

## LEGAL ACTIVITIES

In the construction of electric lines by a cooperative with funds borrowed from REA, a large amount of legal work must necessarily be done, and although it is an intangible thing that cannot be seen, as contrasted with actual construction, the legal work must be properly and quickly done in order not to hold up the progress of actual construction.

The REA must of course take due precautions to see that money loaned by it is properly secured by property of the cooperative and accordingly requires that the cooperative select an attorney, subject to the approval of REA, to perform functions of a legal nature.

Among other duties of the attorney he is required to supervise the incorporation of the cooperative, and the succeeding organizational steps of adoption of by-laws, election of directors and officers. It is also required that he supervise and write an opinion on the validity of the corporate authorization to borrow funds from the REA and execute a mortgage on the property of the cooperative as security for the loan. The REA must be assured that it is obtaining a valid mortgage from a validly organized corporation.

The Government must further be assured that all legal steps are properly taken necessary to not only construct the physical plant of the Project, but to place the Project on a sound operating basis. This means that the Association as owner of such a Project must be legally protected as to source of energy through a valid contract executed for that purpose and must also obtain the necessary franchises and permits from Governmental authorities and obtain such other contracts as may be necessary to complete the construction of the Project, and to insure that when the Project is completed it will be in a legal position to operate and serve its members and thus secure income to pay back its loan.

The first Projects which were formed in Wisconsin such as ROCK, RICHLAND, DOUGLAS and COLUMBUS, selected Mr. John Ernest Roe of Madison as counsel. Mr. Roe not only performed valuable work for these Associations, but the work he did has proven of value to the Associations that were formed thereafter. In November of 1936, a legal staff for Rural Electrification Coordination was formed with Norris E. Maloney as chief counsel, assisted by B. W. Huiskamp, Lloyd Allan, Floyd Wheeler, Harry Carlson, Lee K. Besnor and Sam Levitin. Late in 1936 Mr. Roe resigned as counsel for the Associations he then represented and Mr. Maloney resigned as chief counsel of Rural Electrification Coordination on February 1, 1937, to become counsel for a number of Associations then being organized or in the early construction phases of their Project. Mr. Wheeler and Mr. Allan became members of Mr. Maloney's staff and Mr. Besnor continued as counsel for Rural Electrification Coordination.

At the present time Mr. Maloney is counsel for seventeen out of the twenty REA Projects in the state. The Chippewa Valley Electric Cooperative is represented by Mr. P. J. Murphy, Chippewa Falls, Mr. Ira Slocum of Menomonie represents the Dunn Project, and the legal work for the Project being constructed by the village of Bangor is being done by Mr. Herbert Roswell, attorney for the village.

In a few of the larger Projects Mr. Maloney is aided by local counsel who collaborate with him in matters of a local nature. The following attorneys are associated with Mr. Maloney: Mr. George Geffs, Janesville, Rock Project; Mr. Francis J. Brewer, Richland Center, Richland Project; Senator Walter J. Rush, Neillsville, Clark Project; Mr. P. J. Murphy,

Chippewa Falls, Wisconsin Power Cooperative; and Mr. Elmer Barlow, Arcadia, Trempealeau Project; Lincoln Neprud, Viroqua, Vernon Project.

#### LEGAL FUNCTIONS DURING CONSTRUCTION

Because of the fact that cooperatives organized to serve members only are not public utilities and therefore do not have the power of eminent domain to condemn a right of way for the construction of the lines, it is highly important that careful provision be made to procure easements over all parcels of land that it is proposed to build the line. Counsel for the cooperative must draft suitable forms of easements and also carefully instruct employees of the cooperative as to the proper manner of procuring execution of the instruments by the property owner.

It is fundamentally necessary that the work of procuring a right of way for the construction of the lines be done systematically and with exactitude because of two reasons. First, the Association must procure from the property owner the legal right to construct the line in order to insure the permanent location thereof. Second, the REA requires an opinion of counsel relative to the procurement of a right of way before funds will be advanced to the contractor for the construction of the line. Contractors are to be paid monthly which necessitates an opinion each month from counsel as to the validity of the right of way procured. The contractor, of course, is vitally interested in receiving his pay as soon after the end of the month as possible and, therefore, it is necessary that the work of Statewide, as engineer, in certifying the amount of construction made during the month be closely correlated with the work of counsel in writing an opinion as to the right of way upon which the work during the month had been done in order to avoid unnecessary delay. The work of obtaining a right of way for the construction of a line has passed through many stages of evolution, and it has now been systematized in such a way as to enable the payments to the contractors to be made within the time specified in the Construction Contract.

In addition to the easement work many other problems arise during the period of construction that require the services of counsel in close collaboration with the engineering staff. These other matters include such items as the obtaining of railroad crossing permits, agreements with public utilities and municipalities to build joint pole lines, village and town board permits to build lines on the highways, and agreements with telephone companies to move their lines to the other side of the road to clear a right of way for the electric lines.

#### LEGISLATION AND COMMISSION WORK.

Among the important functions of a legal nature during the past early stages of the REA progress in Wisconsin have been those functions relating to the improvement of legislation to facilitate the work of cooperative rural electrification in the state and to protect the work accomplished by the several cooperative associations. These functions have been primarily of two types. First, the drafting and promotion of legislative amendments and additions to existing laws, and second, work before the Public Service Commission to secure both general and specific orders favorable to the protection and promotion of the REA projects.

When the REA program was instituted in Wisconsin neither the laws of the state, nor the rules and orders of the Public Service Commission were framed with the specific and peculiar problems of REA cooperatives in mind. While Chapter 185 of the Wisconsin Statutes dealing with the organization and incorporation of cooperative associations was more favorable to the cooperative development of REA projects than cooperative

laws of most other states, there were naturally many problems peculiar to REA cooperatives which were not dealt with in that Chapter nor in other applicable provisions of our statutes. The same was true of the general orders and regulations of the Public Service Commission which were designed almost solely for the purpose of regulating the building and extension of facilities by public utilities.

One of the most pressing needs of the cooperative associations attempting to carry on the REA program in Wisconsin in 1936 and in the early part of 1937 was some form of protection from the attempts of privately owned public utilities desiring to break up the REA program by building lines into territory proposed to be served by the cooperative. In this connection the Public Service Commission held conferences with public utility representatives and representatives of the Rural Electrification Coordination staff, then headed by Orland S. Loomis, and early in the year of 1936 revised its rules and regulations relating to extensions to afford some type of orderly development of rural electrification. The rules promulgated by the Public Service Commission were extremely helpful to the cooperative associations in those months prior to the time that the Legislature met, but the extent of the protection which could be afforded by Public Service Commission rules and regulations was limited by the statutory authority of the Commission. As a result the earlier projects, particularly ROCK and RICHLAND, were confronted with numerous hearings before the Public Service Commission resulting from the attempts of public utilities to build in territory which these Associations planned to serve.

The several legislative problems were attacked by a careful study of the existing state laws by Mr. Roe during the time he was counsel for some of the earlier projects, which was followed by coordinated efforts of staff members of Rural Electrification Coordination, attorneys of REA and Mr. Maloney representing the various projects in existence during the early part of 1937. This study was made with the view to seeking those improvements in legislation necessary to permit the progress and development of the REA program. After this study was made, proposed amendments and new legislation were drafted and submitted to the Legislature for its consideration. This necessitated appearances at committee hearings as well as many conferences with senators and assemblymen.

Under the sponsorship of Rural Electrification Coordination, headed by Mr. Becker, a bill was drafted to afford the REA cooperatives protection during the construction period. This bill was introduced by Senator Rush and was enacted as Chapter 17 of the Laws of 1937. Almost immediately the numerous hearings before the Public Service Commission, at which the cooperative associations had to be represented in order to protect their interests, ceased. The law has since operated effectively to afford a breathing space for electrical cooperative associations in which to build their lines without harassment and interference from privately owned utilities.

Another piece of legislation which has not received the publicity given the Rush Law, but which has been equally as important, was the enactment by the 1937 Legislature of a provision specifically exempting electrical cooperative associations from Public Service Commission regulation. This confirmed a previous, but somewhat uncertain judicial construction of the existing law. The statement that the enactment of this legislation was important, does not in any way reflect upon the fairness

of the Public Service Commission. However, if the REA cooperatives had been subject to Public Service Commission regulation, particularly during the early stages of development, it is safe to say that the REA program in this state would have been slowed down measurably by the requirement of having to obtain authority of the Commission to build lines in each particular town. The utilities, of course, would have opposed the granting of such authority by the Commission and availed themselves of appeals to the courts thus prolonging the period during which the cooperative could not build. Therefore, it is safe to say that the present status of development of the REA program in this state could not have been reached if the cooperative associations had been subject to Public Service Commission regulation as public utilities.

Another piece of 1937 legislation which has proven important to REA cooperative associations was that authorizing County Boards in those counties where the Register of Deeds is on a salary basis to waive all or any part of the recording fee for the recording of easements to REA cooperatives, and setting of a ten cent fee for filing easements in the form of photostatic copies in those counties where the Register of Deeds is on a fee basis.

There were a number of other legislative revisions which were drafted and sponsored for the local associations. Many of these related to such technical matters as the facilitating of borrowing funds by cooperatives and the obtaining of highway permits and franchises, but all of these legislative enactments have been instrumental in aiding the REA program in Wisconsin.

Of importance to all Associations in this state, hardly secondary to the legislative work, was that work performed before the Public Service Commission to secure the promulgation of general orders to supplement and complete the protection afforded by the Rush Law and to carry some means of protection for electrical cooperatives beyond the mere construction phase of their development in order to afford protection to the associations after operations are commenced against construction of competing duplicating facilities by private utilities. Mr. Maloney, as counsel for several associations, and Mr. Besnor, as counsel for Rural Electrification Coordination, have appeared at several hearings and conferences before the Commission relative to this subject and the Commission has recently issued its revised order giving to the cooperative associations of Wisconsin a more certain and complete form of protection against the inroads of privately owned utilities than such associations have enjoyed in the past.