

MINUTES OF THIRTY FIFTH MEETING
FEBRUARY 20, 1952

Pursuant to call of the Chairman the Ohio Turnpike Commission met in special open session in Hearing Room No. 2, State Office Building, Columbus, Ohio, at 1:30 o'clock p.m. on February 20, 1952 with its Attorney, Bond Counsel, representatives of the Consulting Engineers, of the Financial Advisor, of the Department of Highways, and of the press and others 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.

The Chairman stated that minutes had been prepared for the several preceding meetings but that consideration would be deferred until the members had opportunity to review the minutes. He congratulated the members upon their intensive activity in behalf of the Commission and the committee work of the Commission and made particular reference to the extended travel by Mr. Teagarden, Mr. McKay, Mr. Kauer, Mr. Dunbar, Mr. Crawford and the Governor of Ohio in behalf of the Commission.

The Chairman reported that more work had been done since the last meeting with respect to the procurement of steel; that Mr. Donnelly had been with Governor Lausche in Washington in conference with Mr. Manly Fleischmann of the National Production Authority and that the Secretary of Commerce, Mr. Sawyer, had indicated to the Governor his willingness to discuss the strategic advantage of the Ohio Turnpike project with the Department of Defense. The Chairman stated that it has been reported that steel is likely to be available for the fourth quarter of 1952 and that while the official position of the Commission with respect to steel is no better, still he detects a greater responsiveness to the request of the Commission for materials. The Chairman then read the following letter which had been received from the representatives of the Financial Advisor:

"Mr. James W. Shocknessy, Chairman February 19, 1952
Ohio Turnpike Commission
Columbus 15, Ohio

Dear Mr. Shocknessy:

In a statement made to the Ohio Turnpike Commission on January 2, 1952, we indicated that only two major problems remained for solution before financing for the Ohio Turnpike could be completed. These are:

1. Availability of steel
2. Favorable market conditions

The prospective availability of an allocation of steel requirements for the Ohio Turnpike Commission for the Fourth Quarter of 1952 appears to be the first break in the situation surrounding the availability of steel. It is our opinion that a construction revenue issue of this size must have more definite allocation than requirements for only one quarter in order to successfully market the issue which is the largest single public offering of revenue bonds ever attempted.

We understand, however, that under existing regulations, before any allocations of steel can be made to any project, total approval of the project must be given by the Defense Production Authority and that such approval together with an allocation of steel for one quarter's needs implies an obligation to make the remaining requirements of steel available for the completion of the approved project.

We recommend that the Commission continue its efforts to obtain total approval of the project and accept, if available, the allocation of steel for the Fourth Quarter of 1952. With such total approval of the project and the allocation mentioned above, we believe that the first problem referred to above will have been solved and that the underwriting and distribution of the proposed revenue bonds in the near future can be successfully concluded subject to favorable market conditions at the time.

The work on the Trust Agreement, the Traffic and Revenue Report and the Construction Report are progressing satisfactorily and every effort will be put forth to complete these documents as soon as possible in order that the financing may be completed at the earliest possible date.

Respectfully submitted,

Blyth & Co., Inc.
B. J. Van Ingen & Co., Inc.
The Ohio Company

Braun, Bosworth & Co., Inc.
Stranahan, Harris & Company
McDonald & Company
Prescott, Shepard & Co., Inc.
The Weil, Roth & Irving Co.,

by B. J. Van Ingen & Co., Inc.

by J. G. Couffer
Vice President "

The Chairman reported certain rumors which had been brought to his attention by Mr. Seasongood in connection with the selection of accounting firms and by Mr. McKay in connection with the selection of engineering firms. The Chairman and all members of the Commission agreed that no commitments had been made or implied to any firm or to any individual in the matter of services to be performed for the Commission by accounting or engineering firms. It was pointed out that the recommendation of engineering firms will be within the responsibility of the Greiner Company and that the employment of such firms will be the responsibility of the Commission as a whole.

The Chairman reported a suggestion by Mr. McKay that certain assurances be given to property owners along the route of the turnpike concerning prices which may be offered for the land which will be needed for the turnpike project. Mr. McKay had pointed out that some persons or firms are making representations to some property owners that their services on a contingent fee basis might be helpful in obtaining a better price from the Commission than the property owner would otherwise be paid. The Chairman stated on behalf of the Commission that no property owner is going to benefit from the services of any person in any measure which would gain for him a better price than he would otherwise obtain without the services of that person. He said that the Commission intends that a fair and just price will be paid for any land that it acquires and that just compensatory damages will be paid. He pointed out that no one is going to be able to make a better deal for a property owner than he can make for himself.

The Chairman congratulated and thanked Mr. Stanfield, the Vice President of the Ohio Farm Bureau Federation, for the very beneficial services which have been rendered to property owners along the route of the turnpike through the meetings which the Farm Bureau arranged at which Mr. Stanfield and his counsel and Mr. Faller of the Greiner Company discussed fully those problems which attend the acquisition of land by the Turnpike Commission.

The Chairman reported his understanding that representatives of

the Cleveland Metropolitan Park District wish to discuss with the Commission the route of the turnpike across Cuyahoga County but that the District has not to this time made its wishes known directly to the Commission. He appointed a committee composed of Mr. McKay as chairman and Mr. Kauer and Mr. Donnelly to meet with the Cleveland Metropolitan Park District if the District should indicate its wish so to meet.

The Chairman reported that he had arranged to obtain a transcript of a meeting of the Cleveland Chamber of Commerce held on February 12, 1952 at which Mr. McKay had discussed the Ohio Turnpike. Request for such a transcript had been made by Mr. Seasongood.

The Chairman then requested that the Consulting Engineers report as to their progress and Mr. Jenkins of the Greiner Company reported upon a public hearing held in Toledo on February 19, 1952 by the District Engineer of the U. S. Corps of Engineers at which arguments were heard for and against the revised application of the Commission for permission to cross the Maumee River. He reported that officials of the city of Maumee and representatives of pleasure boating opposed the granting of the application, that officials of the city of Toledo had supported the application, and that the Greiner Company had presented a statement in support of the application in behalf of the Commission.

Mr. Donnelly then reported that steel requirements for the turnpike project had been reanalyzed as requested by the Commission and that steel for the turnpike project had been rescheduled into four quarters beginning with the fourth quarter of 1952. He stated that the progress schedule for Ohio Turnpike Project No. 1 was still possible of accomplishment within the revised schedule for allocation of steel. Mr. Donnelly stated that the revised requirements for steel were in the possession of the Governor of Ohio and had been used by him in discussions with the Secretary of Commerce.

Mr. Donnelly then reported the results of studies of alternative grade lines in the vicinity of Elyria. He stated that a fully elevated grade line through Elyria would be prohibitively expensive but that the grade line could be depressed through a part of the area in order that additional structures could be built over the turnpike to accommodate any future development of Elyria city streets. The additional cost incident to changes in the grade line was estimated to be \$215,000. Mr. Donnelly was authorized to consult further with officials of Elyria with respect to the alternative grade line. Mr. Donnelly completed his report with the statement that at no time in the discussions which J. E. Greiner Company has had with the Commission or with anyone else has the subject of an accounting firm been

raised and that at no time during the interviews which the Greiner Company has had with prospective consulting engineering firms has any commitment or implied commitment been made. In the absence of objection the report of the Consulting Engineers was received.

The Chairman reported the receipt of a letter from the Clerk of Council of the City of Berea transmitting a resolution protesting the proposed route of the Ohio Turnpike through the City of Berea. The resolution was filed with the Secretary for reference to the Greiner Company.

Mr. McKay then reported for the committee which had been appointed to finalize the Traffic and Revenue Report that he and Mr. Kauer had met in New York City on February 18 with representatives of the Financial Advisor and of Parsons, Brinckerhoff, Hall and Macdonald with the following results:

1. General agreement between the Commission's committee and the Financial Advisor's committee to the recommendations of the Traffic Consultant for finalizing the Traffic and Revenue Report. The committee therefore recommended consideration of the preliminary draft of a final Traffic and Revenue Report at the regular meeting on March 4, 1952. Initial construction of sections one through four as determined by the Commission on February 5, 1952 will require changes in the base tables of revenue adjusted to the Commission's plan for construction and financing initially to a point west of the Maumee River and for construction subsequent thereto to the Indiana border on the present location of Turnpike Project No. 1.

2. General Agreement between the Commission's committee and the Financial Advisor's committee as to the toll schedule recommended by Parsons, Brinckerhoff, Hall and Macdonald except for consideration of minor changes in tolls between two interchanges. The committee therefore recommends consideration by the Commission of final toll schedule rates at the regular meeting of March 4, 1952.

3. Agreement between the Commission's committee and the Financial Advisor's committee to recommendations of Parsons, Brinckerhoff, Hall and Macdonald as to the classification method of vehicle tolls for commercial vehicles subject to further investigation of the practicability of such recommended method. The committee

recommends consideration by the Commission of the recommended plan at a later meeting of the Commission.

Mr. McKay further reported that a preliminary draft of the final report would be available for consideration within two weeks. There being no objection the report of the committee was received.

Mr. Kauer then reported as follows for the committee which had been appointed to consider a Traffic Consultant:

"Pursuant to the purpose for which it was appointed, the committee composed of Mr. Kauer, Mr. Shocknessy and Mr. Donnelly met with Mr. Jerome Fischer of Parsons, Brinckerhoff, Hall and Macdonald immediately following adjournment of the meeting of the Turnpike Commission on February 5, 1952 to consider the letter proposal dated January 3, 1952 by which that firm suggested its employment as Traffic Consultant to the Commission. The committee discussed fully with Mr. Fischer the services which Parsons, Brinckerhoff, Hall and Macdonald are capable of furnishing to the Commission during the period of financing, development of plans, construction, and initial operation of the turnpike project.

The committee received from Mr. Fischer a proposal of Parsons, Brinckerhoff, Hall and Macdonald dated February, 1952 in which the firm presented in detail the services which it considers should be available to the Commission. A question was raised as to possible overlapping of the proposed services with those which are already the responsibility of the General Consultant under the contract which the Commission now has with J. E. Greiner Company.

The committee was of the opinion that the proposal is far more comprehensive in scope than it need be. The committee plans to confer further with the representatives of Parsons, Brinckerhoff, Hall and Macdonald for the purpose of reaching a conclusive counter-recommendation as to the services of a Traffic Consultant which may be needed and will report on the matter at a later meeting of the Commission."

A motion was made by Mr. Seasongood that the committee to consider a Traffic Consultant confer further with representatives of Parsons, Brinckerhoff, Hall and Macdonald and J. E. Greiner Company. Mr. McKay seconded the motion. 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, Seasongood, Shocknessy, McKay, Kauer
Nays, None

The Chairman declared the motion adopted.

Mr. Seasongood then presented the following report of the committee on organization of the Commission's legal staff which report had been signed by the three appointed members of the committee except that the signature of Mr. Seasongood was subject to certain reservations:

"At the commission's meeting on February 5, 1952, the chairman appointed the undersigned a committee to study and report upon the organization of the commission's legal staff.

Your committee has considered that it is not its function to consider particular persons for employment, and accordingly, makes no report thereon.

Your committee gave careful consideration to the question whether a law firm should be retained to furnish the general legal services and advice that will be required by the commission, or whether the commission should directly employ its lawyers and set up its own legal staff. Your committee recommends the latter alternative, bearing in mind the high measure of public trust involved in the commission's work, and after duly weighing practical considerations of probable costs, efficiency, availability of satisfactory personnel, and so on. However, some legal services will, as a practical matter, necessarily have to be furnished by lawyers or law firms especially retained for particular kinds of work, especially in connection with condemnation cases and other litigation in counties remote from the commission's headquarters.

After due consideration, your committee has prepared and herewith submits a "Plan of Organization and Administration of Legal Staff" for adoption, but not to become effective until and unless approved by general counsel when selected by the commission. Said plan is hereby incorporated in this report, and constitutes a part of it.

Your committee gave no detailed consideration to the rates of compensation to be paid to staff lawyers. It believes that that matter should be carefully investigated and considered by general counsel; that he should report

fully thereon to the commission, with his recommendations; and that the commission should then, and not now, consider and pass upon this matter.

One of the subcategories of "retained lawyers" provided for in the plan herewith submitted is that of "special counsel". Your committee does not attempt to foresee exactly what may be the occasions for retaining such counsel -- such problems may be met by the commission as they arise. However, to illustrate what the committee has in mind: The commission might retain a lawyer or law firm to handle, or to assist the legal staff in handling, a particular lawsuit; or to furnish advice or other service in a specialized field of legal service; or to perform any particular service of specified scope.

However, your committee does point out that when the commission considers rates of compensation, it should also consider appropriate arrangements for reimbursing staff lawyers for overhead expenses which they may bear in connection with any services which they may render between the times when they are employed and the time when, with funds available, the commission can start furnishing them with office facilities and stenographic and clerical services.

All contracts of employment should clearly specify that all compensation and other payments by the commission shall be contingent upon its procuring funds, under the Turnpike Act, from which such payments can be made.

Respectfully submitted,

Murray Seasongood
Chairman (subject to reservations
to be stated)

Henry J. Crawford

Frank Dunbar, Jr.

Committee on Organization of Com-
mission's Legal Staff

Plan of Organization and Administration of Legal Staff

1.00 Categories of Lawyers. Lawyers for the commission may be classified in two categories: First, staff Lawyers, second, retained lawyers.

1.10 Staff Lawyers are employees of the commission, working at the commission's offices, or elsewhere as the general counsel may prescribe, and, generally, (and as soon as the commission shall have funds therefor) having all their office facilities and services furnished, and official expenses paid, by the commission. Generally, they will furnish all legal services required by the commission, except such as are below provided to be furnished by retained lawyers, who will be paid on a fee basis, as hereinafter set forth.

1.20 Retained Lawyers are either law firms or individual lawyers who are employed by the commission to perform specific services or types of services. They will work at or from their own offices, will pay their own office expenses, and will be compensated on a fee basis.

1.21 Bond counsel, one subcategory of retained lawyers, who have heretofore been retained, will furnish the services already contracted for.

1.22 Local counsel, a second subcategory of retained lawyers, will furnish such services in each of the several counties to be traversed by Turnpike Project No. 1 as shall be contracted for. A lawyer or law firm will be retained in each such county to furnish all needed local services in such county in connection with condemnation cases, prospective and pending. If and when any other services in any of those counties are required, the same or other local counsel will be retained to furnish such services.

1.23 Special counsel, if any, the third subcategory of retained lawyers, will furnish any services for which the commission may contract with them.

2.10 "Services", as the word is used in this plan, means legal services. In the case of staff lawyers, it includes any services, functions, or duties that the commission may prescribe.

3.10 Employment of Staff Lawyers. The head of the legal staff, to be denominated "general counsel", shall be employed by the commission, and shall serve at the commission's and his mutual pleasure. All other staff lawyers shall be employed by the commission upon the recommendation of general counsel. They may resign at any time, and may be discharged at any time either by the commission or by general counsel.

3.20 Employment of Retained Lawyers. Retained lawyers shall be employed by the commission upon the recommendation of general counsel. All such employments shall be by written

(formal or informal) contract, in each case setting forth the general nature and scope of the services to be furnished and the compensation, or the basis for determining the compensation, to be paid by the commission for the services. Such contracts may contain any other pertinent and mutually acceptable provisions.

3.30 Compensation of Staff Lawyers. Staff lawyers shall be paid such compensation, and be reimbursed for such expenses incurred in connection with their work, as shall from time to time be prescribed by the commission.

3.40 Nonlawyer Personnel of Legal Staff. Clerical, stenographic, and other nonlawyer personnel of the legal staff shall be employed in such numbers, in such manner, under such terms, and at such rates of compensation, as shall from time to time be prescribed or authorized by the commission.

4.10 Duties, Responsibility, and Authority of General Counsel General Counsel is the chief legal officer of the commission. He shall devote such time to the performance of his duties as shall be required adequately to discharge them or as shall be required by the commission, and in the aforesaid capacity he shall:

- (1) Be responsible, and answerable to the commission for all work of the legal staff, and legal advice and services furnished to it.
- (2) Manage, supervise, and direct the work of the legal staff, including both lawyer and nonlawyer personnel.
- (3) Manage and control, on behalf of the commission, all litigation to which the commission is a party, subject to any arrangements, including divisions of responsibility, which are provided for in contracts between the commission and retained lawyers.
- (4) From time to time, assign and reassign work and duties of, and fix the scope and lines of authority and responsibility as between, the several staff lawyers, and from time to time assign and reassign to them working titles to the extent that such labelling of their respective functions, for the time being, will serve the convenience of the commission, the legal staff, and persons having occasion to deal or communicate with members of the legal staff.
- (5) From time to time designate, subject to commission approval, a staff lawyer to serve in the capacity and with the title of assistant general counsel. (see 4.20 below)
- (6) Conduct investigations and negotiations and make recommendations for the employment by the commission of staff lawyers.

- (7) Conduct investigations and negotiations and make recommendations for the contracting by the commission with retained lawyers for the furnishing by them of services as local or special counsel.
- (8) Make any needed plans for, and supervise, direct, and coordinate, the services of local and special counsel; to the extent he deems it practical and desirable to do so, conduct conferences and meetings, and do other things, for the guidance and instruction of local counsel in the proper, efficient, and coordinated performance of their services; and supervise the preparation by staff lawyers of briefs and manuals of law, practice, and procedures, and of standard or suggested forms, for the use and guidance of local and special counsel.
- (9) Furnish all legal advice and opinions required by the commission, or by the commission's officers, agents, and employees, in connection with their work in the commission's behalf.
- (10) Draft or approval all contracts, deeds, releases, accords, and other legal instruments or documents, or standard forms thereof, to which the commission is, or is proposed to be, a party, except such as fall within the sphere of responsibility of bond counsel.
- (11) Keep the commission fully advised with respect to the work of the legal staff, by making reports in such form, in such manner, of such scope, and at such times as the commission shall from time to time request. He shall report actions taken under 4.10 (4).
- (12) Make all needed plans, conduct investigations and negotiations, and make recommendations with respect to office and working facilities and equipment for the legal staff.
- (13) Subject to any rules which the commission may prescribe or directions which it may give, be responsible to the commission for all reporting and records of financial transactions (for example: travelling and office expenses) affecting or involving the legal staff.
- (14) Attend meetings of the commission, to extent that it shall so request.
- (15) Furnish to the commission all required advice and assistance in connection with resolutions of, and other proceedings by, the commission.
- (16) Perform such other services as shall from time to time be requested by the commission.

All the foregoing things cannot be done personally by the general counsel. It is anticipated that he will delegate the doing of some of them to subordinate staff or other lawyers.

4.20 Assistant general counsel shall perform such duties and have such responsibilities in connection with the administration and supervision of the legal staff, its work, and its office, and perform such other duties, as the general counsel shall prescribe, and generally report to the commission.

4.30 Other staff lawyers shall from time to time serve in such capacities and have such duties and responsibilities as general counsel shall prescribe.

Mr. Seasongood explained that his reservations with respect to the report were based on his opinion that the words "and executive director or chief engineer" ought to be inserted in the fourth paragraph of the report immediately following the words "general counsel"; that the last four words of paragraph 3.10 of the plan of organization and the immediately preceding word "either" should be deleted and that paragraph 4.10 of the plan of organization should be made to read as follows: "General counsel is the chief legal officer of the Commission. He shall agree that as soon as funds are available he will devote his entire time to the performance of his duties, and in the aforesaid capacity * * *". The exceptions of Mr. Seasongood were noted and the report of the committee was received.

There being no further business to come before the meeting, a motion was made by Mr. Seasongood, seconded by Mr. Teagarden, that the meeting adjourn until 10:30 a. m. on February 27, 1952. 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, Seasongood, Shocknessy, McKay, Kauer
Nays, None

The Chairman declared the meeting adjourned. The time of adjournment was 3:25 o'clock p. m.

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



T. J. Kauer
Secretary-Treasurer

Mar. 4, 1952