

(The memorandum of law referred to follows:)

U.S. DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION,
BUREAU OF PUBLIC ROADS,
Washington, D.C., August 29, 1967.

MR. WALTER R. MAY,
Chief Counsel, Special Subcommittee on the Federal-Aid Highway Program,
Committee on Public Works, House of Representatives, Washington, D.C.

DEAR MR. MAY: Enclosed is a Memorandum of Law concerning the propriety of Interstate fund participation in safety improvements on segments of the Interstate System previously constructed with Interstate funds.

This is furnished pursuant to the Subcommittee's request, for insertion in the record of the hearings before your Subcommittee on highway safety, design and efficiency, at which I testified on July 20, 1967. The insertion would appear at the bottom of page 1294 of the transcript.

Sincerely yours,

F. C. TURNER, *Director of Public Roads.*

MEMORANDUM OF LAW

INTERSTATE FUND PARTICIPATION IN SAFETY IMPROVEMENTS ON SEGMENTS OF THE INTERSTATE SYSTEM PREVIOUSLY CONSTRUCTED WITH INTERSTATE FUNDS

The question presented is whether Interstate funds are legally eligible to participate in new safety improvement work or in revamping and upgrading existing items to a new or higher standard, as may be deemed necessary to eliminate hazards on segments of the Interstate System previously constructed with Interstate funds.

This question was raised because of the decision of the Comptroller General, B-143075, dated January 5, 1961, 40 Comp. Gen. 404, which modifies his earlier decision of July 19, 1960, 40 Comp. Gen. 21, to the effect that portions of the Interstate System constructed with Interstate funds and later seriously damaged by natural disaster, while eligible for emergency or regular Federal-aid funds, could not be rebuilt with Interstate funds. This decision makes reference to the rationale that, under the Federal-aid legislation and fund authorizations, Congress has provided for a completed Interstate System and the use of Interstate funds to rebuild a portion of the Interstate System previously constructed with Interstate funds to Interstate standards would not accord with the basis upon which Interstate funds were provided.

The situation to which the Comptroller General's decision was directed—that is, the rebuilding or reconstruction of a highway seriously damaged or destroyed by natural disaster—is clearly distinguishable from safety improvement work on the Interstate System to provide maximum safety for the traveling public. In the one case, the work is restorative in character and may involve the complete rebuilding of a destroyed highway. In the other, the work constitutes additive or corrective safety features in accordance with the most modern design standards based on current day experience, for the purpose of saving lives as well as reducing injuries and property damage. In our judgment there is no sound analogy between reconstruction and restoration work attributable to "serious damage as a result of disaster over a wide area" as referred to in section 125 of title 23, United States Code, and safety feature improvements, including corrective work consisting generally of low-cost items, needed to overcome design deficiencies in the light of current knowledge.

The legislative history is clear that Congress intended safety to be a primary objective of the Interstate program. In addition, section 109 of Title 23 expressly states that plans and specifications for all Federal-aid projects shall provide for existing and probable future traffic needs and conditions "in a manner conducive to safety" and that geometric and design standards for the Interstate System shall be applied uniformly throughout the States. The declarations of Congressional intent in section 101 provide that prompt and early completion of the Interstate System is one of the most important objectives of the law and that the System is to be completed as nearly as practicable over the period of availability of funds authorized.

It is recognized that Interstate authorizations and apportionments are based on cost estimates in order to provide for a completed System of specified mileage