

MINUTES OF FIFTEENTH MEETING

OCTOBER 24, 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 24, 1950 with members of the press; Mr. Kinneary of the office of the Attorney General of Ohio; Mr. Foster of the office of the Auditor of State; 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, Kauer
Absent: None

Whereupon the Chairman announced that a quorum was present.

A motion was made by Mr. Seasongood, seconded by Mr. Teagarden, that reading of the minutes of the meeting of October 10, 1950 be dispensed with and that the minutes stand adopted as submitted in final form to the members of the Commission for their consideration after the last meeting. 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, Shocknessy, McKay, Teagarden, Seasongood, Kauer
Nays, None

The Chairman declared the motion adopted.

Thereupon the Chairman reported to the Commission that he, in company with the Director of Highways and Colonel Smith, had attended the dedication of the Eastern Extension of the Pennsylvania Turnpike on October 23, 1950. He commented upon the high degree of cooperation which exists among elected and other state officials in Pennsylvania in connection with the Pennsylvania Turnpike, and the fact that officials from the cities and towns along the line of the Pennsylvania Turnpike were unanimous in their approval of the undertaking and of the benefits which would accrue to the local communities whether or not they were directly connected to the turnpike by interchanges. It was evident that both the officials and the public of Pennsylvania were unanimous in their praise of the turnpike project.

Thereupon the Chairman read the following letter which he had addressed to the Attorney General of Ohio on October 16, 1950, to which the Attorney General had not yet responded:

"Dear Mr. Attorney General:

As the First Assistant Attorney General, Mr. Kinneary, has no doubt already advised you, at the last meeting of the Ohio Turnpike Commission it was proposed by one of the members that bond counsel be employed by the Commission at this time. The whole Commission, however, including the member who offered the resolution proposing the employment of counsel, after discussing the proposed resolution with Mr. Kinneary at the meeting, determined that before taking such action your advice would be asked as to whether or not you would consider such action inconsistent with the Commission's present status and its relation with your office. I shall be very happy to discuss the matter with you further at your convenience. I already indicated to Mr. Kinneary that I should like to discuss the matter with you."

The Chairman thereupon inquired of Mr. Kinneary as to response to this letter and Mr. Kinneary advised the Commission that he was authorized by the Attorney General to state that the Attorney General is presently not in favor of the Turnpike Commission proceeding with the employment of bond counsel; that the employment of bond counsel at the present time is not indicated by the present status of the proposed turnpike project; that the Attorney General takes the position that he should be consulted both with respect to the matter of the retention of bond counsel and also the selection of particular bond counsel; that inasmuch as the office of the Attorney General will be required to cooperate with and consult with bond counsel if and when such is employed, that he insists upon being given the opportunity to exercise his official and professional judgment with respect to the selection of any particular bond counsel or legal firm acting as bond counsel.

Upon inquiry from the Chairman, Mr. Kinneary stated that he considered that the Attorney General is the counsel for the Ohio Turnpike Commission. There was a discussion of matters upon which the advice of the Attorney General had been requested and received, and Mr. Kinneary advised the Commission that the Attorney General would soon offer some assistance in the preparation of its by-laws.

Mr. Kinneary advised the Commission specifically that the Attorney General of Ohio believes in the constitutionality of the Ohio Turnpike Commission.

There was extended discussion as to the powers of the Commission during which the Chairman observed that the Commission may legally incur debt.

A motion was made by Mr. McKay, seconded by Mr. Teagarden, that the first order of business, namely the consideration of his resolution which had been submitted and seconded at the meeting of October 10, 1950 and made first order of business for this meeting, be removed as first order of business and left pending for adoption at a subsequent meeting. 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, Shocknessy, McKay, Teagarden, Seasongood, Kauer
Nays, None

The Chairman declared the motion adopted.

Thereupon a motion was made by Mr. Shocknessy, seconded by Mr. McKay, that the resolution which had been submitted at the meeting of October 10, 1950 by Mr. McKay and seconded by Mr. Teagarden, be presented to the Attorney General for his opinion, consultation, and advice, and that the resolution remain pending subject to the advice of the Attorney General. The resolution was as follows:

"NOW THEREFORE BE IT RESOLVED by the
Ohio Turnpike Commission of Ohio:

Section 1. That the law firm of Squire, Sanders and Dempsey, Cleveland, Ohio, be and the same hereby is employed by the Ohio Turnpike Commission to serve as Bond Counsel of said Commission with respect to the project of the Commission known as Ohio Turnpike Project No. 1, approved for study by the Commission by resolution adopted on August 15, 1950, and as the same may be amended.

Section 2. Said law firm as such Bond Counsel shall consult with and advise the Commission with respect to all proceedings looking towards or authorizing the issuance of Turnpike Revenue Bonds of the State of Ohio, payable solely from revenues for the purpose of paying the cost of such project No. 1, the issuance and sale of such bonds and all legal matters related thereto, including such proceedings in the Supreme Court of Ohio or elsewhere as may be deemed to be necessary and advisable to establish the power and authority of the Commission to issue such bonds

and to permit the sale thereof, and the rendition of an unqualified opinion or opinions approving such bonds.

Section 3. Said firm shall be paid a reasonable compensation for all such services in such amount as shall be hereafter determined by the Commission the same to be payable solely from the proceeds of such Turnpike Bonds or from the revenues of the Ohio Turnpike Commission derived from said Project No. 1."

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, Shocknessy, McKay, Teagarden, Seasongood, Kauer
Nays, None

The Chairman declared the motion adopted.

The Chairman advised the Commission that he would address a letter to the Attorney General which would review the attitude of the Attorney General as expressed by Mr. Kinneary to the Commission and which would present the resolution of Mr. McKay for the opinion, consultation, and advice of the Attorney General. Mr. Kinneary requested that the communication to the Attorney General be accompanied by a transcript of the minutes taken at this meeting, and promised that there would be no procrastination with respect to the request of the Commission.

Thereupon a motion was made by Mr. Seasongood, seconded by Mr. Shocknessy, that the Attorney General be requested to take whatever action is appropriate and proper in the urging upon the Supreme Court of Ohio that the constitutionality of the turnpike enactment be determined in the litigation pending on behalf of the J. E. Greiner Company and the firm of Parsons, Brinckerhoff, Hall and Macdonald. 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, Shocknessy, McKay, Teagarden, Seasongood, Kauer
Nays, None

The Chairman declared the motion adopted.

Thereupon Mr. Kinneary reviewed the events subsequent to October 10, 1950, on which date the Director of Highways had addressed the following letter to the Attorney General:

"Dear Mr. Duffy:

I have been advised that the J. E. Greiner Company and Parsons, Brinckerhoff, Hall and Macdonald have decided to file petitions against the Auditor of State in their own behalf which necessitates the withdrawal of my request under date of September 25, 1950, that a petition be filed on my behalf. At the date of my letter I did not know that the said contractors had any such intentions.

However, I am very much interested in the case and feel that the State is an interested party and request that your office represent me by filing a brief upon my behalf.

I appreciate the attention and consideration given by yourself and staff in this matter and, of course, would not have made the request if I had known the contractors contemplated taking this action. "

Mr. Kinneary stated that pursuant to the expressed request of the Director of Highways, the Attorney General took no further action on behalf of the Director of Highways seeking to compel the Auditor of State to issue warrants for payment of services rendered by the consulting engineers. Mr. Kinneary then read a letter dated October 17, 1950 which the Attorney General had received from the Governor of Ohio in which it was stated:

"Dear Mr. Duffy:

I am urging you as quickly as possible to bring the mandamus action against Joseph T. Ferguson, the Auditor of the State of Ohio, to compel him to honor vouchers which have been submitted to but rejected by him for the payment of the expert engineers hired by the Director of the Department of Highways to do the engineering work on the contemplated Ohio Turnpike.

I cannot over-emphasize to you the urgent need of bringing the action promptly.

Sincerely yours,

Frank J. Lausche"

Mr. Kinneary stated that the reply to Governor Lausche on October 18, 1950, was as follows:

"My dear Governor Lausche:

I am just now in receipt of your letter of October 17th in which you urge me to proceed immediately with the mandamus action against the Auditor of State, Joseph T. Ferguson, to compel him to honor the vouchers which have been submitted to but rejected by him for the payment of expert engineers hired by the Director of the Department of Highways to do the engineering work on the contemplated Ohio Turnpike.

Some time ago we conferred with Director Kauer and he advised us to proceed with this action. We did proceed and had the petition drawn. Then subsequently Director Kauer called us and informed us that we are not to proceed, but that the contracting firms would proceed themselves to file petitions against the Auditor of State. On October 10, 1950, we received the following letter from Director Kauer which confirms our understanding:

'I have been advised that the J. E. Greiner Company and Parsons, Brinckerhoff, Hall and Macdonald have decided to file petitions against the Auditor of State in their own behalf which necessitates the withdrawal of my request under date of September 25, 1950, that a petition be filed on my behalf. At the date of my letter I did not know that the said contractors had any such intentions.

However, I am very much interested in the case and feel that the State is an interested party and request that your office represent me by filing a brief upon my behalf.

I appreciate the attention and consideration given by yourself and staff in this matter and, of course, would not have made the request if I had known the contractors contemplated taking this action.'

Even subsequent to the receipt of the letter of October 10th, we received a telephone call from Mr. Williams of the Highway Department requesting that we abide by that letter, which we have done. You can readily understand, therefore, why no action has been taken, and that through no fault of our own, this action has been delayed. If you will communicate with Director Kauer I am sure he will confirm this understanding.

If you have any further request, kindly let me hear from you.

Sincerely yours,

Herbert S. Duffy
Attorney General"

Mr. Kinneary advised the Commission that cases no. 32432 and 32433 were filed in the Supreme Court of Ohio on October 21, 1950 in which the relators are the State of Ohio ex rel. the partners in the J. E. Greiner Company and the partners in the firm of Parsons, Brinckerhoff, Hall and Macdonald respectively, against Joseph T. Ferguson, Auditor of the State of Ohio. He stated that the office of the Attorney General had not been furnished with copies of these petitions; that copies of the petitions had been obtained from Mr. Drury who was understood to represent the Auditor of State in this action; that the Auditor of State has not requested the Attorney General to represent him in this action, and that the office of the Clerk of the Supreme Court of Ohio had not yet received a pleading filed on behalf of the Auditor of State. Mr. Kinneary then quoted from the prayer in the petitions as follows:

"WHEREFORE, Relators pray that this Court issue an alternative writ of mandamus commanding Respondent, the Auditor of State of the State of Ohio, to issue warrants as called for by the vouchers hereinbefore mentioned, or show cause why he has not done so; and that upon final hearing this Court issue a final order commanding Respondent to issue such warrants; and that Relators may have all other and further relief to which they may be entitled."

Mr. Kinneary continued that the Attorney General is not in a position to take any action in this litigation until he is apprised of the issue raised by the pleadings and until the Director of Highways may again request such action. The Director of Highways thereupon advised Mr. Kinneary that he would again request the Attorney General to take whatever action he deems

appropriate under the circumstances in these two particular suits.

There being no further business to come before the meeting, a motion was made by Mr. Teagarden, seconded by Mr. Shocknessy, 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, Shocknessy, McKay, Teagarden, Seasingood, Kauer
Nays, None

The Chairman stated that the next meeting will be called as soon as the Attorney General replies to the Commission, and declared the meeting adjourned. The time of adjournment was 3:00 o'clock p. m.

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



T. J. Kauer
Secretary-Treasurer

Nov. 21, 1950