

MINUTES OF FOURTEENTH MEETING

OCTOBER 10, 1950

Pursuant to call of the Chairman, the Ohio Turnpike Commission met in special open session in Room 1012 A, State Office Building, Columbus, Ohio, at 1:45 o'clock p. m. on October 10, 1950, with members of the press; Mr. Kinneary of the office of the Attorney General of Ohio; Mr. John Pershing of the firm of Mitchell and Pershing; Mr. Lawrence Waterbury of Parsons, Brinckerhoff, Hall and Macdonald; and members of the staff of the Director of Highways also in attendance.

The meeting was called to order by the Chairman and the roll was called and the attendance was reported to be as follows:

Present: Shocknessy, McKay, Teagarden, Seasongood
Absent: Kauer

Whereupon the Chairman announced that a quorum was present and that Mr. L. F. Schaeublin, Assistant Director of Highways, would represent the Director of Highways in the unavoidable absence of the Director of Highways.

The minutes of the meeting of August 15, 1950 were read. There being no objection, the Chairman announced the minutes to be adopted as read.

Thereupon the report of the Secretary-Treasurer was presented and the Commission was advised that a map showing the proposed location of Ohio Turnpike Project No. 1, which had been approved for study by resolution of the Commission on August 15, 1950, had been approved by the Governor of Ohio on August 17, 1950, and that certified true reproductions of the map had been distributed to the several members of the Commission. It was further reported that applications for employment of individuals by the Commission had been received by the Secretary-Treasurer during the period of the report.

The Chairman thereupon reviewed the events leading to his public statement at the last meeting of the Commission that he was prepared to retire from the Commission at the end of one year of service and upon completion of what he considered to be the first phase of the work which was the approval of a one-mile band within which Ohio Turnpike Project No. 1 would be finally located. He reminded the Commission that he had agreed to discuss the matter further with the Governor of Ohio and reported that he had done so. The Chairman thereupon read

the following letter from the Governor of Ohio and requested its inclusion in the minutes of the meeting:

"Mr. James W. Shocknessy, Chairman August 22, 1950
Ohio Turnpike Commission
State Office Building
Columbus 15, Ohio

Dear Jim:

"I regretted very much your public statement that you were thinking of resigning from the Ohio Turnpike Commission. When I read it, I, of course, was stunned.

"Since that time I have publicly expressed my wishes in regard to your future service on the Commission. You have done an excellent job. I want you to stay on the Commission.

"If at the time of your appointment when the unfavorable comments were made about the appointees you had suddenly determined not to serve I could have understood it. At present the Commission has won the confidence of the public and, therefore, your withdrawal at this time to me seems unjustified.

"I do know that you are suffering a sacrifice of time and money in the services which you are rendering. Unless we get more and more people willing to make such a sacrifice government will be required to move in the direction into which it is steered by the incapable and the unscrupulous.

"I tried to reach you by telephone and they told me that you were in Chicago. It is for that reason that this letter is written.

"What I said publicly several days ago and which was carried in the principal newspapers of the State, I want to say to you now personally. It is my desire that you continue your services on the Commission. You have done excellent work. For you to leave at this time would not be conducive in the development of the Turnpike which the people of Ohio obviously want completed.

Sincerely yours,

Frank J. Lausche"

The Chairman then confirmed that he will remain as a member and will continue as Chairman at the pleasure of the Commission. He insisted that the expressions of the Governor as to the excellency of the work of the Chairman must be shared by all members of the Commission and by members of the Department of Highways and other departments of State Government who have cooperated in the efforts of the Turnpike Commission. He then called upon the representative of the Director of Highways for a report as to progress of the turnpike studies, and Mr. Schaeublin read the following report:

"On September 12, 1950, I reported by letter to the Chairman and the several members of the Commission with respect to the progress of the engineering studies being performed by the J. E. Greiner Company and Parsons, Brinckerhoff, Hall and Macdonald for the month of August, 1950. In that report I advised the Commission that the traffic and revenue studies were essentially abreast of the approved schedule, but that the location and cost phase of the work was approximately 15 days behind the established schedule due, primarily, to the inability of the consulting engineers to obtain payment for services performed in accord with the terms of contract. It was stated as probable that the progress of the turnpike studies will be further and materially jeopardized until and unless payment of the sums due to the consultants might be assured.

"On September 15, 1950, the Auditor of State advised me by letter that he would not honor the vouchers which I had presented to him for payment of the sums due to the consulting engineers engaged in the turnpike studies. On September 28th I requested the Attorney General of Ohio to take the necessary action to require the Auditor of State to draw the warrants in payment of the disputed vouchers.

"Progress reports covering the month of September, 1950, which have been received from the two consulting firms have verified the prediction which I made to the Commission in my letter of September 12, 1950. Each of the consultants has reached a point in the progress of the studies where considerable financial outlays must be made in order to complete necessary field surveys, appraisals, origin and destination surveys, and traffic density counts. Each of the consultants is forced to avoid such heavy additional burdens until such time as there will be assurance that the outstanding obligations of the State with respect to payments already due have been discharged. I, therefore, regret to report that, as of this

date, turnpike studies are approximately 6 weeks behind the rate of progress which we had planned to maintain."

Mr. Schaeublin thereupon supplemented his report by reading letters which had been received from the J. E. Greiner Company and Parsons, Brinckerhoff, Hall and Macdonald, in which those firms notified the Director of Highways that the position taken by the Auditor of State has seriously delayed the progress of the turnpike studies, that the consultants are confronted with commitments involving large expenditures in connection with the work which they are reluctant to make firm because of the uncertainties of payment. They pointed out the difficulty and expense of prosecution of the work during the winter months and stated that they did not feel justified in proceeding with their work until the matter of payments under their contracts with the Director of Highways had been resolved finally. The consultants had concluded arrangements by which they expect to file separately in the immediate future in the Supreme Court of Ohio petitions in mandamus to resolve the question of the honoring by the Auditor of State of the vouchers which have been submitted to him. They stated that they have engaged the services of local Counsel in Ohio to represent them in the forthcoming proceedings.

Mr. Schaeublin thereupon read a letter which the Director of Highways had addressed on October 10, 1950, to the Attorney General of Ohio advising him of the contemplated actions of the consulting engineers and requesting the withdrawal of the request by the Director of Highways on September 25, 1950, that a petition against the Auditor of State be filed in behalf of the Director of Highways. The Director of Highways reaffirmed his interest in the case and requested that the Attorney General represent him in the proposed action by filing a brief in his behalf.

There being no objection, the report of the Director of Highways was accepted as the monthly report of progress of the turnpike studies in lieu of the regular monthly report for September, 1950.

There was extended discussion of the report of the Director of Highways during which Mr. Kinneary stated his confidence that the Attorney General will advance the Supreme Court case to the best of his ability and will help the Director of Highways in every possible way. The Chairman deplored the delays which are being encountered. Mr. Waterbury pointed out that seasonal factors in the delays may cost one full construction season in the development of the turnpike. Mr. Pershing advised that his firm would be of counsel to the Ohio counsel for the consultants.

Mr. Seasongood stated that the members of the Commission had been furnished copy of the request dated August 4, 1950 of the Auditor of State to the Attorney General for an opinion as to whether he was obligated to honor the vouchers which had been presented to him for payment of the sums due to consulting engineers engaged in the turnpike studies; and also that the members had received copy of opinion of the Attorney General in answer to the Auditor of State dated August 23, 1950 declaring, in substance, the Auditor was required to honor the vouchers and draw warrants in payment thereof, and that, without respect to other reasons, he was bound to do this by reason of the judgment against him in the mandamus suit of State ex rel. Kauer, Director, v. Defenbacher, Director, et al. 153 O. S. 268, decided by the Ohio Supreme Court, March 22, 1950, in which suit the Auditor was a party defendant.

Mr. Seasongood then stated that he saw no reason why the Director of Highways should have withdrawn in the letter of October 10, 1950, the written request made by the Director of Highways to the Attorney General on September 25, 1950, that a petition against the Auditor of State be filed in behalf of the Director of Highways.

Mr. Seasongood moved that the Director of Highways be asked to reconsider in conference with the Attorney General the requested withdrawal of the letter of September 25, 1950, asking the Attorney General to proceed on behalf of the Director of Highways against the Auditor of State, and thereupon that the Director of Highways reaffirm the request in his letter of September 25, 1950. The motion failed because it was not seconded.

Thereupon a motion was made by Mr. McKay, seconded by Mr. Teagarden, that the report of the Director of Highways be accepted. A vote by ayes and nays was taken and all members present responded to roll call and voted aye except Mr. Seasongood who voted nay. The vote was as follows:

Ayes, Teagarden, McKay, Shocknessy
Nays, Seasongood

The Chairman declared the motion adopted.

Thereupon Mr. McKay reminded the Commission that at its meeting on July 14, 1950, it had been agreed that the Chairman would investigate the matter of selection of Bond Counsel and report thereon for consideration by the Commission, and inquired of the Chairman as to his readiness to report thereon. The Chairman thereupon reported that he had made inquiries with respect to suitable Bond Counsel to advise

the Ohio Turnpike Commission; that he had assumed that it would be advantageous that Counsel be familiar with Ohio practice; that he had investigated and found only a few firms in Ohio who have been generally acceptable outside Ohio as approving firms for bond issues, and that one firm in Ohio has had far more assignments in that field than any other.

A motion was made by Mr. Seasongood, seconded by Mr. McKay, that the report of the Chairman be accepted as fulfillment of the obligation imposed upon him by action of the Commission of July 14, 1950. A vote by ayes and nays was taken and all members present responded to roll call and voted aye. The vote was as follows:

Ayes, Teagarden, McKay, Shocknessy, Seasongood
Nays, None

The Chairman declared the motion adopted.

Mr. McKay thereupon introduced a resolution with respect to the employment by the Ohio Turnpike Commission of the law firm of Squires, Sanders and Dempsey of Cleveland, Ohio, to serve as Bond Counsel to the Commission with respect to Ohio Turnpike Project No. 1. and moved for its adoption. The motion was seconded by Mr. Teagarden. There was extended discussion of the motion. Mr. Seasongood did not agree that immediate employment of Bond Counsel is necessary. Mr. Kinnearly observed that there is precedent for the employment of independent Bond Counsel but that in his opinion there is no immediate necessity for employment of such Counsel by the Commission. Mr. McKay insisted that early action in the Supreme Court to test the validity of turnpike revenue bonds is vital and that Bond Counsel could assist materially by preparation of bond resolutions.

The matter of the authority of the Commission to employ Counsel and the duties of Bond Counsel were fully discussed, but no conclusion was reached. The Chairman thereupon advised the Commission that Mr. Pershing is a member of the law firm of Mitchell and Pershing of New York City and is an authority on this question and, in the absence of objection, invited Mr. Pershing to address the Commission on the matter under discussion with respect to the duties of Bond Counsel.

Mr. Pershing referred to the approval by his firm of legal proceedings in connection with the Maine, Pennsylvania, and Oklahoma Turnpikes, and other revenue refunding ventures. He stated that the Ohio Turnpike would be a revenue project of very great size in which, as a practical matter, it would be well for the Commission to be ably represented by Counsel in Ohio. He pointed out that the turnpike bond

issue would be far beyond the constitutional limitations in Ohio and that the determination of constitutionality of the turnpike enactment would be a necessary prerequisite to the issuance of bonds. He pointed out that all factors involved in the issuance of bonds cannot be related until the rate structure is known and that, in turn, the rate structure and the attractiveness of the issue to the market will be determined by the engineering studies.

Mr. Pershing agreed that the Commission cannot at this time set up a bond issue in final detail but he expressed the opinion that there would be much practical value from early preliminary work by qualified Counsel. He stated that several independent firms would, without question, rule eventually upon the legality of a bond issue and that the cost of the bond examinations would be an ultimate charge against the proceeds of the bonds. Mr. Pershing recommended the early selection of qualified Ohio Counsel to assist in the preparation for financing of the Ohio Turnpike.

A motion was made by Mr. McKay, seconded by Mr. Seasongood, that the resolution remain pending and that it be made a special order of business at the next meeting of the Commission. A vote by ayes and nays was taken and all members present responded to roll call and voted aye. The vote was as follows:

Ayes, Teagarden, McKay, Seasongood, Shocknessy
Nays, None

The Chairman declared the motion adopted.

The Chairman thereupon read the following statement which he had released to the press on October 5, 1950, and asked the Commission to affirm or deny the authority previously granted him to issue such statements as he may consider to represent the views of the Commission between sessions of the Commission:

"FOR IMMEDIATE RELEASE
October 5, 1950

The chairman of the Ohio Turnpike Commission, James W. Shocknessy, of Columbus, announced today that a meeting of the Commission will be held on Tuesday, October 10 at 1:30 P. M. at the State Office Building. Shocknessy said that at the meeting the Commission will consider the developments which have occurred since the last meeting with respect to the suit to be filed against the Auditor of State to obtain payment of the engineering consultants whose bills are being dishonored by

the Auditor. Shocknessy said further that it is his belief that the Turnpike Act is constitutional and that any questions of constitutionality will eventually be decided in favor of the turnpike legislation and project. He said that in that belief the Commission is going to proceed accordingly with all possible speed. He said that financing, organization, planning and other matters must go forward so that Ohio will have a highway which will be able to handle the great traffic load which the completion of the western extension of the Pennsylvania Turnpike will discharge at the terminal point of that highway at the Pennsylvania-Ohio border. "

The Authority of the Chairman to issue such statements was affirmed.

The Chairman thereupon recognized Mr. Dennis Murphy of the Ohio Company who advised the Commission that the syndicate which had been formed to give consideration to financing for the Ohio Turnpike had been following the developments and progress of the studies; that the members of the syndicate are still interested in the matter, and will be happy to make themselves available to the Commission at its pleasure.

The Chairman thereupon read a resolution which had been received from the Stark County Council of the Veterans of Foreign Wars seeking to designate the Ohio Turnpike as "The Veterans Memorial Highway". A motion was made by Mr. Teagarden, seconded by Mr. McKay, that the resolution be placed on file for future consideration. A vote by ayes and nays was taken and all members present responded to roll call and voted aye. The vote was as follows:

Ayes, McKay, Teagarden, Shocknessy
Nays, None

The Chairman declared the motion adopted.

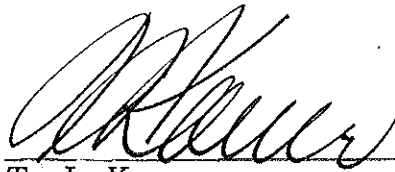
The Chairman announced that he expected to discuss the matter of Bond Counsel for the Commission with the Attorney General and with others and that the next meeting of the Commission would be called at an early date.

There being no further business to come before the meeting, a motion was made by Mr. Teagarden, seconded by Mr. McKay, that the meeting adjourn until further call by the Chairman. A vote by ayes and nays was taken and all members present responded to roll call and voted aye. The vote was as follows:

Ayes, Teagarden, McKay, Shocknessy
Nays, None

The Chairman declared the meeting adjourned. The time of adjournment was 3:40 o'clock p. m.

Approved as a correct transcript of the proceedings of the Ohio Turnpike Commission.



T. J. Kauer
Secretary-Treasurer

10-24-50