

MINUTES OF SIXTEENTH MEETING

NOVEMBER 21, 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 2:00 o'clock p. m. on November 21, 1950, with the Governor of Ohio, Mr. Kinneary of the office of the Attorney General of Ohio, Mr. Waterbury of Parsons, Brinckerhoff, Hall and Macdonald, members of the press, 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, Teagarden, Seasongood, McKay, Kauer
Absent: None

Whereupon the Chairman announced that a quorum was present.

The Chairman expressed the gratitude of the Commission to the Governor of Ohio for his presence at the meeting and for the assistance which the Governor has given during the period of service of the Commission. He stated that the Commission has striven to do what it conceived to be its duty in the best interests of the State of Ohio and consistent with the ideals and purposes which the Governor had in mind when he appointed the several members of the Commission.

A motion was made by Mr. Teagarden, seconded by Mr. McKay, that reading of the minutes for the meeting of October 24, 1950, be dispensed with and that the minutes stand adopted as presented to the members of the Commission since 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, Teagarden, Seasongood, McKay, Kauer
Nays, None

The Chairman declared the motion adopted.

The Chairman thereupon reported as to his activities since the last meeting of the Commission and stated that under date of October 25, 1950, the Attorney General of Ohio had been asked to give his consultation and advice upon the proposed resolution which Mr. McKay had offered and which had been considered at two meetings. The Chairman also referred to his letter of November 10, 1950, which inquired

from the Attorney General of Ohio as to whether or not any participation was contemplated by the Attorney General other than as counsel for the Auditor of State in the suits which had been filed by the turnpike consultants. He also referred to a press release of November 15, 1950 in behalf of the Commission and expressing the sentiments of the Commission with respect to the aggressive pursuit of its duty and expressing the intolerance of the Commission with respect to obstructionist tactics.

The Chairman reported that he had conferred with Mr. Waterbury of Parsons, Brinckerhoff, Hall and Macdonald, and that Mr. Waterbury, being persuaded that his firm will be paid for its services, has assured the Chairman that the firm will continue the preparation of a traffic and anticipated revenue report. The Chairman referred to his conferences with the Attorney General of Ohio and with the Attorney General Elect and reported that the following letter had been dispatched to the Auditor of State:

"Hon. Joseph T. Ferguson
Auditor of State
State House
Columbus, Ohio

November 16, 1950

Dear Mr. Ferguson:

Mr. Shocknessy, the Chairman of the Ohio Turnpike Commission, has requested that I advise you of the meeting of that Commission which has been called for November 21, 1950. The meeting will be held in Room 1012 A of the State Office Building beginning at 2:00 o'clock p. m.

As he has indicated in the past, Mr. Shocknessy will welcome your attendance at this meeting and hopes that your office will be represented.

Very truly yours,

T. J. Kauer
Secretary-Treasurer"

The Chairman then read the following reply which had been received from the Auditor of State:

"Mr. T. J. Kauer, Secretary-Treasurer November 17, 1950
The Ohio Turnpike Commission
State Office Building
Columbus 15, Ohio

Dear Mr. Kauer:

Thank you very much for the invitation extended by Mr. Shocknessy to attend the Ohio Turnpike Commission meeting on November 21st, 1950.

I am sorry that it will be impossible for me to attend as I expect to be out of the city on that day.

Sincerely yours,

Joseph T. Ferguson
Auditor of State"

Thereupon the Secretary-Treasurer reported that in the interim since the meeting of October 24, 1950, applications of individuals for employment with the Commission had been received and acknowledged and that a statement of expenses had been filed by Mr. Seasongood. A motion was made by Mr. McKay, seconded by Mr. Teagarden, that the report of the Secretary-Treasurer be adopted as read. 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, Teagarden, Seasongood, McKay, Kauer
Nays, None

The Chairman declared the motion adopted.

The Chairman thereupon requested a report from the Director of Highways and Mr. Kauer reported as follows:

"At the meeting of October 10, 1950, I reported to the Commission that the consulting engineers who had been engaged in the turnpike studies were forced to avoid any additional heavy financial commitments until such time as there might be assurance that payment would be made to them of the sums already due under their contracts with me. I reported at that time that the turnpike studies were approximately six weeks behind the rate of progress which we had planned to maintain. In the ensuing six weeks some progress at a retarded rate has been made by the consultants. A copy of the first sheet of photogrammetric mapping covering about three miles of the band which was approved for further study has been received from the J. E. Greiner Company. The studies are

now approximately ten to twelve weeks behind the stage of completion which had been hoped for as of this date.

"On October 24, 1950, I addressed a letter to the Attorney General of Ohio in which reference was made to the claims which had been filed in the Supreme Court of Ohio by the J. E. Greiner Company and by Parsons, Brinckerhoff, Hall and Macdonald, advised the Attorney General of my interest in the case, and requested that his office take whatever action he deemed appropriate in connection with that litigation. The Attorney General has since informed me that he has the permission of the Supreme Court to intervene as a relator, in my behalf.

"On October 27, 1950, I advised the Chairman of the Indiana State Highway Commission of the status of the Ohio Turnpike studies and of the fact that the line which had been approved for detailed study will join existing U. S. Route 20 in the vicinity of the Indiana State line. Arrangements have been made with Mr. Samuel C. Hadden, the Chairman of the Indiana State Highway Commission, to meet with me for further discussions of the matter.

"In view of the apparent situation wherein a considerable period of time will elapse between the completion and opening to traffic of the Western Extension of the Pennsylvania Turnpike and the provisions in Ohio for adequate permanent facilities which will accept the traffic generated by the Pennsylvania Turnpike, my staff has been considering methods by which this traffic problem may be accommodated on a temporary basis. I have requested certain traffic statistics from the Chairman of the Pennsylvania Turnpike Commission, particularly the details of assignment of traffic to the Pennsylvania State Highway System at the Homewood interchange. It is the intention of the Ohio Department of Highways to analyze this problem without delay in order that traffic may best be accommodated during the temporary period before adequate connection exists with the Pennsylvania Turnpike and also to insure the proper planning of permanent improvements to the Ohio Highway System, whether or not an Ohio Turnpike may be built!"

A motion was made by Mr. McKay, seconded by Mr. Teagarden, that the report of the Director of Highways be accepted and filed. 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, Teagarden, Seasongood, McKay, Kauer
Nays, None

The Chairman declared the motion adopted.

Thereupon the Governor of Ohio inquired of Mr. Kinneary as to his opinion concerning the outcome of the lawsuits pending in the Supreme Court, insofar as he could express it, having in mind the normal uncertainty of the outcome of a lawsuit. Mr. Kinneary stated his personal opinion and belief that the Supreme Court will grant a writ of mandamus ordering the Auditor of State to honor the vouchers in question. Upon further inquiry, Mr. Kinneary referred to an opinion of the Attorney General dated August 23, 1950, which was rendered to the Auditor of State at the request of the Auditor of State.

The Chairman thereupon presented Mr. Waterbury to the Governor and to the Commission and Mr. Waterbury confirmed the intention of his firm to proceed with its phase of the turnpike studies. Mr. Waterbury also advised the Commission that the Chairman of the Pennsylvania Turnpike Commission, Mr. T. J. Evans, had authorized the release of traffic information to Ohio authorities in order that consideration may be given to the effective accommodation of traffic generated by the Western Extension of the Pennsylvania Turnpike in the interim period before adequate direct connection to the Pennsylvania Turnpike may be available in Ohio. The Director of Highways stated that he would express his gratitude to Mr. Evans for his cooperation. It was estimated that the work of Parsons, Brinckerhoff, Hall and Macdonald could be completed in approximately six weeks and that of the Greiner Company in from three to four months after resumption of normal progress of the work.

The Governor of Ohio entered into the discussion which followed the remarks of Mr. Waterbury and made the following statement to Mr. Waterbury:

"In my own opinion the people of Ohio are wanting this turnpike road completed. The experts who have approached the problem are of the belief that this is one of the important methods of helping to solve the ultimate problem confronting us in traffic. While I had nothing to do in the hiring of either of the two firms, I do want to say to you that the hiring which has been done has been supported

has been offered by a member of the Ohio Turnpike Commission, Mr. McKay, and seconded by a member of the Ohio Turnpike Commission, Mr. Teagarden, as set forth hereafter wherein it is provided that the Ohio Turnpike Commission employ a certain firm as its bond counsel.

"Before taking action upon the resolution, the Commission, by appropriate action, has authorized that the resolution be submitted to you. The resolution is 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.

"I will be happy to confer with you with respect to the above at your early convenience.

Very truly yours,

James W. Shocknessy
Chairman"

Mr. Kinneary advised the Commission that the Attorney General had given the letter his careful consideration but that inasmuch as the term of office of the present Attorney General will expire on January 8, 1951, and he will be succeeded as Attorney General by Mr. C. William O'Neill, who presumably will continue to advise the Ohio Turnpike Commission, Attorney General Duffy deems it inappropriate at this time and under the existing circumstances to approve or to disapprove the proposed resolution with respect to either form or substance. Further, Attorney General Duffy has consulted with the Attorney General Elect, Mr. C. William O'Neill, for the purpose of taking such action as will expedite the engagement of bond counsel thereby assuring the continuity of legal representation for the Commission. The Chairman accepted this statement as a reply to his letter of October 25, 1950.

Mr. Kinneary thereupon reported as to the action taken by the Attorney General of Ohio in connection with the two suits pending in the Supreme Court of Ohio. He stated that the Attorney General had filed application in the Supreme Court of Ohio on behalf of Mr. T. J. Kauer as Director of Highways and on behalf of the Ohio Turnpike Commission to intervene as a relator in each of the cases to the end that the powers and constitutionality of the Ohio Turnpike Commission may be determined. Pursuant to these applications, the Supreme Court of Ohio entered an order authorizing the Director of Highways and the Ohio Turnpike Commission to file intervening petitions. Pursuant to this order, there was filed with the Clerk of the Supreme Court of Ohio on November 21, 1950, an intervening petition of T. J. Kauer, Director of Highways and the Ohio Turnpike Commission in the case of STATE, ex rel. MACDONALD, et al., Relators, vs. JOSEPH T. FERGUSON, Auditor of the State of Ohio, Respondent, Case No. 32433, and an intervening petition of T. J. Kauer, Director of Highways, and the Ohio Turnpike Commission in the case of STATE, ex rel. ALLEN, et al., Relators, vs. JOSEPH T. FERGUSON, Auditor of the State of Ohio, Respondent, Case No. 32432.

Mr. Kinneary reported that in these two intervening petitions the Attorney General has as his first cause of action adopted by reference all of the allegations and the prayer filed by the original relators. In his second cause of action the Attorney General alleged that the Auditor of State has consistently pursued a course of action which clearly indicates his intention to question the validity of all of the powers and duties conferred upon the intervening relators by the Ohio Turnpike Act; that the position of the Auditor of State with respect to the constitutionality and interpretation of the Ohio Turnpike Act raises questions of great public interest which directly involve the Director of Highways and the Ohio Turnpike Commission who are charged with the proper administration of the Act and who are directly and beneficially interested in the outcome of the pending litigation.

Upon inquiry, Mr. Kinneary stated his opinion that the case will not be heard until after January 1, 1951. He pointed out that the Attorney General has earnestly sought to throw open and raise all possible constitutional questions in this litigation.

The Governor of Ohio expressed his pleasure at the knowledge that the Attorney General is making every effort to get fully before the Supreme Court the complete question of constitutionality of the Turnpike Act.

Thereupon the Chairman reported with respect to the conferences which he has had with the Attorney General with respect to the resolution to retain bond counsel. He stated that in conferences with Attorney General Duffy and Attorney General Elect O'Neill that it had been the consensus that Mr. O'Neill should be consulted with respect to the matter of counsel with whom he, as Attorney General, would be expected to work, that Mr. O'Neill was grateful for this courtesy but preferred not to take any action which could be construed as a premature action before he assumes office; that Mr. O'Neill had assured the Chairman of the continuity of the services from his office as Attorney General which the Commission has received from the office of Mr. Duffy as Attorney General; and that no detriment to the Commission would be suffered were the employment of bond counsel to be postponed until Mr. O'Neill has had time to explore fully the matter of its employment.

The Chairman then proceeded to the unfinished business of the meeting which was the consideration of the outstanding resolution by Mr. McKay for the employment of bond counsel.

A motion was made by Mr. Seasongood, seconded by Mr. Teagarden, that action on the appointment of bond counsel be post-

poned until opinion can be received from the Attorney General advising that the appointment of bond counsel is appropriate and necessary, unless an emergency should intervene which would require its appointment immediately, whereupon the Commission would reconvene at the call of the Chairman and consider the appointment of bond counsel.

Mr. McKay expressed his deep concern over the delay in the selection of bond counsel and his conviction that an eventual loss of four to five months in the preparation of a bond resolution would result from failure to name and retain bond counsel at this time. Mr. Shocknessy was not of the belief that such delays would materialize. Mr. Teagarden believed that progress by bond counsel would be limited until the work of the consultants has been completed. Mr. Kauer thought that the Commission should wait until after the receipt of a decision by the Supreme Court and estimated that three to four months would be required to complete the engineering studies after such decision.

A vote by ayes and nays was taken and all members present responded to roll call and voted aye, except Mr. McKay who voted nay. The vote was as follows:

Ayes, Shocknessy, Teagarden, Seasongood, Kauer
Nays, None

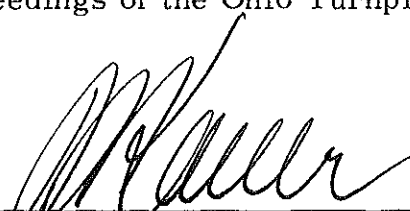
The Chairman declared the motion adopted.

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

The Chairman declared the meeting adjourned. The time of adjournment was 3:30 o'clock p. m.

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



T. Kauer
Secretary-Treasurer

April 3, 1951