

MINUTES OF TWENTY NINTH MEETING  
DECEMBER 4, 1951

Pursuant to call of the Chairman , the Ohio Turnpike Commission met in open session in Hearing Room No. 3, State Office Building, Columbus, Ohio, at 10:30 a. m. on December 4, 1951 with its Attorney, Bond Counsel, representatives of the Consulting Engineers, of the Financial Advisor, of the Department of Highways, and of the press 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: Seasongood, Teagarden, Shocknessy, McKay, Kauer  
Absent: None

Whereupon the Chairman announced that a quorum was present.

A motion was made by Mr. Seasongood, seconded by Mr. Kauer, that the reading of the minutes for the meeting of November 6, 1951 be dispensed with and that the minutes be adopted as submitted to the members. 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, Seasongood, Teagarden, Shocknessy, McKay, Kauer  
Nays, None

The Chairman declared the motion adopted.

The minutes of the special meeting of November 28, 1951 were then read by the Secretary-Treasurer. A motion was made by Mr. McKay, seconded by Mr. Teagarden, that the minutes of the meeting of November 28, 1951 be approved as corrected. 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, Seasongood, Teagarden, Shocknessy, McKay, Kauer  
Nays, None

The Chairman declared the motion adopted.

The Chairman then reported that the Governor of Ohio had held a conference in his office on November 29, 1951 at which there was a very full discussion over the impediment in the turnpike statute. The Chairman stated his belief that there was as near unanimity of view among the group in conference as could ever be attained in a group of

that size; that it was the consensus of the group that the Governor should call a special session of the General Assembly at once to consider turnpike legislation; that there was almost unanimity in the view that nothing should be considered in such special session save turnpike legislation. Accordingly, the Governor had on November 30 issued the following proclamation:

" PROCLAMATION

WHEREAS, Section 8, Article III of the Constitution of Ohio empowers the Governor on extraordinary occasions to convene the General Assembly by proclamation which shall state the purpose for which such special session is called:

NOW, THEREFORE, I, FRANK J. LAUSCHE, Governor of the State of Ohio, by virtue of the authority vested in me by the Constitution of the State of Ohio, do hereby convene the 99th General Assembly of Ohio in extraordinary session at the State House in Columbus, at 1:30 p. m. on Monday, December 10, 1951, for the purpose of considering the enactment of legislation to become effective immediately with respect only to the exercise of the power of eminent domain by the Ohio Turnpike Commission and amending Section 1208 of the General Code so as to permit the Ohio Turnpike Commission to exercise the power of eminent domain within the limits of the provisions contained in the Constitution of Ohio. The legislation is urgently needed for the financing of Ohio Turnpike Project No. 1, and it is my belief that unless it is immediately adopted there will be no turnpike in Ohio in the foreseeable future. I believe that the construction of a toll turnpike is an imperative necessity so that the highway system of Ohio can be strengthened without adding to but relieving the financial burden upon the revenues derived by the State from taxation.

In Testimony Whereof, I have here-  
unto subscribed my name and  
caused the great seal of the State  
of Ohio to be affixed at Columbus,  
this 30th day of November, in the  
year of Our Lord one thousand nine  
hundred and fifty-one.

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GOVERNOR

The Chairman reported that on November 30, 1951 the Governor of Ohio also had addressed the following letter to the Commission:

"Mr. James W. Shocknessy, Chairman      November 30, 1951  
Ohio Turnpike Commission  
Huntington Bank Bldg.  
17 South High Street  
Columbus, Ohio

Dear Mr. Shocknessy:

I have just issued an official call convening the General Assembly on Monday, December 10, at 1:30 in the afternoon to consider the enactment of legislation "to become effective immediately with respect only to the exercise of the power of eminent domain by the Ohio Turnpike Commission and amending Section 1208 of the General Code so as to permit the Ohio Turnpike Commission to exercise the power of eminent domain within the limitations of the Constitution of the State of Ohio." So that the leaders of the General Assembly may have before them a proposal for a law which would embody provisions adequate to eliminate the objections which have been raised against the Turnpike Act I would like to suggest that you have the counsel for the Commission prepare such a proposal at once so that it can be examined both by the legislative leaders and myself next week and, if acceptable, become the basis for recommendation to the Assembly. In order to save time I would like the proposed law when prepared to be sent by you to the legislative leaders at the same time you send it to me.

Yours very truly,

Frank J. Lausche"

The Chairman made reference to the fact that the Commission at its meeting of November 28 had requested counsel to consult with the counsel for the Financial Advisor and to prepare a proposal which would be satisfactory in amendment of the existing law so as to eliminate the objections which had been raised; that counsel for the Commission would make its report at this meeting and that he planned to deliver a copy of the Bill as proposed by counsel to the Governor at the conclusion of the meeting. The Chairman mentioned that an inquiry had been made of him with respect to a memorandum issued by the Maumee Watershed Conservancy District. He commented that all provisions of law will, of course, be given compliance by the Ohio Turnpike Commission in the pursuit of its affairs. In the absence of any objection the report of the Chairman was received.

Thereupon the following report of the Secretary-Treasurer was presented:

"Letters offering steel from foreign production have been received from Howard R. Hirsch of Cleveland, Ohio, and S. J. Klein and Company of Detroit, Michigan and have been acknowledged and referred to J. E. Greiner Company for consideration.

The Detroit District Engineer of the United States Corps of Engineers advised the Commission by letter dated November 9, 1951 of objections which had been raised to the proposed crossing of the Maumee River by the City of Maumee and by the Maumee Valley Conservancy District. The communication has been directed to the attention of the Greiner Company for necessary action. Under date of November 16, 1951 the Commission submitted to the Buffalo District Engineer of the United States Corps of Engineers a revised application for construction of the turnpike crossing over the Sandusky River. In the revised application the clearances proposed above the Sandusky River were increased from thirty to forty feet to meet objections which had previously been raised.

A letter has been received from the Columbian Bank Note Company of Chicago offering services in connection with the engraving and printing of bonds.

A copy of a memorandum distributed by the Maumee Watershed Conservancy District was received on November 26. By this memorandum the Maumee Watershed Conservancy District announces the adoption of regulations governing the erection of bridges within the drainage area under its jurisdiction. The memorandum has been referred to J. E. Greiner Company and to Mr. Frank Dunbar, Jr., and copies have been forwarded to the members of the Commission.

Invitations were received to attend the preview and dedication ceremonies for the Western Extension of the Pennsylvania Turnpike held on November 26, 1951. The ceremonies were attended by the Chairman and the Governor of Ohio and Colonel Smith. Invitations were also received to attend the ceremonies at which the New Jersey Turnpike was opened on November 30, 1951 but it was not possible for a representative from Ohio to attend the ceremonies.

A copy of a resolution adopted by the Board of Commissioners of the Cleveland Metropolitan Park District in which the counsel of that board is authorized to take action to prevent the

construction of the Ohio Turnpike as now approved has been received and copies have been furnished to the members of the Commission. The resolution has been forwarded to the Greiner Company for such analysis as may be necessary in advance of any action which may be taken by the board of the Cleveland Metropolitan Park District pursuant to the resolution."

In the absence of objection the report of the Secretary-Treasurer was accepted as received.

The Director of Highways then presented the following report to the Commission:

"500 copies of the engineering report of J. E. Greiner Company have been received. The work of J. E. Greiner Company under its contract with the Director of Highways has been completed and the sums owed to the firm have now been paid in full. I should like to pay tribute at this time to the superior character of engineering services which J. E. Greiner Company has performed for the Ohio Turnpike Commission through the agency of the Department of Highways.

On November 7, 1951 the map showing the location of Ohio Turnpike Project No. 1 as adopted by the Commission and approved by the Governor of Ohio under date of November 1, 1951 was returned to my office. It has since been reproduced by photographic methods and copies of the reproduction are being made available to the several members of the Commission. The original has been prepared for preservation in the files of the Turnpike Commission.

The Department of Highways is now in the process of placing upon all maps issued by the Department the location of the proposed Ohio Turnpike."

The Director of Highways then displayed to the Commission samples of printed maps which are published by the Department of Highways upon which the location of Ohio Turnpike Project No. 1 is to be shown. In the absence of objection the report of the Director of Highways was received.

Pursuant to the instructions given him at the Commission's meeting of November 28, 1951, Mr. Dunbar made the following report:

" Pursuant to your instructions and in close collaboration with Bond Counsel for the Commission, I have drafted a suggested form of bill designed to meet the problem under the existing appropriation statute upon which both Messrs. Squire, Sanders and Dempsey and

I have heretofore reported to you. A copy of the suggested bill has been handed to each of you, and I have additional copies available for the use of anyone in the room.

In the course of this work, I have consulted freely not only with Mr. Crawford, but also with counsel for the Commission's Financial Advisor. Yesterday I read the final draft, as submitted to you today, to their counsel and thereafter received from them under a 3:02 p. m. , December 3, 1951, New York dateline, the following telegram addressed to me :

' Proposed form of bill to amend general code section 1208 as you read it to us today will, from our standpoint, cure defects we have pointed out to our clients the financial advisors to the Ohio turnpike commission.

Mitchell and Pershing '

They have promised to confirm and elaborate this message by a letter.

The proposed bill is so drawn as to require relatively few words of amendment to the existing statute. It provides a simple, expeditious procedure to be followed in appropriation cases by the Turnpike Commission, It provides for putting the Commission into possession of property promptly after a jury verdict assessing the compensation to be paid. There is nothing novel in the procedural steps nor in the rights to possession conferred on the Commission; they are similar or identical to those provided in nearly all the numerous Ohio condemnation statutes. All constitutional problems as to the procedure and the right to possession which this proposed statute provides for have long since been laid to rest by decisions of the Supreme Court of Ohio.

It should be noted that this statute goes at least as far as any of the various Ohio appropriation statutes in protecting the interests of property owners, which of course is a proper and necessary concern of this public agency and of the legislature. In fact, in some respects it goes farther than almost any of them in protecting those interests.

I have prepared, and now submit for the record, a memorandum which outlines the procedural steps that would be taken in an appropriation proceeding prosecuted under the proposed law.

To understand the bill, it is necessary to know the nature of the problems sought to be met, and how they arise. From what the investment bankers' group said in their letter to the Commission of November 20, 1951, and from what their counsel have told me in my discussions with them, it is apparent that their objections are as to (1) what they consider to be procedural deficiencies in the existing statutes, and (2) the failure of the existing statutes to provide expressly for the taking of possession of needed property by the Commission after it has protected the owners' interests by making a payment or deposit of money, which would be permitted by section 19 of article I of the constitution.

To explain just how these difficulties arise under present legislation, I cannot do better than to read to you one paragraph from my letter to the Commission of November 28, 1951:

'The statutes (GC 1178-37 to 39) pertaining to appropriations by the state highway director provide for his taking possession of property before he has paid for it or secured the payment by a deposit of money. (GC 1178-37 does provide for a so-called "deposit", but since 1178-38 requires its return to the director if it is not accepted by the landowners, it cannot be a deposit for security of the character prescribed in the Constitution, and therefore it is, in effect, a mere arrangement for tender.) This taking before paying or securing payment is constitutionally permissible in the case of the highway director, for he takes property for roads which are "open to the public, without charge". Since these statutes contain this provision regarding the time of taking possession, they are silent as to when possession may be taken by someone else attempting to act under them -- in this case the Turnpike Commission -- when that someone else is prohibited by the Constitution from taking possession before payment or deposit. This is the major deficiency which gave rise to the investment bankers' letter. '

The proposed bill meets these problems in the first place by getting completely away from the statutory procedure which is prescribed for appropriations by the Director of Highways. In undertaking the drafting of legislation such as this, either one of two basic approaches can be followed. By one method all procedural steps would be spelled out fully in the statute. By the other method the provisions of some existing statute with respect to the procedure to be followed would be incorporated by reference. It was this latter method which the legislature followed in enacting

the present section 1208 of the General Code. It is also the method which we have followed in drafting the proposed bill to amend section 1208.

We examined all the many appropriation statutes of the state of Ohio in an effort to ascertain which of them would most nearly meet all the requirements, which include a speedy, efficient, procedure, a positive and satisfactory provision for the taking of possession, protection of the landowners' interests, and compliance with all constitutional limitations. The statute which best met all these requirements is the one which pertains to appropriations by the State Bridge Commission. Undoubtedly, one reason why it is so apt is that the State Bridge Commission and the Turnpike Commission are very similar bodies. The two Commissions are similarly constituted they finance their projects by issuing revenue bonds to be paid out of tolls, and so on. We concluded that the procedure prescribed in General Code section 1084-9 with respect to the State Bridge Commission would be quite satisfactory for the purposes of the Turnpike Commission.

We propose no change in the first sentence of section 1208. In that connection let me point out that the proposed amendment of section 1208 does not confer the power of eminent domain upon the Commission. It already has that power by virtue of the first sentence of the section, and the constitutionality of the delegation of that power by the legislature has been affirmed by the Supreme Court of Ohio.

The proposed bill would delete the first portion of the second sentence of section 1208 and substitute for it a statement that 'The procedure to be followed, the estate which shall vest in the State of Ohio, and the right to possession which shall be acquired by the Commission, in any proceedings for appropriation under this section, shall be the same as provided in paragraphs (a) to (o) both inclusive, of section 1084-9 of the General Code with respect to condemnation by the State Bridge Commission, \*\*\*.' I will now read to you the paragraphs to which I have just referred, from section 1084-9. (Mr. Dunbar then read the paragraphs mentioned, commenting briefly upon some of them.)

The next change is the incorporation, immediately following the language from the bill which I previously read of a clause which says that 'such right to possession shall be enforced in such proceedings by writ of possession or other appropriation means; \*\*\*.' This clause goes to the heart of one of the major problems to be met, namely, that of assuring that the Commission



shall be able to take possession promptly after a jury verdict assessing the compensation. The incorporation of this clause in the law should prevent the difficulties which were encountered by the Turnpike Commission in New Jersey. They had to seek an amendment of their law also. They found that under the original law, after the Turnpike Commission had completed a condemnation case and had a right to possession, there was no speedy way of enforcing that right. The Commission had to start an entirely new lawsuit, in the nature of ejectment, I believe, in order to obtain actual possession. The clause which I have read will enable the court which tries the condemnation case to put the Commission into possession.

It is proposed -- and I refer you to lines 23 to 28 of the proposed bill -- that the following brief paragraph shall be inserted:

'All proceedings brought under this section shall be governed by the provisions of law applicable in civil actions in the court of common pleas, except as otherwise provided in the above enumerated paragraphs of section 1084-9; shall be advanced as a matter of immediate public interest and concern; and shall be heard in all courts at the earliest practicable moment.'

The effect of this paragraph is to make the procedure uniform no matter whether the condemnation proceedings are brought in the Common Pleas Court or in the Probate Court, and to make it clear that exactly the same rules apply in these cases as apply in civil actions generally, except to the extent that the pertinent provisions of the Bridge Commission's appropriation statute control in particular respects. The clause with respect to the advancement of the cases is substantially identical to similar clauses in some other Ohio condemnation statutes, and that clause, coupled with the next one, are included to assure a speedy disposition of the cases by the courts.

Section 3 of the proposed bill, which appears at lines 31 and 32, is incorporated to meet what might be termed a legal technicality, and to be very certain that the amendment will apply to appropriation proceedings in connection with Ohio Turnpike Project No. 1. Unless you wish it, I shall not go into a detailed explanation of this legal technicality.

Section 4 which is the emergency clause and appears at lines 33 to 41 of the proposed bill is self-explanatory.

I am of the opinion that the proposed bill will raise no substantial constitutional questions. As I have already mentioned, the Supreme Court has already approved the delegation to the Commission of the legislative power to appropriate property. By getting completely away from the Highway Director's procedure, we avoid the difficulty which I have previously mentioned. The Constitution of Ohio permits the legislature to delegate to any agency or corporation which is to build toll roads the power to appropriate private property, subject to two conditions or limitations. One of these is, that before the property is taken compensation for it must either be first paid in money or first secured by a deposit of money. The other is, that the amount of the compensation must be assessed by a jury. The proposed bill fully meets these requirements. I am confident that it also meets the requirements of the Constitution of the United States with respect to 'due process'."

At the request of the Chairman Mr. Crawford then reported as Bond Counsel to the Commission that the proposed bill as presented by Mr. Dunbar had been the result of joint effort. He stated the opinion of Bond Counsel that the proposed bill would accomplish the thing to be desired; that the Constitution of the State of Ohio does not in any way prevent, but rather authorizes an amendment of this character; and that if this bill should be passed and become law it would be valid and constitutional and there would not be need for further test cases before proceeding with the financing.

Upon inquiry of the Chairman Mr. Dennis Murphy agreed to arrange that a representative of the Financial Advisor and counsel to the Financial Advisor would be present when the special session of the General Assembly is convened and that they would be prepared to indicate their confidence in the validity of the proposed amendment to the Turnpike Act. There being no further discussion or objection, the reports of counsel, including the proposed bill to amend the Turnpike Act, were received.

A motion was made by Mr. Seasongood, seconded by Mr. Teagarden, that the Chairman be authorized and directed to transmit the proposal of counsel for a Bill amending the Turnpike Act to the Governor of Ohio and to the leaders of the General Assembly as requested by the Governor. 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, Seasongood, Teagarden, Shocknessy, McKay, Kauer  
Nays, None

The Chairman declared the motion adopted.

A motion was made by Mr. Teagarden, seconded by Mr. Kauer, that the following resolution be adopted:

"WHEREAS, January 1, 1952, a legal holiday, falls on Tuesday which is by resolution the regular meeting date of the Ohio Turnpike Commission;

NOW, THEREFORE, BE IT RESOLVED that the regular meeting of the Commission for the month of January, 1952 be held on January 2nd at 1:30 p. m. "

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

The Chairman declared the motion adopted.

Mr. McKay then discussed the establishment by the Commission of toll rates for the turnpike project, the preparation by counsel of By-Laws for the Commission, and the need for consideration of the initial operating organization of the Commission. He stated for the record that he intends to object to the detailed schedule of tolls which may be proposed unless such schedule is supported by proof of the methods, bases, and analyses from which it might be derived. It was agreed that Parsons, Brinckerhoff, Hall and Macdonald in collaboration with the Director of Highways would prepare a statement in justification of proposed toll charges for presentation at the next meeting of the Commission.

Mr. Dunbar stated that he would soon be in a position to turn his attention to the matter of By-Laws. Mr. Donnelly of J. E. Greiner Company agreed at the request of the Chairman to submit an organization plan in detail at the next meeting of the Commission. The Chairman stated his belief that it has been the theory of the Commission from the beginning that it will not seek to build a great bureaucracy of its own but will seek to have its engineers insofar as possible perform the functions of the Commission in order that the administrative organization might be kept at a minimum. He recognized the fact that the Commission must have engineering, legal, and auditing elements in its organization.

Mr. Teagarden submitted a special issue of the New York Times dated November 25, 1951 which was devoted to the New Jersey Turnpike. The document was filed with the Secretary.

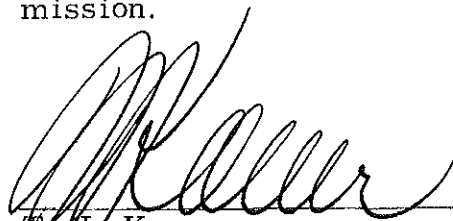
There being no further business to come before the meeting a motion was made by Mr. McKay, seconded by Mr. Teagarden, that the meeting

adjourn subject to call of 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, Seasongood, Teagarden, Shocknessy, McKay, Kauer  
Nays, None

The Chairman declared the meeting adjourned. The time of adjournment was 12:30 o'clock p. m.

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



T. J. Kauer  
Secretary-Treasurer

Jan. 2, 1952