



6.9 JURISDICTIONAL TRANSFERS

The regional Real Estate section will be involved in the jurisdictional transfer process. The Facilities Development Manual (FDM) summarizes the question of the distribution of right of way. As stated in the FDM 4-5-1, "The disposition of all state-acquired lands and/or interests in lands as affected by the transfer of jurisdiction should be delineated in the letter. Normally, all acquired interests and lands are retained by the state. In the event it is in the best interest of the state to pass on to the local unit such interests, appropriate action should be initiated by the region and coordinated through the Bureau Technical Services-Real Estate." In other words, the right of way does not automatically go with the roadway. According to [s. 84.09\(3\)\(b\) Wis. Stats.](#), "Any property of whatever nature acquired in the name of the county pursuant to this section or any predecessor shall be conveyed to the state without charge by the county highway committee and county clerk in the name of the county when so ordered by the department." An opinion of the Office of the General Council stated that the title held by the county "is only a 'naked' legal title to the property which the county holds at the pleasure of the state highway commission," *Kynel vs. Kenosha County* (1968) 37 Wis. 2d 547, 554, 155 N.W. 2d 583; July 28, 1975. The title is acquired and held by the county acting as an agent for the state.

The transfer does not have to include surplus property. WisDOT may retain and dispose of surplus property in accordance with Section 6.4 of this manual. Note: If federal funds were used to acquire the right of way, FHWA approval is necessary prior to transfer. The WisDOT Program Management Manual (PMM), at the time of this writing, under Chapter 3, Section 20 Jurisdictional Transfers as well as the FDM, Chapter 7 Access Control can provide additional reference information and guidance.