards as effectively against insidious approaches as an open and direct attack. Whenever a law deprives an owner of the beneficial use and free enjoyment of his property, or imposes restraints upon such use and enjoyment that materially affect its value, without legal process or compensation, it deprives him of his property, within the meaning of the constitution. All that is beneficial in property arises from its use and the fruits of that use, and whatever deprives a person of them deprives him of all that is desirable or valuable in the title and possession. It is not necessary, in order to render a statute obnoxious to the restraints of the constitution, that it

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\(^{23}\)Id. at 209, 5 N.E.2d at 203.


\(^{25}\)368 Pa. 189, 82 A.2d 34 (1951).
must, in terms or in effect, authorize an actual physical taking of the property or thing itself, so long as it affects its free use and enjoyment, or the power of disposition at the will of the owner.\textsuperscript{26}

The same principles seem to be involved in both street, and park and playground, cases, and the court in the \textit{Miller} case indicated that it thought that the holdings in the street mapping cases were the result of earlier cases in that field where the constitutionality of the ordinances was assumed, and the court had been concerned with the question of whether the landowner was entitled to have damages assessed between the date when the map became effective and the date of the actual taking of the property.\textsuperscript{27} The court in the \textit{Miller} case also stated:

"It follows that the aforesaid cases involving a plotting of streets should not and do not provide authority for an extension of the principle or doctrine therein enunciated. A principle of questionable constitutionality should not be extended beyond its present application or limitation especially if such extension would violate either the letter or the spirit of the constitution. 'The law as to what constitutes a taking has been undergoing a radical change during the last few years. Formerly it was limited to the actual physical appropriation of the property or a divesting of title, but now the rule adopted in many jurisdictions and supported by the better reasoning is that when a person is deprived of any of certain rights in and appurtenant to tangible things, he is to that extent deprived of his property, and his property may be taken, in the constitutional sense, through his title and his possession remain undisturbed;' . . . .\textsuperscript{28}

The \textit{Miller} case seems to cast considerable doubt as to whether the Supreme Court of Pennsylvania would continue to uphold the validity of harsh street mapping ordinances if again attacked upon constitutional grounds in that state.

\textsuperscript{26} Id. at 197, 82 A.2d at 38.
\textsuperscript{27} See also \textit{In re Harrison's Estate}, 250 Pa. 129, 95 Atl. 406 (1915). In \textit{Bakken v. State of Montana}, 382 P.2d 550 (Mont. 1963), the court held that an owner whose property was located within the boundaries of a proposed future highway had no cause of action because his property was worth less because of such location. No mapping statute was involved. That is to some extent the same view taken by the Pennsylvania court in earlier mapping cases where the constitutionality of the mapping ordinances was not questioned.
\textsuperscript{28} \textit{Miller v. City of Beaver Falls}, 368 Pa. 189, 196, 82 A.2d 34, 38 (1951).
In one of the most recent cases on the subject the Supreme Court of Wisconsin held valid a statute granting municipalities the power to enact mapping ordinances which would require owners of land within the mapped area to obtain building permits before building upon land in that area. But the statute provided that a board of appeals should have the authority to grant permits in hardship cases, and the court construed this provision to mean that it is the duty of the board to grant the permit if the property owner would be substantially damaged if the permit were denied. The court stated that without such a saving clause, it would be extremely doubtful if such a mapping statute would be constitutional, and, even with such a clause, a mapping ordinance, drafted pursuant to and in compliance with the statute, might be invalid as applied to particular lands.

The fact that a mapping ordinance contains a provision permitting building upon the mapped area in hardship cases may save the ordinance if it is attacked on constitutional grounds, but the courts may take the position that the officials charged with the administration of the ordinance must be very lenient in the granting of permits. In fact, the court in one case indicated that it thought that the landowner should be able to use his land or should be paid for it. The court did not pass upon the validity of the ordinance since it remanded the case to the board of appeals because of an irregularity in procedure. But the court made the following statements:

"The court will not instruct the Board of Appeals upon its duties at this time. However, because of the sharp conflict between respective counsel as to the law applicable in these circumstances, it is deemed proper to direct its attention to the fundamental principle that if private property is to be taken for a public use, prompt consideration must be made to its owner. The prevention of any reasonable use of such property for an indefinite period of time in anticipation of an eventual acquisition is an actual taking in all but name.

This petitioner is threatened with the loss of virtually one-half of a valuable commercial property, which, before the fire of April 15, 1956, was completely devoted to business uses. It is proposed that the petitioner be permitted to retain title to the portion which may be needed for street widening purposes, and

\[\text{State ex. rel. Miller v. Manders, 2 Wis.2d 365, 86 N.W.2d 469 (1952).} \]
\[\text{Front St. Realty Corp. v. Klaess, 6 Misc. 2d 774, 160 N.Y.S.2d 265 (1957).} \]
that it be required to pay taxes on the entire parcel, but in order to mitigate its eventual damages, the petitioner shall be prevented from making any improvements while it awaits for an indefinite period (which may well extend for a year or more) the acquisition by the municipal authorities.

Unless such acquisition is to take place in the near future, it would seem that petitioner must be afforded some reasonable use of this portion of its property."

Prior to the decision in the Wisconsin case, two eminent writers, in an article on official mapping laws, stated that the general validity of such statutes and ordinances seems no longer to be in doubt, and that constitutional attack, to be successful, must be grounded upon detailed facts showing that as applied to a particular parcel of land the map operated unreasonably.

There is a great difference between a situation where all or a major portion of a person's property is included in a mapped area and one where only a narrow strip of land is included therein. There may also be a difference between cases involving municipal mapping ordinances and those involving state highway mapping statutes. In many of the former, the prohibition is against building in the mapped area without a permit, and in many of the latter, the prohibition is against building in the mapped area. This difference appeared to be one of the grounds relied upon by the New York Court of Appeals for distinguishing the Headley case from the Forster case.

While most of the original mapping statutes were enacted to give municipalities the power to map future streets and to freeze property values so far as improvements were concerned, several states in recent years have enacted statutes granting their highway departments similar mapping powers. A portion of a memorandum giving a resume of several of the latter type statutes is attached to this paper as an appendix. As shown by that memorandum, these statutes

31 Id. at 776, 160 N.Y.S.2d at 267.
32 Kucirek and Beuscher, Wisconsin's Official Map Law, 1957 Wis. L. Rev. 176.
33 The court in Headley v. City of Rochester, 272 N.Y. 197, 5 N.E.2d 198 (1936), used this difference as one of the features which distinguished that case from the earlier Forster case.
34 The memorandum was prepared on June 11, 1962, by O. K. Norman, Deputy Director of Research for the Bureau of Public Roads, United States Department of Commerce.
vary in their grants of powers from very limited to very extensive powers.

The recent Wisconsin statute\(^{35}\) requires only that the landowner notify the highway commission prior to improving any of his land included in the mapped area. The Pennsylvania statute\(^{36}\) baldly provides that the landowner is not entitled to compensation for improvements placed upon land included in the mapped area after the map becomes effective. The powers granted the highway departments by the other state statutes vary between these two extremes, although the powers granted by the Indiana statute\(^{37}\) are about as limited as those granted by the Wisconsin statute.

One can only guess how statutes granting municipalities and the state road commission the power to map areas for proposed future streets and highways, and freeze the enclosed properties at approximately their existing values, would fare if enacted and later attacked upon constitutional grounds in West Virginia.

Article III, Section 9, of the Constitution of West Virginia provides that private property shall not be taken for public use without just compensation. In *Hardy v. Simpson*,\(^{38}\) the Supreme Court of Appeals of West Virginia stated:

"While our statutes, covering the taking of private property under the powers of eminent domain, only apply, in direct terms, to the actual taking of property, these provisions must be held, in order to give effect to the constitution, to cover cases where there is damage to property, as distinguished from the actual taking thereof. Therefore, a duty rests on the state to take necessary steps under our condemnation statutes to ascertain damages to the owners of the private property, whether the same is actually taken, or damaged only."

In *Strouds Creeks M. R. Co. v. Herold*,\(^{39}\) that court stated:

"The well-established and universally recognized rule is that the amount of compensation for land actually taken by the condemnor in a proceeding instituted for that purpose is determined by the market value of the land at the time it is taken."


The same court, in *State ex rel. United Fuel Gas Co. v. Deberry*, stated:

"The Legislature may determine the private property needed for public purposes, but, when the taking has been authorized by the Legislature, the question compensation is judicial, and a court may not be precluded from determining the amount of such compensation by rules for its computation prescribed by the Legislature."

In spite of all this, the West Virginia court has been very liberal in permitting local governments to restrict the use of private property through the use of zoning and building code ordinances. Such ordinances, however, are justified only by the exercise of some aspect of the police power in the interest of the public. The court, in *Carter v. City of Bluefield*, stated:

"The power to interfere by zoning regulations with the general rights of a landowner by restricting the character of his use is not unlimited and a restriction cannot be imposed unless it bears a substantial relation to the public health, morals or the general welfare . . . private property may not be taken without compensation, even for a public purpose or to advance the public welfare."

However, in the recent case of *G-M Realty Co. v. City of Wheeling*, the same court in speaking of a zoning ordinance, made the following statements:

"Courts are not disposed to declare ordinances invalid, in whole or in part, where the question whether they are arbitrary or unreasonable is fairly debatable. But zoning is not, and cannot be static and zoning ordinances are not restricted to the regulation of conditions in the immediate present; they may, and frequently do, look to the future or deal with conditions in the future, to the extent that such conditions can be reasonably anticipated. So, these regulations may be intended to guide the future development and uses of land in certain areas and to protect such areas during transition periods in connection with anticipated further development; good zoning connotes com-

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42 Id. at 905, 54 S.E.2d at 761.
43 120 S.E.2d 249, 252, 253 (W. Va. 1961).
munity development in accordance with consistent plans and policies of the legislative body.'

There appears to be no doubt that the effects of such ordinance do, to some extent, lessen the value and limit the free and independent use of plaintiff's property. That, however, does not afford the test of unreasonable discrimination. No doubt rights and privileges of some individuals are to some extent limited or controlled by every such zoning ordinance. The spacious and indefinable breadth of the police power, though not entirely without constitutional limitations, permits reasonable restrictions of the rights and privileges of the individual for the needed protection of the health, safety, morals and general welfare of all.

It may be proper to add that in this 'changing world' the increase in the density of population, the modern methods of living, and the greater need for larger and more effective means or methods of protecting the health, safety, morals and general welfare of all the people, are creating a need and demand for such restrictions throughout rural areas as well as within urban areas."

In making the last statement the court seemed to realize that changing social and economic conditions can result in a greater and more flexible police power.

**CONCLUSION**

The writer of this paper is of the opinion that mapping statutes containing value freezing provisions, like zoning ordinances, are generally valid if not too severe.

The constitutionality of a mapping statute providing that the owner of land included in the mapped area will not be compensated for improvements made thereon after the map has become effective if the land is later purchased or taken by the governmental agency is extremely doubtful. This is particularly true if there is no time limitation upon the effectiveness of the map. There is, in that type statute, a taking of an interest in land for an indefinite time without compensation. In view of the Miller case, decided in Pennsylvania six years after that state enacted such a statute, it was not surprising that the mapping powers therein granted have apparently not been used in recent years.
The fact that a mapping statute provides that the map shall be no longer effective if the governmental agency does not move to acquire the property within a relatively short period of time would probably not save the statute if it were attacked on constitutional grounds.44

If the mapping statute provides that no improvement can be made on land included in the mapped area by the owner thereof without a permit, which will not be granted except in hardship cases, it may survive an attack upon constitutional grounds since it, like zoning laws which have survived such attacks, provides for variances to take care of exceptional and hardship cases.

The type of mapping statute which provides that the owner of mapped land will be compensated for improvements made thereon after the map becomes effective provided he gives the governmental agency a reasonable notice of his intention to improve the land is very likely to be held constitutional. That type statute is extremely fair to the owners of mapped property. If any owner desires to use the portion of his property included in the mapped area, he can do so or force the state to acquire the property. Of course, this type statute is the least valuable of the four types from the standpoint of the government.

APPENDIX

Legal Authority for Reservation of Right-of-Way for Future Highway Improvement

CALIFORNIA

State highway department submits copies of maps showing location of proposed State highways to county planning commission. If approved by governing body of county, thereafter no buildings may be erected in proposed right-of-way with exception of temporary structures costing less than $500, without permit. State has not used this authority extensively because of provision that in event landowner requests permit which is granted by county, State must acquire land, whether funds have been budgeted for that purpose or not. Cal. Sts. & Highways §§ 740-41.

44 In considering the rule which makes a restraint upon the alienation of real estate void, the courts generally hold that it is immaterial that the restraint is for a limited time. VI American Law of Property § 26.16 (Casner ed. 1952).
DELaware

After State highway department has determined upon road or roads to be converted into State highways, and notice thereof has been given property owners, no compensation shall be allowed for any building constructed within 60 feet of center line of any such road, unless such owner shall serve written notice upon the department within three months from time he received notice that he claims damages by reason of provisions of act, in which event department may apply for ascertainment of damages so claimed. Del. Code Ann. ch. 1, tit. 17, § 138 (1953).

Indiana

When State has determined location of State highway which requires acquisition of land or easements and rights in lands, State may file metes and bounds or other description in office of recorder of county and cause written notice to be given owner, or record such lands or rights, together with a statement that department intends to acquire same for highway purposes.

After service of notice, owner shall not erect any improvements on said land, subdivide same or make any change in use thereof which would affect its use for highway purposes without notifying department. Department then has 90 days within which to purchase such land or right or to commence action to condemn. After that, if department has not entered into contract for purchase or commenced condemnation action, owner may proceed with improvement, subdivision or other use.

Reservation no longer in force if no action taken by State within three years. Ind. Acts 1957, 396.

Maryland

Plats or maps prepared by the State Roads Commission not to be open to public inspection until recorded in the appropriate offices as provided by law. The amount determined upon by the State as the value of the property not to become public information until such time as all of the property along the pertinent section of highway has been acquired or the price determined or agreed upon by the parties to the transaction. If land is not acquired within one year from the date plats or maps are recorded, or a condemnation suit filed, value of property to be determined as of time of acquisition rather than as of date plats or maps were recorded. Md. Code, art. 89B, §§ 9A-9B (1957).
The Maryland-National Capital Park and Planning Commission is authorized to reserve lands for public use including highway or street rights-of-way for a period of three years. If a reservation seems desirable to the planning commission, it may be referred to the State Roads Commission which may approve such a reservation or request changes therein. Approval is by resolution of the planning commission. During the reservation period no building or structure may be erected upon the land reserved. If land so reserved is not acquired for public use or proceedings initiated at the end of the reservation period, the reservation is declared void. Md. Acts 1943, ch. 992, § 2-I, as amended by Md. Acts 1949, ch. 582.

**MICHIGAN**

State Highway Commissioner must approve all plats which include land on State trunkline or Federal-aid roads. He may require widths and locations as shown by plans on file. The State requests dedication of rights-of-way or protective steps to make adequate provision for traffic safety. On controlled-access highways service drives are mandatory. On other highways, the State obtains necessary width of right-of-way by holding up plat approval until subdivider conforms by executing highway easement release. Mich. Comp. Laws Ann. § 560.35 (1948).

**OHIO**

The State Highway Department, by means by highway reservation agreements, acquires specified “reserved” areas, for a nominal consideration, permitting the owner to utilize the reserved areas for all normal purposes not inconsistent with the future use of the marginal strips for highway right-of-way. Under Sec. 1178-2 of the State statutes, the State is presumed, if it has an ultimate highway plan on record, to have the right to acquire property and property rights pursuant to that plan.

**PENNSYLVANIA**

The Secretary of Highways has authority, with the approval of the governor, to establish ultimate width and lines of any State highway for future construction before or after the construction, reconstruction or improvement of the same. Landowner is not entitled to recover damages for buildings or improvements placed or constructed upon or within the ultimate widths and lines after the same shall have been established for future construction. Pa. Stat. Ann. tit. 36, § 270-208 (Purdon 1961).
TEXAS

The State Highway Department has authority to acquire . . . any property rights of any kind or character including, but not limited to, rights of ingress and egress, and reservation rights in land which restrict or prohibit for any period of time not to exceed seven (7) years the adding of new, or addition to or modification of existing improvements on such land, or subdivision or resubdividing same . . . .” Tex. Laws 1957, ch. 300, at 728.

WASHINGTON

When any authority in behalf of State establishes location, width and lines of any new highway, or declares any such new highway as a limited access facility, and description and plan and certified copy of resolution is recorded in county, owner or occupier of lands, buildings or improvements may not erect buildings or make improvements thereto. If buildings are erected or improvements made, no allowance is to be made in assessment of damages. No permits for improvements within said limits to be issued by any authority.

Reservation is effective for one year from filing thereof if no action to condemn or acquire property has been commenced within that time. Wash. Laws 1955, ch. 161.

WISCONSIN

Provides for review of subdivision plats by State Highway Commission if the subdivision abuts or adjoins a State trunk highway or connecting street, to determine if there is any objection to the plat. Approval of plats to be conditioned on rules of S.H.C. pertaining to safety of entrance to and exit from highway or connecting streets and preservation of public interest and investment in highway. Wis. Stat. Ann. tit. 21, ch. 236.01 (1957).

[NOTE. Since this memorandum was prepared WISCONSIN has enacted a new statute giving its highway commission the authority to map the location of future freeways or expressways. The statute further provides that no one shall thereafter erect or move into the mapped area any additional structures without giving the highway commission sixty days written notice thereof, and that when the right-of-way is acquired, no additional damages shall be allowed for any construction or additions in violation of this statute. Wis. Stat. Ann. tit. 11, ch. 84.295(10) (1961)].