

MINUTES OF THE FIFTY-THIRD MEETING
DECEMBER 9, 1952

Pursuant to adjournment the Ohio Turnpike Commission met in special open session at its offices at 361 East Broad Street in Columbus, Ohio, at 1:30 o'clock P. M. on December 9, 1952. The meeting was called to order by the Chairman, the roll was called, and the attendance was reported to be as follows:

Present: Allen, Teagarden, Shocknessy, McKay,
Linzell.

Absent: None.

The Chairman announced that a verbatim record of the proceedings of the meeting would be taken and transcribed by Mr. Ira W. Pratte, Court Reporter of Springfield, Ohio.

Resolution No. 115-1952 authorizing the removal of houses and other buildings was moved for adoption by Mr. McKay and seconded by Mr. Linzell, as follows:

"WHEREAS in the process of acquiring right of way for Ohio Turnpike Project No. 1 the Commission has acquired houses and other buildings which must be removed or destroyed in order to construct the turnpike;

"WHEREAS it would be beneficial to the Commission to receive compensation for the removal of such houses and other buildings rather than destroy them;

"NOW, THEREFORE, BE IT

"RESOLVED that each of the Executive Assistant and the Chief of Right-of-way Section be, and each of them hereby is, authorized on behalf of the Commission to sell houses and other buildings which have been acquired incidental to the purchase of the right of way for Ohio Turnpike Project No. 1 and which houses or other buildings must be removed or destroyed in order to construct said project; provided, that the sale of such houses and other buildings shall be made to the highest and best bidder after advertising at least once in a newspaper of general circulation in the county in which the houses or other buildings

to be sold are located, provided, however, that in the event no bids are received as provided herein, then the same two persons, namely the Executive Assistant and the Chief of Right-of-way Section, may enter into negotiations for sale without bid and proceed accordingly to dispose of the severed property, and further provided, that nothing in this resolution shall be deemed to require the sale of any house or building nor to prevent the destruction thereof when necessary in order to construct said project and when either the Executive Assistant or the Chief of Right-of-way Section is of the opinion that no satisfactory sale thereof can be made."

A vote by ayes and nays was taken and all members responded to roll call. The vote was as follows:

Ayes, McKay, Linzell, Teagarden, Allen, Shocknessy.

Nays, None.

The Chairman declared the resolution adopted.

Resolution No. 116-1952 granting authority to take action with respect to adjustment of alignment of the Turnpike in the Cleveland Metropolitan Park area was moved for adoption by Mr. McKay, seconded by Mr. Linzell, as follows:

"WHEREAS the Commission's Consulting Engineers have reported that it is feasible from an engineering standpoint to make a northward adjustment in the alignment of Ohio Turnpike Project No. 1 at and in the vicinity of the crossing of the Royalton-Brecks-ville Parkway in the Cleveland Metropolitan Park District, that the revenues from the Project would not be impaired by such an adjustment, and that construction costs will be materially decreased by making such adjustment, as contrasted with the costs that would be incurred if construction were made pursuant to the original, tentative plans;

"WHEREAS the Chief Engineer of the Commission has reported to it that he concurs in the conclusions aforesaid of the Consulting Engineers; and

"WHEREAS representatives of the Cleveland Metropolitan Park Board are reported to have indicated that such an adjustment in alignment is desired by said Board, because they are of the opinion that thereby the damage to the Board's land and park system would be reduced;

"NOW, THEREFORE, BE IT

"RESOLVED that, subject to the receipt from the Director of Highways of his written concurrence, the Commission approves the northward adjustment in the alignment of Ohio Turnpike Project No. 1 at and in the vicinity of the crossing of the Royalton-Brecksville Parkway in the Cleveland Metropolitan Park District, to be made in the manner and to the degree set forth in the report of the Commission's Consulting Engineer, the J. E. Greiner Company, in the form of a letter, with attached plan, dated December 4, 1952, addressed to T. J. Kauer, Chief Engineer:

"FURTHER RESOLVED that, subject to the approval of General Counsel, the Chairman is authorized to inform the Cleveland Metropolitan Park Board of the foregoing approval, and the Chairman, the Chief Engineer and the General Counsel are authorized to take whatever action, make whatever arrangements, and enter into whatever agreements on behalf of the Commission they may determine to be necessary or desirable to effect such adjustment in alignment and to protect the interests of the Commission in connection therewith; provided, that the foregoing approval is not to be deemed to be a mandate that such an adjustment in alignment shall be made if said officers shall, upon further consideration and investigation, determine it to be practically or legally undesirable to make such change, or if they are unable to effect arrangements with the Cleveland Metropolitan Park Board which they shall deem to be satisfactory and in the public interest."

A vote by ayes and nays was taken and all members responded to roll call. The vote was as follows:

Ayes, McKay, Linzell, Teagarden, Allen, Shocknessy.

Nays, None.

The Chairman declared the resolution adopted.

Resolution No. 117-1952 approving the engineering report dated August 15, 1951, was moved for adoption by Mr. Allen and seconded by Mr. Linzell, as follows:

"WHEREAS the Director of Highways transmitted to the Commission on August 7, 1951, the engineering report made to him by the J. E. Greiner Company, together with his recommendations thereon, both relating to Ohio Turnpike Project No. 1;

"WHEREAS between said date and September 4, 1951, the

Commission held public hearings, conferences, and public meetings with reference to various aspects of said recommendations;

"WHEREAS on September 4, 1951, the Commission adopted a resolution approving said report and recommendations, except for the part thereof relating to transposed traffic flow, following which the report as so approved was printed and dated as of August 15, 1951;

"WHEREAS on October 2, 1951, the Director of Highways approved the alignment and design standards of said Ohio Turnpike Project No. 1;

"WHEREAS the J. E. Greiner Company, consulting engineer to the Commission under contract of employment made on October 2, 1951, by letter dated June 4, 1952, confirmed to the Commission the said engineering report dated August 15, 1951, and the estimates therein contained;

"WHEREAS fifteen months have elapsed since the aforesaid approval of the said engineering report by the Commission, and in the meanwhile continuing examination has been made of the validity of said report, and the Commission now has two members who are new to it since said approval; and

"WHEREAS the Commission, having fully considered said engineering report and the recommendations therein contained and all the other information brought to the attention of the Commission, and the knowledge and experience of the several members of the Commission, records its present concurrence in said engineering report and its independent determination of the validity of the recommendations thereof;

"NOW, THEREFORE, BE IT

"RESOLVED that after due and full consideration thereof, this Commission hereby approves the engineering report of J. E. Greiner Company, dated August 15, 1951, as modified and supplemented as to design criteria for agricultural drainage, guard rails, and drainage pipe in accordance with resolutions Nos. 107, 109, and 110 adopted on December 2 and 6, 1952."

A vote by ayes and nays was taken and all members responded to roll call. The vote was as follows:

Ayes, Allen, Linzell, McKay, Teagarden, Shocknessy.

Nays, None.

The Chairman declared the resolution adopted.

Resolution No. 118-1952 adopting general and supplemental specifications and standard drawings was moved for adoption by Mr. Linzell and seconded by Mr. McKay, as follows:

"WHEREAS general and supplemental specifications and standard drawings have been completed, subject to approval of the Commission, and are before it this day for consideration; and

"WHEREAS the Commission has duly and fully considered the same;

"NOW, THEREFORE, BE IT

"RESOLVED that the general specifications, supplemental specifications, and standard drawings, Nos. 1 to 18, both inclusive, which are before this meeting are approved and adopted for Ohio Turnpike Project No. 1, and shall be printed; provided, that any changes which are in the nature of adding or changing headings, captions, tables of contents, and style of writing or printing, or in the nature of filling in blank spaces or correcting typographical, clerical, or arithmetical errors, may be made upon the authorization of either the chief engineer or general counsel."

A vote by ayes and nays was taken and all members responded to roll call. The vote was as follows:

Ayes, Linzell, McKay, Allen, Teagarden, Shocknessy.

Nays, None.

The Chairman declared the resolution adopted.

Resolution No. 119 - 1952 approving plans for Contract C-46-A was moved for adoption by Mr. Teagarden and seconded by Mr. Allen, as follows:

"WHEREAS there have been presented to this meeting plans for the substructure of the Maumee River Bridge, the approval of which has been recommended by the Commission's chief engineer and consulting engineer; and

"WHEREAS the Commission has duly and fully considered the same;

"NOW, THEREFORE, BE IT

"RESOLVED that the Commission does hereby approve said plans for contract C-46-A."

A vote by ayes and nays was taken and all members responded to roll call. The vote was as follows:

Ayes, Teagarden, Allen, McKay, Linzell, Shocknessy.

Nays, None.

The Chairman declared the resolution adopted.

Resolution No. 120-1952 approving plans for Contract C-15-B was moved for adoption by Mr. McKay and seconded by Mr. Linzell, as follows:

"WHEREAS there have been presented to this meeting plans for the superstructure of the Cuyahoga River Bridge, the approval of which has been recommended by the Commission's chief engineer and consulting engineer; and

"WHEREAS the Commission has duly and fully considered the same;

"NOW, THEREFORE, BE IT

"RESOLVED that the Commission does hereby approve said plans for contract C-15-B."

A vote by ayes and nays was taken and all members responded to roll call. The vote was as follows:

Ayes, McKay, Linzell, Teagarden, Allen, Shocknessy.

Nays, None.

The Chairman declared the resolution adopted.

Resolution No. 121-1952 approving documents for Contract C-1, providing for advertising, etc., was moved for adoption by Mr. Allen and seconded by Mr. Teagarden, as follows:

"WHEREAS there are before this meeting forms of contract documents for construction contract C-1, to wit: forms of notice to bidders, proposal, plans, special provisions, and contract; and

"WHEREAS the Commission has duly and fully considered the same;

"NOW, THEREFORE, BE IT

"RESOLVED that the Commission hereby approves the forms before it at this meeting of contract documents, being the notice to bidders, the proposal, the plans, the special provisions, and the contract (to be known as Contract C-1), for the construction of that portion of Ohio Turnpike Project No. 1 which is known as construction section C-1, which begins at a point about 500 feet east of South Range-Center Road at turnpike center-line station 1015 + 00 in Mahoning County and extends eastwardly to the Ohio-Pennsylvania state line at center-line station 1292 + 03.83 at the eastern boundary of Mahoning County;

"FURTHER RESOLVED that the Chief Engineer and General Counsel shall do all things needful to publish statutory and any additional notice which they deem desirable of the taking of bids for the performance of said contract No. C-1, and shall take and open the same on January 3, 1953, and report the results thereof to the Commission; and

"FURTHER RESOLVED that the Chief Engineer and General Counsel shall, as promptly as feasible, do all things requisite to cause, and they shall cause, to be published advertisements of notices for the taking of bids for the construction of the remaining portions of Ohio Turnpike Project No. 1."

A vote by ayes and nays was taken and all members responded to roll call. The vote was as follows:

Ayes, Allen, Teagarden, McKay, Linzell, Shocknessy.

Nays, None.

The Chairman declared the resolution adopted.

Resolution No. 122-1952 ratifying actions of administrative officers was moved for adoption by Mr. Teagarden and seconded by Mr. Linzell, as follows:

"WHEREAS the executive assistant, chief engineer, general counsel, assistant secretary, comptroller, and chief of the right-of-way section of the Commission have, by various written and oral communications, fully advised the members of the Commission with respect to their official actions taken on behalf of the Commission since the Commission's last meeting, and the Commission has duly reviewed and considered the same;

"NOW, THEREFORE, BE IT

"RESOLVED that all official actions taken by the aforesaid administrative officers of the Commission on its behalf since the Commission's meeting on December 2, 1952, are hereby ratified, approved and confirmed."

A vote by ayes and nays was taken and all members responded to roll call. The vote was as follows:

Ayes, Teagarden, Linzell, McKay, Allen, Shocknessy.

Nays, None.

The Chairman declared the resolution adopted.

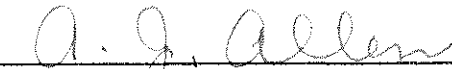
The following documents which were placed before the Commission during the meeting, or had been handed to the members prior to the meeting, were filed with the Secretary-Treasurer or otherwise handled as indicated in the following tabulation:

1. Letter from Mr. Ernest L. Dewald of American Society of Landscape Architects, Kentucky-Ohio Chapter, dated December 8, 1952, pertaining to borrow pits on the turnpike.
2. Memorandum from Chief Engineer to members of the Commission, dated December 8, 1952, including copy of a letter from the Consulting Engineers, dated December 4, 1952, pertaining to alignment adjustment in Cuyahoga County, and a location study map of Royalton-Brecksville Parkway Grade Separation, dated December 4, 1952.
3. Three free-hand illustrations, presented by Mr. Lansdale in demonstration of portions of his statement pertaining to the Shafer case.
4. Forms of Special Provisions and Proposal, together with forms of Contract and Contract Bond for Contract C-1, Ohio Turnpike Project No. 1.
5. Plans for Contract C-46-A, substructure of Maumee River bridge, handed by Secretary-Treasurer to Chief Engineer for appropriate action pursuant to Resolution No. 119-1952.
6. Plans for Contract C-15-B, superstructure of Cuyahoga River bridge, handed by Secretary-Treasurer to Chief Engineer for appropriate action pursuant to Resolution No. 120-1952.

7. Plans and cross-sections for Contract C-1 in Mahoning County, handed by Secretary-Treasurer to Chief Engineer for appropriate action pursuant to Resolution No. 121-1952.

The Chairman declared the meeting adjourned. The time of adjournment was 6:45 P. M.

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



A. J. Allen
Secretary-Treasurer

1 REPORT OF THE PROCEEDINGS OF MEETING OF THE OHIO TURNPIKE
2 COMMISSION HELD IN THE BLUE ROOM OF THE SENECA HOTEL,
3 COLUMBUS, OHIO, ON TUESDAY, DECEMBER 9, 1952, BEGINNING
4 AT 1:30 O'CLOCK, P. M.

5 - - -

6 COMMISSION MEMBERS PRESENT:

7 James W. Shocknessy, Chairman
8 O. L. Teagarden, Vice-Chairman
9 A. J. Allen
S. O. Linzell
J. Gordon McKay

10 - - -

11 OTHERS PRESENT:

12 Frank C. Dunbar, Jr., General Counsel, Ohio Turnpike
Commission.
13 John Lansdale, Henry Crawford and Lawrence E. Oliphant,
of Squire, Sanders and Dempsey, Special Counsel to
14 Ohio Turnpike Commission.
John Soller, Comptroller and Assistant Secretary-Treasurer,
15 Ohio Turnpike Commission.
T. J. Kauer, Chief Engineer, Ohio Turnpike Commission.
16 Charles P. Smith, Executive Assistant, Ohio Turnpike
Commission.
17 David Ralph Hertz, Robert Dow Hamilton and Paul Griffith,
Counsel for Richard Shafer.
18 E. J. Donnelly, Benjamin LeSueur and Vincent Faller, of
J. E. Greiner Company, Consulting Engineers to Ohio
19 Turnpike Commission.
John Blanpied, representing the Trustee under the
20 Indenture.
John Christenson, Counsel for the Trustee under the
21 Indenture.
Dennis Murphy, Vice-President of the Ohio Company.

22 - - -

AFTERNOON SESSION,

Tuesday, December 9, 1952.

- - -

CHAIRMAN SHOCKNESSY: All right, will this special meeting of the Ohio Turnpike Commission come to order, please.

This meeting convenes pursuant to the adjournment resolution calling the Commission to convene in special session meeting at this time and place.

Will you call the roll, Mr. Soller?

- - -

Thereupon the secretary called the roll, all members being present.

- - -

CHAIRMAN SHOCKNESSY: All members of the Commission have answered to roll call. The meeting accordingly will proceed.

The Chairman has no report of any great consequence to make to the Commission today. I spent the greater part of the past two days in the Court of Appeals of the Second District giving testimony before the Referee in the Shafer case.

I might mention that counsel for the Relator in the Shafer case has indicated in the last couple days that he does not have a high regard for the character of the deliberations of this Commission as exemplified at the

meeting on the 6th of December.

I shall, after reading a letter I have here, proceed with the usual reports.

This letter is on the stationery of the American Society of Landscape Architects, Inc., Kentucky-Ohio Chapter, Western Reserve Section, Cleveland, Ohio, December 8, 1952. It is addressed to the Director of Information and Research, Mr. James D. Hartshorn.

"Dear Mr. Hartshorn:

"Thank you for your letter of December 5th in which you explained the 'borrow pit problem'.

"The specifications of the Ohio Turnpike Commission covering 'borrow pits' have been well conceived and very well written. We feel that you have covered all phases of the problem quite adequately. In fact, it would be well for the State Highway Departments all over the country to follow your splendid example.

"The Western Reserve Section of the American Society of Landscape Architects want to take this opportunity to congratulate the Turnpike Commission for their clear thinking and foresight on this problem.

"Very truly yours,

"Ernest L. Dewald, Chairman,
"Western Reserve Section"

Now, this is the man, Mr. Dewald, who wrote a letter which was the subject of some comment in the Cleveland

1 Press in an article by Mr. Bordner, if I remember correctly.
2 Therefore, I wonder, Mr. Hartshorn, if it might not be a good
3 plan for you to see that Mr. Bordner, as well as other news-
4 paper men, receive a facsimile of that letter, and since the
5 writer, Mr. DeWald, mentions the Departments of Highways of
6 the several states, it might be a good plan to send a copy
7 to Mr. Linzell as Director of Highways, and to the Governor.

8 Is that agreeable to the members?

9 MR. MCKAY: Yes.

10 (The other Board Members nodded their heads affirm-
11 atively.)

12 CHAIRMAN SHOCKNESSY: Now, Mr. Allen, do you have
13 a report to make to this meeting as Secretary-Treasurer?

14 MR. ALLEN: We have no report today.

15 CHAIRMAN SHOCKNESSY: There will be no report
16 today from the Secretary-Treasurer.

17 Mr. Kauer, you have advised me that you have a
18 report to make. Will you proceed with your report?

19 MR. KAUER: Mr. Chairman and Members:

20 Since the last meeting I have written letters to
21 the engineers advising them of the adoption of design criteria
22 for agricultural drainage, for drainage pipe and for guard
23 rail. The instructions given to the engineers were to the
24 effect that these criteria should be taken into effect and
25 all plans submitted shall be in conformance with those

1 criteria.

2 Since the last meeting, Mr. Chairman, we have
3 awarded a contract and entered into an agreement for the
4 testing of materials to be used in the construction of the
5 sub-structure of the Cuyahoga River Bridge to a Cleveland
6 firm, Gulick-Henderson of Ohio, in the amount of \$4,448.95.
7 There were seven proposals received with respect to the test-
8 ing of materials on that contract.

9 I would like to also report, Mr. Chairman, that the
10 plans are complete and have been signed for the super-struc-
11 ture for the Cuyahoga River Bridge in Summit County and for
12 the sub-structure of the Maumee River Bridge in Lucas County.

13 That's the end of my report, sir.

14 CHAIRMAN SHOCKNESSY: Thank you, Mr. Kauer.

15 I did not mention at the beginning of the meeting
16 that we do not have any minutes to consider of the last two
17 meetings, because it hasn't been possible -- Colonel Smith
18 reminds me that it is of the last three meetings. That
19 would be December --

20 MR. SMITH: November 4 --

21 CHAIRMAN SHOCKNESSY: November 4, December 2 and
22 December 6 -- because we have been so busy with other press-
23 ing matters that it hasn't been possible for the clerical
24 staff to get the minutes in form for submission to the members.
25 We will hope at the next meeting of the Commission to have

1 all minutes of previous meetings that have not been approved
2 offered to the Commission for adoption.

3 I'd like the record to show the presence at the
4 table of the five members of the Commission, the General
5 Counsel, the Chief Engineer, the Fiscal Adviser and Special
6 Counsel of the firm of Squire, Sanders and Dempsey, Messrs.
7 Crawford, Lansdale and Oliphant, and the Assistant Secretary-
8 Treasurer, Mr. Soller.

9 I have incorporated you by reference at this table,
10 Mr. Oliphant, considering that table where you are sitting
11 with the many documents to be an extension of this one.

12 Also I would like the record to show the presence
13 in the room at this time of the Trustee under the Indenture,
14 represented by Mr. John Blanpied, and counsel for the Trustee,
15 Mr. John Christenson, and Mr. Dennis Murphy of the principal
16 underwriters who financed the Turnpike Project Number 1, and
17 also Mr. E. J. Donnelly of the J. E. Greiner Company of
18 Baltimore, consulting engineers to the Commission, Mr. Ben
19 LeSueur of the same company, and Mr. Vincent Faller of the
20 same company, and also counsel for the Relator in State,
21 ex rel Shafer against the Ohio Turnpike Commission, Messrs.
22 David Ralph Hertz, Robert Down Hamilton and Paul Griffith.

23 Off the record.

24 (Discussion off the record.)

25 CHAIRMAN SHOCKNESSY: Colonel Charles P. Smith,

1 the Executive Assistant to the Commission, is also at the
2 table at this time.

3 Mr. Dunbar, will you make your report to the
4 Commission?

5 MR. DUNBAR: Before I do so, sir, I made
6 a couple notes about things that I thought might be pending.

7 As I recall, there is a committee having to do with
8 the oil station matter. I didn't know whether you might
9 want that brought to your attention at this time.

10 CHAIRMAN SHOCKNESSY: Is there anything to report
11 from the Petroleum Committee, Mr. Allen?

12 MR. ALLEN: No further report.

13 CHAIRMAN SHOCKNESSY: No report at this time.

14 Dr. McKay, have you any report on the Erie County
15 request for line change?

16 MR. MCKAY: We expect the complete
17 report will be laid before the Commission at the meeting in
18 January.

19 CHAIRMAN SHOCKNESSY: Thank you, Dr. McKay.

20 MR. DUNBAR: Mr. Chairman, at the last
21 meeting, that on December 6th, I reported to the Commission
22 further with regard to the status of the B. and O. property
23 at the site of pier number 4 for the Cuyahoga River Bridge
24 substructure. I can amplify that somewhat today, although
25 I regret that the information is not all that I wish that I

1 might present.

2 I talked this morning with counsel for the J. E.
3 Greiner Company in Baltimore, which happens to be the home
4 office of the Baltimore and Ohio Railroad Company, as well as
5 the location of the principal office of the Greiner Company.

6 He reported that, as the negotiating agent of the
7 J. E. Greiner Company, he had yesterday held a discussion
8 with five engineers of the Baltimore and Ohio Railroad Company
9 seeking to develop a basis for arranging for the Commission
10 to take possession of that particular parcel of property, at
11 least to the extent required for the construction of pier
12 number 4. He said that they had reiterated some of the
13 demands of which I had previously told him and which I have
14 also told the Commission about, and I won't bother to repeat,

15 Suffice it to generally say that no conclusion was
16 reached and we still are not in possession of a right of
17 access to and entry upon that land.

18 He did say that Mr. Donovan, who is Assistant
19 General Counsel, if I recall correctly, of the Erie Railroad
20 Company, was the spokesman of the group of railroad companies
21 to the extent that when and if the Commission should arrive
22 at an agreement satisfactory to Mr. Donovan, or an under-
23 standing satisfactory to Mr. Donovan, perhaps I should say,
24 with respect to indemnity to be afforded to the railroad
25 companies, that they would promptly enter into an arrangement

1 that would permit us access to that land.

2 I haven't been able in the very short time that
3 has elapsed since I had that report from the Greiner Company's
4 negotiating agent to speak with Mr. Donovan, but I expect to
5 do so the first minute that my time enables me to do so this
6 afternoon or tomorrow, and see if we can't very promptly
7 come to an understanding on that matter.

8 I have had also, as indirectly bearing on that, an
9 extended conference with Mr. Donnelly with regard to various
10 of the engineering and construction problems involved with
11 all of these railroad crossings, and have conferred to some
12 extent with Mr. Kauer on some of the same problems, and be-
13 tween us and Mrs. Wilkins of the Legal Staff, I believe we
14 have developed a form of agreement which I think will be
15 satisfactory from the standpoint of the Commission in all
16 respects, or at least reasonably satisfactory, and will meet
17 nearly all of the multifarious requests of the railroad
18 companies. However, it will not satisfy at all the demand
19 that the railroad companies made with respect to indemnity.
20 I expect to see that that is put into their hands as soon as
21 it can be reproduced and disseminated, with the hope that
22 we may come to an understanding with all of them.

23 A second matter might be entitled a brief mention:
24 I received, oh, three or four days ago -- it was before the
25 weekend -- a request from the Engineering Department for

1 advice with respect to the legal rights and obligations of
2 the public authorities who will be involved, and with respect
3 to the procedure to be followed in connection with the re-
4 location of public roads of one kind or another which may have
5 to be shifted slightly, or at least in cases in which it
6 appears desirable that they be shifted, and I have not yet
7 had a chance fully to develop that, but the advice requested
8 will be rendered as soon as possible in order that the
9 negotiations, which I understand are already well advanced,
10 with the public authorities having control of various roads
11 may be concluded by the Commission's consulting engineers and
12 its own engineers.

13 A third matter also I might mention is that whereas
14 I was asked some time ago to prepare a draft of suggested
15 by-laws and did so and presented them to the members of the
16 Commission, it has developed recently -- or perhaps I should
17 say, a more accurate expression would be, that I now believe
18 that it would be desirable to amplify that draft somewhat
19 by making provision with respect to certain legal holidays
20 and the work of the employees of the Commission, and the
21 office hours of the Commission on those holidays, and I will,
22 therefore, undertake as promptly as I can to supplement the
23 draft which I put in your hands so that whenever you are dis-
24 posed to do so you may have that before you also for any
25 action you may care to take on it.

1 I have two matters with respect to which I have
2 prepared drafts of suggested resolutions for your consideration.

3 One of them has to do with this problem: Occasion-
4 ally the Commission has acquired and will acquire for the
5 purpose of constructing Ohio Turnpike Project Number 1 a
6 parcel of land upon which a dwelling or other building or
7 structure will exist. Where it is possible to do so, our
8 negotiators are under instructions to endeavor to arrange for
9 removal of any such building by the owner in cases in which
10 it appears that the amount of damages to be paid can be re-
11 duced by so doing. However, as is obvious I think, the
12 Commission is in no position to compel a person to remove
13 a building from land which we are to take, and particularly
14 is in no position to insist that the amount that the
15 Commission shall pay him as a matter of law shall be reduced
16 to the extent of any salvage value of that building.

17 Therefore, it happens that we have acquired in at
18 least one instance, and we undoubtedly shall in other
19 instances, not many probably, acquire other dwellings or
20 buildings. Those will have some salvage value, and a
21 procedure should be evolved and authorized by the Commission,
22 I suggest, whereunder that salvage value could be realized
23 for the benefit of the Commission.

24 In the one instance which I mentioned, which has
25 already developed, an informal offer has been made by one

1 person to pay the Commission, I think, the sum of two thousand
2 dollars for this dwelling, and it would be his undertaking
3 to remove it.

4 I do not recommend that that offer be accepted. I
5 think that it would be a much more desirable procedure if
6 there were some advertisement publicly in the neighborhood
7 where the building exists of the fact that the Commission
8 wishes to dispose of this building which has been or is to
9 be severed from the land, and offers received, so that the
10 best offer could be accepted.

11 This is not a matter which comes under the
12 Commission's competitive bidding statute. That relates to
13 situations under which the Commission is to make an expend-
14 iture of more than one thousand dollars. Of course, here
15 we are not concerned with an expenditure by the Commission,
16 but rather with a receipt of money by the Commission.

17 MR. MCKAY: Wouldn't you want also, in
18 case of advertising and no offers, authority in that same
19 power to negotiate for disposal, I mean, having advertised
20 and received no bidders?

21 MR. DUNBAR: Well, now, that might be
22 worth doing. I haven't incorporated --

23 MR. MCKAY: It will happen frequently
24 on property of that kind.

25 MR. DUNBAR: Yes, I can see that it might.

1 Well, I will make this suggestion -- I have drawn
2 a resolution that would authorize either the Executive
3 Assistant or the Chief of the Right-of-Way Section to sell
4 such houses or other buildings in cases in which either of
5 those officers considers that it is feasible to try to find
6 a buyer for it upon advertising at least once in a newspaper
7 of general circulation in -- I forget how I expressed it now
8 -- in the county in which the houses or other buildings are
9 located, with a saving clause to the effect that nothing in
10 the resolution would be deemed to require the sale of any
11 house, that is, to make it mandatory, but allowing them to
12 exercise some judgment as to whether it is worth while to
13 seek bids, because there will be small and relatively worth-
14 less buildings, or buildings of a character which would be
15 destroyed probably, I suppose, by having to move them.

16 I would suggest then, Dr. McKay, that the
17 Commission might desire to act on this. I will be glad to
18 report to the Commission the first time any situation develops
19 where a bid can't be received and it looks like something
20 could be negotiated, and suggest some additional enactment
21 or Commission legislation at the time.

22 CHAIRMAN SHOCKNESSY: Couldn't you go about it,
23 however, right there in that one, Mr. Dunbar, "provided, how-
24 ever, that in the event no bids are received as provided
25 herein, then --

1 MR. MCKAY: They are authorized to
2 negotiate for same.

3 CHAIRMAN SHOCKNESSY; -- the same two persons,
4 namely, the Executive Assistant and the Chief of Right-of-
5 Way, may enter into negotiations for sale without bid and
6 proceed accordingly to dispose of the severed property?

7 MR. MCKAY: I think that's all right.

8 MR. DUNBAR: Then I will suggest that
9 you consider that the language of the resolution which I
10 hand you has been amended by the addition of the words
11 which the Chairman has just stated. That would seem to
12 be admirably suited to accomplish the purpose.

13 MR. MCKAY: I would so move, with the
14 amendment as provided therein, it's adoption.

15 MR. LINZELL: Second the motion.

16 CHAIRMAN SHOCKNESSY: It has been moved by
17 Dr. McKay and seconded by Mr. Linzell that the Executive
18 Assistant and the Chief of the Right-of-Way Section be
19 authorized to sell houses and other buildings which have
20 been acquired incidental to the purchase of right-of-way
21 by --

22 MR. MCKAY: What is the number, 115?

23 MR. SOLLER: 115.

24 CHAIRMAN SHOCKNESSY: -- award after receipt of
25 bids, or by negotiation in the event no bid is received.

1 Is there any discussion?

2 (No response.)

3 In the absence of discussion, will the secretary
4 call the roll, please?

5 - - -

6 The members answered the roll call as follows:

7 MR. MCKAY: Yes.

8 MR. LINZELL: Yes.

9 MR. TEAGARDEN: Yes.

10 MR. ALLEN: Yes.

11 CHAIRMAN SHOCKNESSY: Yes.

12 - - -

13 CHAIRMAN SHOCKNESSY: The resolution is unanimous-
14 ly adopted.

15 You may proceed, Mr. Dunbar.

16 MR. DUNBAR: The other matter in con-
17 nection with which I have drafted for your consideration a
18 resolution has to do with again the Cleveland Metropolitan
19 Park Board.

20 As the Commission will recall, some, oh, I believe
21 it was at least a couple months ago, maybe more than that,
22 a resolution was adopted, after the Commission received
23 reports from its Consulting Engineer and the Chief Engineer,
24 approving a northward adjustment in the alignment of Ohio
25 Turnpike Project Number 1 in the vicinity of the crossing
by that project of U. S.-Ohio Route 42. The Chairman,

1 the Chief Engineer and General Counsel were given authority
2 and direction to undertake to work out the details of an ar-
3 rangement with the Park Board whereunder that might be accom-
4 plished and subject to the terms of that resolution.

5 I remind you that at a subsequent meeting it was
6 reported to the Commission that a conference was held in
7 Cleveland, attended among others by Commissioner McKay and
8 Mr. Kauer and I and Special Counsel and representatives of
9 the Consulting Engineer, with their respective counterpart
10 members of or agents of the Park Board, and the major out-
11 lines of an arrangement satisfactory to both parties were
12 developed at that time.

13 The Commission's contracting engineer in the mean-
14 time proceeded with the development of the detailed con-
15 struction plans for certain of the work in the Park Board
16 area. Sometime after that conference J. E. Greiner Company
17 reported to me and to Special Counsel in the matter that
18 their contracting engineer had developed a plan for some
19 changes eastward of this other point of change, which they
20 indicated would probably have the effect of saving the Com-
21 mission several hundred thousand dollars of construction
22 costs. That plan was pretty well developed, and last week
23 a conference was held -- I think it was last week -- in
24 Cleveland between a representative or representatives of
25 the Greiner Company and the Chief Engineer and -- what is

Mr. Stinchcomb's title, Director?

MR. CRAWFORD: Director.

MR. DUNBAR: -- Director of the Cleveland Metropolitan Park Board, on some changes.

Out of that was evolved a slight counter-suggestion which would involve a very substantial saving also to the Commission in initial construction cost, according to a written report, which I believe each of the members of the Commission have a copy of, from the Greiner Company, and has one or two advantages which I think the Commission, if they want any more details than are indicated in the written report, can ascertain by inquiry of Mr. Kauer at this time.

It appears that there will be an estimated saving of construction cost if this plan is adopted of approximately \$365,000.

Is that about right, Mr. Kauer?

MR. KAUER: That is about right, yes.

MR. DUNBAR: As compared with the tentative original plans which were discussed with the Park Board earlier.

MR. KAUER: That is right.

MR. DUNBAR: I understand in its essentials at least this arrangement is satisfactory with the Park Board.

I have drawn a resolution which is predicated on

1 what I have been told orally by Mr. Kauer and what the
2 Greiner Company has put in its written report and what I
3 have been told orally by Mr. Donnelly, and I would suggest
4 that the Commission ought at this time, if it desires to
5 consider acting upon it, inquire of Mr. Donnelly or a
6 representative of the Greiner Company now, first, whether
7 the Greiner Company recommends that change, which is that
8 which is designated as A-2,--

9 Am I right, Mr. Kauer?

10 MR. KAUER: Yes, sir.

11 MR. DUNBAR: -- upon the plan which is
12 a part of the Greiner Company's report, whether the Greiner
13 Company makes that a recommendation to the Commission, and
14 whether in its opinion there would be any impairment of the
15 revenues by making such change. And I think also Mr.
16 Kauer might well state whether or not he recommends this,
17 or what is his recommendation with respect to it.

18 CHAIRMAN SHOCKNESSY: You might also, I should
19 think, seek the advice and consent of the Director of High-
20 ways.

21 MR. DUNBAR: Yes, sir, I think that
22 would be eminently appropriate, too, especially because I
23 have been informed by Mr. Kauer that he is of the opinion --
24 I don't know whether it is with or without any consultation
25 with the Director -- that this proposal has a merit not

1 mentioned, I believe, in the Greiner Company's report, of
2 making the crossing of some state road to the east --

3 MR. MCKAY: Broadview Road.

4 MR. DUNBAR: -- much more feasible and,
5 he thinks, much more satisfactory both to the Director and
6 to the County Engineer.

7 MR. LINZELL: May I say a word?

8 This has come to us so late that we haven't had
9 a chance, the Highway Department, to study the effects of
10 them, whether they are beneficial to our highways or other-
11 wise, and I would like to, if I go along on this resolution,
12 at least go along in a qualified way.

13 CHAIRMAN SHOCKNESSY: You might make the resolu-
14 tion subject to concurrence by the Director of Highways as
15 such, rather than as an ex officio member of this Commission.

16 MR. DUNBAR: Sure.

17 MR. MCKAY: Mr. Chairman, if I might
18 ask a question, I would like to know, first, the relativity
19 of costs and grades on the various proposals, because the
20 original report had nothing other than a general recommenda-
21 tion; second, its relationship to the intersection or cross-
22 ing of Broadview Road, which relates to State Highway
23 Routes; and, third, what is the differential of costs in-
24 volved, plus or minus, as a result of the A-2, because I
25 think up to this time it was the B plan.

1 Personally, I think both the Greiner Company and
2 Mr. Kauer should recommend specific approval of or partial
3 approval of or rejection of with respect to the present
4 status of the Brecksville Metropolitan Park intersection.

5 I have looked at all the profiles. I just
6 glanced through them. But I think, as a matter of policy,
7 those things should be on record.

8 CHAIRMAN SHOCKNESSY: Mr. Kauer and Mr. Donnelly
9 have been directly or impliedly requested by Dr. McKay to
10 make a recommendation to the Commission with respect to
11 this matter.

12 Before calling upon them, I would like to ask if
13 any of the other members would like to say anything before
14 we hear from Mr. Kauer and Mr. Donnelly about this matter.

15 Mr. Linzell, do you want to say anything further?

16 MR. LINZELL: Well, this is rather new
17 to us. My engineers or myself haven't had a chance to
18 study it, and before I as Director of Highways give approval
19 to this I must have this looked into by my engineers or my-
20 self.

21 MR. MCKAY: That is correct.

22 CHAIRMAN SHOCKNESSY: Well, I agree entirely.

23 MR. LINZELL: That is all I have to say.

24 CHAIRMAN SHOCKNESSY: I would say that whatever
25 action the Commission chooses to take, in the event there

1 would be an approval, should be subject to the concurrence
2 of the Director of Highways on behalf of the Department of
3 Highways, rather than as an ex officio member of this
4 Commission.

5 MR. DUNBAR: May I make a comment before
6 you hear from the engineers?

7 The resolution which I have drafted and which I
8 have now modified to make the action of the Commission
9 subject to the receipt from the Director of Highways of his
10 written concurrence, is comparable, almost identical, in the
11 substantive provisions to the resolution which was adopted
12 by the Commission with respect to the other northward adjust-
13 ment in alignment, and would not bind the Commission to
14 make this adjustment, but leaves it to the Chairman, the
15 Chief Engineer and General Counsel to endeavor to work out
16 detailed satisfactory arrangements with the Park Board.

17 I think it is important that the Commission not
18 bind itself by this action, but only confer upon its
19 officers sufficient authority to work this out if it can
20 be done in all its details.

21 CHAIRMAN SHOCKNESSY: All right, then, Mr. Kauer.

22 MR. KAUER: Mr. Chairman, as Mr. Dunbar
23 stated, there were studies made of several possibilities of
24 arriving at an agreement with the Metropolitan Park Board,
25 and of those four agreements, we found that the cost between

1 identical limits would range from a low on line B, which is
2 a line shown here, of \$487,000, to a maximum of the original
3 scheme A-1 of \$1,045,000. Scheme B is the line which was
4 proposed to go under the Metropolitan Park Drive. On that
5 line the Turnpike would go over State Route 176, or Broad-
6 view Road, and presents a very difficult situation.

7 The suggestion made by the Greiner Company engi-
8 neers and the Metropolitan Park Board Engineers indicated
9 that a further study should be made, and this further study
10 is indicated on this drawing as scheme A-2. It is a slight
11 shift in the alignment, with a saving of closer to five hun-
12 dred thousand dollars than the three hundred -- \$550,000
13 cheaper than the original proposal.

14 This scheme A provides that the Turnpike will be
15 over the Metropolitan Park Drive, with the Metropolitan Park
16 Drive retained on its present alignment and its present
17 gradient. There will be no change in line or grade on the
18 Park Drive.

19 It happens that the Drive drops off towards the
20 north or the east, which enhances the situation, and by the
21 use of scheme A and the new grade line on the Turnpike,
22 with the Turnpike over the Park Drive, we can bring the
23 Turnpike under Route 176, or Broadview Road. Mr. Lehman,
24 design engineer, has indicated to me and also the Greiner
25 Company that that will ease the situation with respect to

1 Route 176 considerably. I haven't gone into that detail,
2 but that will be gone into and we will be in full agreement
3 with the Director of Highways and the County Engineer with
4 respect to that crossing if this were adopted.

5 CHAIRMAN:SHOCKNESSY: Do you want to call on Mr.
6 Donnelly, Mr. Kauer?

7 MR. KAUER: Mr. Donnelly, would you
8 care to elaborate further on this scheme?

9 MR. DONNELLY: I just would recommend the
10 adoption of scheme A-2 as shown on these plans, and would
11 further state in response to General Counsel's question
12 that in our opinion this shift in alignment, minor adjust-
13 ment, would have no possible effect upon the revenues to be
14 derived from the Turnpike.

15 CHAIRMAN SHOCKNESSY: You say specifically you
16 recommend this scheme --

17 MR. DONNELLY: A-2.

18 CHAIRMAN SHOCKNESSY: -- A-2.

19 You also, Mr. Kauer, recommend the approval of
20 scheme A-2?

21 MR. KAUER: I do recommend the
22 adoption of Scheme A-2, Mr. Chairman.

23 MR. MCKAY: Mr. Donnelly, you are
24 back to your original. How about your grade lines?

25 MR. DONNELLY: Pardon, sir?

MR. McKAY: How about your grade lines
on A-2? I mean, the original plan was going over.

MR. DONNELLY: Yes, sir.

MR. McKAY: You are back there. How
about your grade line?

MR. DONNELLY: Your grade line?

MR. McKAY: A little better line?

MR. DONNELLY: Yes, sir, because by shift-
ing to the north and --

MR. McKAY: You get down into that little
valley?

MR. DONNELLY: That is correct, sir.

MR. McKAY: A better grade line. Is
there a reservation with respect to the depth of highways in
there?

(Thereupon Mr. McKay and Mr. Kauer confer with
each other.)

MR. McKAY: Mr. Chairman, I move the
adoption of the following resolution number 116-1952:

Skipping the whereases:

"Resolved that, subject to the receipt from the
Director of Highways of his written concurrence, the Com-
mission approves the northward adjustment in the alignment
of Ohio Turnpike Project Number 1 at and in the vicinity
of the crossing of the Royalton-Brecksville Park -

1 way in the Cleveland Metropolitan Park District, to be made
2 in the manner and to the degree set forth in the report of
3 the Commission's consulting engineer, the J. E. Greiner Com-
4 pany, in the form of a letter, with attached plans dated De-
5 cember 4, 1952, addressed to T. J. Kauer, Chief Engineer.

6 "Further resolved that, subject to the approval of
7 General Counsel, the Chairman is authorized to inform the
8 Cleveland Metropolitan Park Board of the foregoing approval,
9 and the Chairman, the Chief Engineer and the General Counsel
10 are authorized to take whatever action, make whatever ar-
11 rangements and enter into whatever agreements on behalf of
12 the Commission they may determine to be necessary or desir-
13 able to effect such adjustment in alignment and to protect
14 the interests of the Commission in connection therewith; pro-
15 vided, that the foregoing approval is not to be deemed to be
16 a mandate that such an adjustment in alignment shall be made
17 if said officers shall, upon further consideration and inves-
18 tigation, determine it to be practically or legally undesir-
19 able to make such change, or if they are unable to effect ar-
20 rangements with the Cleveland Metropolitan Park Board which
21 they shall deem to be satisfactory and in the public interest."

22 I move the adoption.

23 (Reporters Note: The wording of Resolution No.
24 116, shown just read by Mr. McKay, has been conformed to the
25 writing as per discussion on page 26 hereof.)

MR. LINZELL:

Second.

1 CHAIRMAN SHOCKNESSY: You have heard the resolu-
2 tion moved by Dr. McKay and seconded by Mr. Linzell.

3 MR. DUNBAR: May I comment that Dr.
4 McKay had some readily understandable difficulty in reading
5 some of my longhand. He read as "approval" what I intended
6 to write as "addressed" to the Chief Engineer of the Com-
7 mission, but I assume the writing will stand.

8 MR. MCKAY: Okay.

9 MR. DUNBAR: I see the difficulty. May
10 I add, "addressed to the Chief Engineer"?

11 CHAIRMAN SHOCKNESSY: Yes.

12 MR. MCKAY: That will cure it.

13 CHAIRMAN SHOCKNESSY: All right, Mr. Linzell?

14 MR. LINZELL: Yes.

15 CHAIRMAN SHOCKNESSY: Well, the offerer of the
16 resolution and the second have agreed to that correction.
17 Is the correction, which was merely a correction of language,
18 satisfactory to the members of the Commission?

19 MR. MCKAY: Yes.

20 (The other members of the Commission nodded their
21 heads affirmatively.)

22 CHAIRMAN SHOCKNESSY: All right, then, we will
23 call the roll on that.

24 - - -

25 The members answered the roll call as follows:

1 MR. MCKAY: Yes.

2 MR. LINZELL: Yes.

3 MR. TEAGARDEN: Yes.

4 MR. ALLEN: Yes.

5 CHAIRMAN SHOCKNESSY: Yes.

6 - - -

7 CHAIRMAN SHOCKNESSY: The resolution is unanimous-
8 ly adopted.

9 Proceed, Mr. Dunbar.

10 Off the record.

11 (Discussion off the record.)

12 MR. DUNBAR: Mr. Chairman, at the
13 Commission's meeting on December 6th I presented to the
14 Commission certain specifications for the construction of Ohio
15 Turnpike Project Number 1 as prepared, drafted, redrafted,
16 corrected, changed and developed over a period of many
17 months by the Commission's consulting engineer, its Chief
18 Engineer, his assistants, and the members of the staff of
19 the Highway Director, embodying to an extent which I have
20 indicated at previous meetings also certain portions largely
21 drafted by me, those portions being in the division entitled
22 "General Conditions."

23 Those specifications are divided into two separate
24 sets of specifications, one denominated "general specifica-
25 tions," which, as I explained previously, relate to the

1 construction of the Turnpike proper, and the supplemental
2 specifications relating to the construction work on state,
3 county and township roads and city streets and other, if
4 there are any other, roads or streets which cross or inter-
5 sect the Turnpike.

6 Now, I might say that also, as I mentioned previous-
7 ly, certain standard drawings are a part of those specifica-
8 tions.

9 Incidentally, I understand that one of those has
10 been slightly modified, and the Chief Engineer can tell you
11 if you wish about it, by changing a couple of little
12 dimensions -- I don't really understand what it has to do
13 with -- since the last meeting. It has to do with this
14 much, that something that was involved there was three
15 inches too long, or something of that sort, to fit the
16 usual mill production equipment.

17 In addition, I have suggested and written in for
18 your consideration a change in one sentence of paragraph
19 G 7.17 of the General Specifications. That sentence has to
20 do with temporary crossings by contractors over railroad
21 tracks, and the language as previously written related the
22 prevision to cases in which the contractor sought to haul
23 materials over the tracks of a railroad.

24 At about twelve o'clock last night when Mr.
25 Donnelly and I were going over the proposed form of contract

1 with railroad companies, it occurred to me that that was
2 unduly restrictive and that the provision ought to apply
3 to any temporary crossing of a railroad track whether it
4 would involve hauling of materials or hauling of men or
5 moving equipment, and accordingly I have suggested a slight
6 modification of language in that sentence.

7 I might recall for your consideration the fact
8 that at the last meeting the discussion which ensued after
9 my presentation of these matters for your consideration
10 revolved in considerable degree around the matter of pave-
11 ment. That, of course, is one of the features involved
12 in these general specifications.

13 However, I might further call to your attention
14 that these specifications which were then presented do not
15 at all control a choice of types of pavement to be put on
16 the Ohio Turnpike. They merely lay down specifications
17 for one type of pavement. By implication necessarily they
18 relate to the type of pavement, because no other type is
19 provided for in the general specifications. Really, how-
20 ever, as I think probably you realize, you are dealing
21 with a matter, first, of design criteria, and that is some-
22 thing that is really involved in the adoption of the design
23 criteria set forth in the report by the J. E. Greiner Company
24 made to the Director of Highways under date of August 15,
25 1951. Since that received your extended consideration, I

1 would suggest that it would be desirable first for you to
2 take whatever action you may ultimately decide to take with
3 respect to the Greiner Report and the design criteria there-
4 in embodied, and then proceed to the question of the
5 specifications which were presented.

6 Now, as you, of course, know, at the meeting of
7 December 6th there appeared before you Mr. Ralph Hertz,
8 attorney for Richard Shafer, the Relator in the case to
9 which the Chairman referred at the outset of his report to
10 the Commission, and made various assertions, statements of
11 fact, arguments, some of them arguments as to law, and you
12 heard what Mr. Hertz had to say.

13 He presented to you at the time three memoranda
14 and stated that he would make available to the members of
15 the Commission promptly thereafter the exhibits which had
16 been introduced in evidence by the Relator in the Shafer
17 case.

18 Those exhibits were made available, and I think
19 have been available to each of the members of the Commission,
20 to some of you on Sunday and others last night and today.

21 I think it would be desirable for you to have
22 some presentation made to you with respect to the assertions
23 of Mr. Hertz, and accordingly I have asked Mr. Jack Lansdale
24 of trial counsel in the Shafer case for the Commission and
25 the Commission's officers who are defendants in that case,

1 to state for your benefit the facts as he knows them from
2 his very extended work over a period of many weeks on this
3 case, his intimate familiarity with the record in the case,
4 to state for you whatever he thinks would be pertinent for
5 your consideration as suggested by the comments of Mr. Hertz
6 last Saturday, and to make himself available here today in
7 case any of the members of the Commission should desire to
8 address any questions to him.

9 CHAIRMAN SHOCKNESSY: Mr. Lansdale, if you will,
10 proceed as Mr. Dunbar suggested.

11 MR. LANSDALE: Well, now, Mr. Hertz in
12 making his statement used the form of what I should like to
13 call conclusions of fact, and some of them I think are true
14 and some of them I do not think have any foundation in the
15 record, and some of them are partly so.

16 In order to show what I believe the record truly
17 to state, I think it will be necessary to quote from the
18 record as to what was actually said, so that what I am going
19 to try to do is to select excerpts from the record which
20 seem to me correctly to state the facts shown there.

21 Now, in order to do that, last evening I jotted
22 down record references from which, as I go along, I will
23 read. That may make it a little slow and somewhat dis-
24 connected, but I don't know any other way to present what I
25 hope will be an objective analysis and to keep argument and

1 my own personal conclusions out of it, which is what I desire
2 to do.

3 Now, all or most of you have read the record in
4 its entirety. Some of you to my certain knowledge have.
5 You know that by now the record is nearly three thousand
6 pages long with numerous exhibits, I think probably as many
7 as two hundred exhibits. The exhibits have been made
8 available to you, and again some of you to my certain
9 knowledge have examined them all. They have certainly been
10 available to all of you. But perhaps because I am more
11 familiar than you with it, I will be able to pick out perti-
12 nent portions of the record, which is what I propose to do.

13 In order to put this in its proper framework, I
14 think I should restate for all of us what the claims in the
15 lawsuit are.

16 First, remember that the defendants are the
17 Commission as a corporation, as a body, Mr. Shocknessy as an
18 individual, Mr. Allen as an individual, and Mr. Teagarden as
19 an individual.

20 Now, the petition purports to set out three causes
21 of action. The first of these says that under the statute
22 you must take competitive bids on alternative designs of
23 pavement. The petition doesn't mention pavement, but by
24 stipulation we are all agreed that it is talking about pave-
25 ment.

1 CHAIRMAN SHOCKNESSY: Mr. Lansdale, Mr. Teagarden,
2 Mr. Allen and I are made parties as individuals, but in our
3 official capacity as officers of the public body, are we
4 not?

5 MR. LANSDALE: That is right. In the body
6 of the petition you are identified as the officers of the
7 Commission. I did not mean to imply that you were defend-
8 ants apart from your connection with the Commission.

9 Now, that first cause of action is a legal question.
10 Your own General Counsel has already expressed to you his
11 opinion on that, and I won't dwell on it.

12 The second cause of action relates to the question
13 of monopoly. It is alleged that there is a monopoly in
14 cement and that if you build the road with a Portland Cement
15 concrete pavement you will be eliminating competition be-
16 cause there is, they say, a monopoly in cement.

17 The third cause of action says in effect that
18 the Commission has not exercised its discretion because you
19 selected pavement type pursuant to a preconceived plan
20 among the Commission, Mr. Shocknessy as Chairman, Mr.
21 Teagarden as Vice-Chairman, Mr. Allen as Secretary-Treasurer,
22 and Mr. Kauer and the Greiner Company.

23 In the very early stages of the case Mr. Hertz
24 stated that he did not claim that the Commission itself
25 was in bad faith. I have interpreted that as eliminating

1 the suggestion that the Commission was a part of the precon-
2 ceived plan, because in my judgment they could not be a part
3 of such preconceived plan without being in bad faith.

4 That leaves then the alleged plan between Mr.
5 Kauer and the Greiner Company.

6 As the evidence has proceeded, it has seemed to me
7 that it has reduced somewhat to a claim that the Greiner
8 Company had deliberately failed to disclose to you all the
9 facts in the case, and as Mr. Hertz stated the case at the
10 last meeting, apart from his comments on monopoly, it seemed
11 to me that that is what that constituted.

12 Now, Mr. Hertz presented to you three memoranda,
13 two of which related to this question of monopoly, and one
14 of which related to the question of the evidence in the case
15 as bearing upon whether the Commission had received a suf-
16 ficient disclosure of information to enable it to exercise
17 its discretion.

18 Insofar as a monopoly is concerned, he presented
19 two points, one of them which seems to me in effect to be a
20 statement that there is a scarcity of Portland Cement.

21 That statement contains a tabulation purporting to
22 show that last year the cement industry was operating at 91
23 per cent of capacity, whereas in 1943 it was operating at
24 54 per cent of capacity; that if you took all the cement you
25 needed it would be beyond the capacity of the plants; that,

1 therefore, the price would increase, and so on.

2 Now, I have not had an opportunity to verify those
3 figures presented there. I assume they are correct.

4 Insofar as a scarcity is concerned, one easy answer
5 to it is that the Commission has assured itself of an ample
6 supply of cement by commitments from a number of cement
7 companies, commitments amounting to in excess of five million
8 barrels of cement, whereas the needs of the Turnpike, assum-
9 ing the construction of the road from Portland Cement concrete,
10 is something less than four million barrels.

11 That disposes of the supply question, but it does
12 not dispose of the price question.

13 The number 1 answer to that is, of course, that
14 the cement industry, as many other industries are, is
15 operating under ceiling prices. It may be that they won't
16 last. We don't know. But at the present time there is
17 a ceiling price on cement, as there is on numerous other
18 commodities.

19 Secondly, they have cited to us, I assume for the
20 purpose of demonstrating the effect of the increasing
21 utilization of cement capacity, the increase in price from
22 1943 to 1951, which they show as from \$1.44 to \$2.49 a
23 barrel.

24 My calculation shows that to be an increase of
25 73 per cent. I have been unable to verify those figures.

1 They purport to relate to Ohio prices. Whether they are
2 true or not, I don't know.

3 I did do some checking. I find that the Engineer-
4 ing News record index of cement prices over the same period
5 shows an increase of 66 per cent. The Bureau of Labor
6 Statistics Index over the same period, an increase of 56 per
7 cent.

8 Be that as it may, it seems to me that the
9 Commission could rather take comfort than otherwise from
10 the price increase, by a consideration of other things.
11 For instance, the wholesale price index, the one which ex-
12 cludes food and farm products, increased over the same period
13 nearly 75 per cent. The whole building construction index
14 of the Bureau of Labor Statistics, 102 per cent; lumber,
15 for instance 148 per cent; brick and tile, 81 per cent;
16 structural steel, 90 per cent, and so on.

17 Although this doesn't relate to evidence in the
18 case, because it is not in there yet, I don't think that
19 the increase in price over that period is demonstrable of
20 anything except perhaps that it has not increased as much
21 as the average of similar things.

22 On that same related point, Mr. Hertz delivered
23 quite an impassioned statement concerning monopoly. He says
24 that there is a monopoly in the cement industry, and his
25 evidence of that is that four or five years ago, four years

1 ago I think, the Supreme Court of the United States reversed
2 the Circuit Court of Appeals and affirmed the Federal Trade
3 Commission finding that a combination to restrain trade by
4 the use of what was called the multiple basing point system
5 of prices existed in the cement industry, and as a result of
6 that case there was an injunction or a cease and desist
7 order prohibiting the cement industry from continuing a
8 combination in restraint of trade by the use of the multiple
9 basing point system.

10 Mr. Hertz states that you have got to presume that
11 that continues, and as evidence of that he read us a telegram
12 quoting a letter received by a law firm in Washington from
13 the Federal Trade Commission.

14 Now, that letter related to what we call certificates
15 of compliance. The regulations of the Federal Trade Com-
16 mission require in such cases that companies ordered to
17 cease and desist file a certificate of compliance. If the
18 certificate of compliance is not acceptable to the Federal
19 Trade Commission, or if the Federal Trade Commission thinks
20 that the industry is not complying, then they have the power
21 and do go into court and secure an order from the District
22 Court directing obedience.

23 In this case, according to that letter -- and I
24 have not personally investigated the fact, I assume it is
25 true -- seventy-five of the seventy-seven companies and

1 agencies involved in that action have filed their so-called
2 certificates of compliance. The agency of the Federal
3 Trade Commission charged with investigating the situation
4 and recommending to the Federal Trade Commission has not
5 yet finished its analysis of those, or whatever it does
6 with them, and has as yet made no recommendation to the
7 Federal Trade Commission.

8 From those facts, it would be my judgment that
9 there is no rejection by the Federal Trade Commission. The
10 Federal Trade Commission has not spoken on it one way or
11 another. It seems to me, as a practical matter, unreason-
12 able to ask you to assume that the defendants in that case
13 are violating the terms of the cease and desist order.

14 You might as well presume that the people who make
15 the mixes that go on the road, the hot mix and the cold mix,
16 are still conspiring to defraud the people of Ohio by
17 reason of the fact that back in the 30's there were some
18 lawsuits about it and it was established that they were in
19 a conspiracy to defraud the State of Ohio and various
20 agencies of the State of Ohio. I do not suggest that you
21 presume that. Neither does it seem to me that there is
22 any basis for you to presume anything else.

23 The additional thing mentioned by him in that
24 regard was that in 1945, I believe it was, before the Federal
25 Trade Commission action to which I have referred was

1 concluded, a suit was filed in Denver, Colorado, against
2 many if not all of the same persons who were defendants
3 in the Federal Trade Commission action, alleging a violation
4 of the Sherman Act by reason of the same or substantially
5 the same facts and things contained in the Federal Trade
6 Commission action.

7 That suit has been lying there pending since 1945.
8 After the conclusion of the Federal Trade Commission action
9 a motion to dismiss was made on the ground that the matter
10 was disposed of in the Federal Trade Commission action.
11 The court said, no, it was not disposed of there because
12 there the violation related to the Federal Trade Commission
13 Act, and the Clayton Act, whereas in Denver the action
14 relates to the Sherman Act, and they are different things.
15 Therefore, it may not be dismissed.

16 However, there has been no further action in the
17 case and it has been lying there for one, two, three years
18 now without being brought to trial. Far from suggesting
19 to you that you should take that suit as establishing some-
20 thing, I suggest to you that it would be quite improper
21 for you to assume, by reason of the accusation of the
22 violation of the Sherman Act, that the defendants are guilty,
23 particularly at this time, because the action has not yet
24 been tried. It is simply an allegation which is denied
25 by an answer on file.

1 Now, there is one aspect of this monopoly argument
2 which I think you must consider. I can conceive of a
3 situation where the Commission is directly buying something
4 that the existence or non-existence of a monopoly should be
5 of concern to the Commission.

6 I do not personally believe, however, that that
7 kind of a situation is presented to the Commission here,
8 and I think that rests upon the practical aspects of the
9 situation, which I shall attempt to relate to you.

10 Number 1. The Commission is not proposing to
11 buy cement. The Commission is going to buy a contract to
12 build a highway. One of the commodities which the con-
13 tractors will purchase will be cement, just as the con-
14 tractors will have to purchase numerous other commodities
15 in order to fulfill the contract that they will have with
16 the Commission.

17 That's the first fact.

18 The second one is the very, very minor character
19 of the cement portion of the over-all commodity which the
20 Commission will purchase. Now, for instance, one good
21 illustration of that is the Cuyahoga River bridge sub-
22 structure, which the Commission has just let the contract
23 for and on which construction is proceeding. Now, that
24 was a case in which the monetary value of that which is
25 being built is in excess of 70 per cent concrete.

1 Now, there were seventeen bidders on that job, and
2 although 73 per cent of the monetary value of that contract
3 was Portland Cement concrete, if the bidders had gotten
4 their cement for free, fourteen of them would still not have
5 been in the low bidding category.

6 I think that is fact number 1 as indicating the
7 extremely minor character or influence on the total picture
8 of the bidding.

9 Now, you will have to lay that along side of the
10 facts of the whole job, the mill price of cement, assuming
11 a concrete pavement, is 3.64 per cent of the cost. Of the
12 cost of the pavement itself, it is approximately 14 per cent.
13 Lay that against the situation in Cuyahoga County and you
14 will see that the effect of it is quite small.

15 Now, I think that is about all I have to say on
16 the monopoly question. I think the facts, the effect on
17 the construction of the highway, are something which you
18 are able to evaluate in its relation to the claim, upon the
19 basis stated of monopoly.

20 Now, that enables us to pass on to the lawsuit
21 itself, because there has been very little said in the law-
22 suit about monopoly. Various witnesses have been asked
23 whether they were aware of the litigation involving the
24 cement industry, but very little other than that has been
25 said in the case.

1 While we are on that monopoly question, I think
2 it might be well to mention, because I think it sort of
3 points up the validity of the claim -- the plaintiff in this
4 case is the Ohio Road Improvement Company, which is Mr.
5 Shafer. Mr. Shafer is interested because he has, he said
6 in his petition six, but I understand now from what he says
7 that there are eight, plants in the vicinity of the line
8 of this Turnpike which would enable him to bid on it.

9 Now, since 1946 Mr. Shafer has made 185 bids for
10 black top jobs in Ohio. In 45 per cent of those he was
11 the only bidder. During 1951 and '52 he made 37 bids, and
12 in 65 per cent of those times he was the only bidder on the
13 job.

14 MR. DUNBAR: You mean, the whole State
15 of Ohio, or the State Highway?

16 MR. LANSDALE: State Highway, the State
17 Highway Department.

18 Now, I would like to go into the question of the
19 evidence in the case, and I want to do it from the stand-
20 point of the things which Mr. Hertz brought to your attention
21 specifically the other day.

22 The first one of these, because it kind of sits
23 apart and in no logical order, is that Mr. Hertz stated to
24 you, holding up what is known in the case as Exhibit K --
25 he stated as a fact that the Commission and the Commissioners

1 had never seen it, I assume, of course, he was talking
2 about at the time it was produced.

3 I state to you that that is not a correct state-
4 ment, and that Mr. Hertz was exhibiting then what he has ex-
5 hibited often in the case, an imperfect memory as to what
6 has occurred in the record.

7 I will tell you what Exhibit K is. Exhibit K is
8 the first draft of the preliminary draft of the J. E. Grein-
9 er Company's tentative engineering report. And that was
10 transmitted, the evidence shows, to Mr. Kauer on the 28th
11 day of June, and was presented to the Commission on the 3rd
12 day of June at its twentieth meeting.

13 CHAIRMAN SHOCKNESSY: What year?

14 MR. CRAWFORD: July.

15 MR. LANSDALE: July, I mean, 1951. All
16 the presentation to the Commission was in July, to the
17 Director of Highways in June.

18 In order to illustrate to you, at page 680 of the
19 record Mr. Donnelly is testifying, and it is my examination
20 of him on cross examination:

21 "Question: I will hand you, Mr. Donnelly, what
22 has been marked for identification Respondents' Exhibit K,
23 and I will ask you to state what that is?

24 "Answer: This is the first draft of the prelimi-
25 nary report which was submitted to the Director of Highways

1 under date of June 28th."

2 The Referee says, "What year?"

3 And he says in 1951.

4 And then he identifies Exhibit E, which is the
5 letter of transmittal.

6 Now, later in the record at page 735, Mr. Kauer
7 on cross examination, and from my interrogation:

8 "Question: Now, I will ask you, directing your
9 attention to the minutes of the twentieth meeting of the
10 Ohio Turnpike Commission, held July 3, 1951, and specifically
11 page 141 thereof, if both the letter of transmittal,
12 Respondents' Exhibit E, and the first volume, Respondents'
13 Exhibit K, were not furnished to the Ohio Turnpike Com-
14 mission?

15 "Answer: Yes, sir, they were.

16 "Question: And that is recited in the minutes
17 of the Ohio Turnpike Commission meeting of July 3, 1951?"

18 And you will find in those minutes of July 3,
19 1951, at page 141, the statement that the draft of the
20 tentative engineering report was presented to the Com-
21 mission on that day. I think those of you who were
22 Commissioners at that time will remember that very well,
23 because that was the first time you had heard either
24 traffic and revenue figures in tentative form, or figures
25 as to the construction cost of the contract in tentative

1 form.

2 I know from talking to you and from the events
3 at the time that you were feeling a little disturbed about
4 the cost of the Turnpike. You felt that it was higher than
5 it ought to be. Although it was demonstrated to be
6 financially feasible, you felt that it was not as financial-
7 ly feasible as you had hoped.

8 One of the things which you did was to tell your
9 engineers to see if they couldn't do something to reduce
10 the price of the Turnpike, which they did by various means.
11 One of them was to lower the grade line of the Turnpike.
12 Whereas before it had been proposed to go over everything,
13 it was lowered somewhat, and that saved money.

14 In any event, as a result of all those activities,
15 the final construction estimate was some twelve million
16 dollars less than the estimate contained in that initial
17 report.

18 Now, that is sort of a thing apart, but I couldn't
19 let that pass, because later Exhibit K, in the view of the
20 Relator in the case, becomes of some importance, and I will
21 allude to it later.

22 Now, I want to pass to the memorandum presented
23 to you at the meeting last week, "Evidence in mandamus
24 proceedings." They say this:

25 "We submit that the evidence adduced conclusively

1 shows that the Turnpike Commission has not received full
2 disclosure of all available and pertinent facts necessary
3 to permit the Turnpike Commission to exercise its dis-
4 cretion. For purposes of illustration only, we submit the
5 following:"

6 And then they list a series of statements purport-
7 ing to be, I think, what the evidence conclusively shows.

8 Now, of course, the record is three thousand pages
9 long. There are claims and counter claims and evidence all
10 over the lot. I think it is impractical for me to do any-
11 thing other than confine myself to these things stated by
12 the Relater as illustrative of things which conclusively
13 show that the actors in this matter, and I think it gets
14 down to Mr. Kauer and the Greiner Company, have failed to
15 disclose to you facts so that you are not able to exercise
16 your discretion.

17 Now, I am going to take up together, because it
18 seems more logical to me to do so, proposition 1 and prop-
19 osition 4.

20 Now, proposition 1 is:

21 "That the Turnpike Commission has never been in-
22 formed that the original comparisons of costs made by the
23 Consulting Engineers were based upon thirty inch pavements
24 for each of the flexible and rigid types."

25 Now, that's a true statement. It is a true and

1 accurate statement, and I have no quarrel with it.

2 I think it should also be added, as the record
3 shows, that -- and this is found at 593 of the record and
4 at 599 of the record, in Mr. LeSueur's testimony, one of
5 the engineers of the Greiner Company -- that such compar-
6 ison was never shown to the Director of Highways, either.
7 And that is clear.

8 Now, that is a true statement, and the question
9 immediately arises as to why the statement is made, because
10 on the face of it it appears to have no pertinence.

11 Unquestionably there were literally hundreds if
12 not thousands of preliminary designs, preliminary con-
13 clusions, preliminary matters of all sorts, which were not
14 brought to the Commission and which the Commission would have
15 been very disgusted with the engineers for having brought
16 to your attention, because what you were interested in was
17 what the engineers had concluded to be so.

18 Therefore, in the Relator's mind there must be
19 some pertinence to the fact that this particular preliminary
20 matter, never disclosed by the consulting engineer either to
21 the Commission or to Mr. Kauer, who was then Director of
22 Highways, that there is some particular significance to its
23 not being brought to anybody's attention, and I think I
24 know what it is.

25 Remember that the final design of the Highway

1 as recommended by both the Director of Highways and the
2 Greiner Company called for a rigid pavement in total sixteen
3 inches thick, and a flexible pavement in total twenty eight
4 inches thick, whereas this item refers to two pavements
5 each thirty inches in thickness.

6 Now, I think the assumed pertinence of that is
7 set out in Mr. Shafer's testimony, and I am reading from
8 page 2661 of the record, in which Mr. Shafer, the Relator,
9 was on the stand and I cross examined him. A short time
10 ago there appeared in a publication devoted to a discussion
11 of highway matters a story of what the State Highway Depart-
12 ment in Delaware had done. Delaware had designed a high-
13 way, I have forgotten how long it was, but ten or twelve
14 miles, and had made designs of flexible pavement and of
15 rigid pavement and had submitted those to alternative bid-
16 ding, as the Relators says that the Commission must do in
17 this case. As a result of that bidding the rigid pave-
18 ment was the lowest in price. And I interrogated Mr.
19 Shafer about it, because he had just previously said that
20 in all of his forty years as a contractor he had never
21 heard of a case in which flexible pavement was cheaper than
22 rigid pavement, so I would bring that to his attention in
23 that connection.

24 MR. HERTZ:

You misspoke yourself

25 there.

1 CHAIRMAN SHOCKNESSY: He did say that, but then
2 he changed it.

3 MR. LANSDALE: That is right. I did the
4 same misspeaking Mr. Shafer did.

5 CHAIRMAN SHOCKNESSY: Mr. Shafer did the very
6 same thing. I remember the record.

7 MR. LANSDALE: He said he never heard of
8 a case in which rigid pavement turned out to be cheaper
9 than flexible where they were in competition. So I put
10 to him the case of Delaware.

11 My question, after bringing that out, was, "And,
12 now, I think you want to explain why the two highways --"
13 -- that is, the two highways used in Delaware -- "-- may
14 not necessarily be comparable."

15 Have I got the right one? No, That is the
16 wrong page. Excuse me.

17 My question is, on page 2661:

18 "Question: Do you care to make any explanation
19 as to why that might not have been a fair comparison?"

20 I was referring to the Delaware situation.

21 "Answer: Well, the over-all thickness of the
22 rigid section, or the so-called Portland Cement concrete
23 section, was fifteen inches thick, and the over-all thick-
24 ness of the flexible, or asphalt section as we call it,
25 was twenty and a half inches thick.

1 "Question: And do I understand you to say that
2 in your judgment there is not fair competition unless the
3 competitive highways are the same in thickness?

4 "Answer: Not varying over one or two inches.
5 They have to be within the same thickness of one or two
6 inches to be competitive.

7 "Question: All right, now, do you base that
8 upon the fact that you do not believe that flexible can
9 compete favorably with rigid unless they are the same thick-
10 ness within one or two inches?

11 "Answer: That is correct."

12 Now, that appears to put that statement in its
13 proper picture.

14 It appears from page 2676 of the record, after
15 considerable discussion of the subject on my cross examin-
16 ation of him, that he was not prepared to testify as to
17 whether the two designs presented by the Greiner Company
18 and finally recommended in this case, that is, the sixteen-
19 inch and the twenty-eight inch, were in fact, comparable or
20 equivalent from the standpoint of ability to carry the load.

21 And to continue with that, I think the Commission
22 should have called to its attention, which most of you have
23 already read, that the evidence is uniform, in my judgment,
24 that the designs finally recommended by the Greiner Company
25 and by the Director of Highways are comparable designs.

1 Now, there is a dispute brought on by certain of
2 the witnesses of the Relator, which I will get to in a
3 moment, that from the standpoint of having ability to with-
4 stand the effects of frost action, there is a lack of
5 comparability. At this moment I am speaking of their
6 capacity to bear the load for which they are designed.

7 Now, Mr. Allen, who is the Research Engineer of
8 the Highway Department and one of those habitually consulted
9 on these matters by the Highway Director, states at page
10 1860 --

11 CHAIRMAN SHOCKNESSY: Will you state his full
12 name for this record, if you have it?

13 MR. LANSDALE: Sir?

14 CHAIRMAN SHOCKNESSY: For this record, will you
15 state his full name, if you have it?

16 MR. LANSDALE: Charles W. Allen.

17 He is referring to the design contained in what
18 is known in the case as Exhibit 21, which is the recommended
19 design of the Greiner Company, and upon which their engineer-
20 ing report is based, that is, the rigid portion of it there.
21 In that recommendation they had the two designs stated by
22 them to be comparable, the rigid and the flexible.

23 The question is, and this is on Mr. Hertz's
24 interrogation:

25 "What is your opinion, then, of the comparability

1 of the two designs?"

2 The answer is: "Well, based on our experience,
3 the design shown on this is the one that Marshall and I
4 picked as being the best one for Ohio."

5 Now, Marshall, Harry W. Marshall, is the pavement
6 expert and soils expert in the Highway Department.

7 He said that two or three times.

8 Now, Mr. Parker was an expert produced by the
9 Relator. He is a gentleman who lives in Maine, and from
10 my investigation of him I think I can state that he bears
11 excellent repute as a designer of bituminous mixes. As to
12 his competence in other fields, I will leave it to those
13 who have read the record.

14 However, Mr. Parker states with reference to the
15 design -- he is being interrogated by Mr. Hertz as to the
16 comparability of these final designs -- and he states that,
17 "I believe the design is adequate," referring to the final
18 design, "But I think there is less factor of safety in this
19 second design," meaning the rigid pavement.

20 "Question: Will you give the basis for that?

21 "Answer: Well, on the first design -- " --
22 that is the first design, that is the earlier one, the
23 thirty-inch we are talking about -- "-- it calls for thirty
24 inches on both types. In that case you are reducing the
25 gamble of frost action to a minimum."

1 So that his conclusion was the designs were
2 comparable, but he was worried about the frost, which I
3 will get to in a minute, because it is important in this
4 case.

5 Now, Mr. Knoerle, a disgruntled former employee
6 of the Greiner Company, who testified on behalf of the
7 Relator -- and those of you who have read the record know
8 that there are several hundred pages of his testimony --
9 he stated that, "If the soils would maintain their support-
10 ing value, I think the designs are satisfactory."

11 And by reference to the supporting value of the
12 soils, he is again referring to this frost matter which I
13 will refer to.

14 Now, Mr. Marshall, on page 1139 of the record,
15 to complete the story of all the witnesses in the case,
16 other than Dennelly, whose opinion you know, stated this on
17 cross examination -- and the question is whether he had
18 arrived, in considering the comparative designs of pavement,
19 of the second one, at a conclusion as to which was best for
20 Ohio -- and his answer is, "The rigid."

21 The question is, "Did you arrive at that con-
22 clusion on the basis of cost or on some other basis? What
23 was the basis for that conclusion by you?"

24 His answer is, "Well, the basis for the con-
25 clusion was a consideration of several factors, of which the

1 cost was, of course, one, but also I gave consideration to
2 the fact that here they were trying to build a really high-
3 class road to run from one edge of the state to the other,
4 and the thing to build would be the most foolproof type
5 of thing that you could get ahold of, and I considered the
6 rigid design, from our experience in Ohio, of being a more
7 foolproof type to build."

8 And then he goes on to say that by foolproof he
9 means that you have a better chance to get a well constructed,
10 smooth road if you use the rigid than if you use the flexible.

11 Now, that, I think, puts this contention
12 number 1 in its proper place.

13 Now I want to pass, because it logically fits with
14 the same, into this fourth paragraph of this document, which
15 I will read in full and then come back and go through
16 sentence by sentence, that this is the thing that you weren't
17 told:

18 "That the comparison of costs was made only as a
19 rough comparison at a time when an accurate estimate was
20 not possible for lack of necessary data and information.
21 As a result the comparative costs as presented to the
22 Commission were subject to probable error involving figures
23 as to each type of pavement, which may be either five per
24 cent too high, or five per cent too low; as a further
25 result the figures when considered in the light of probable

1 error provide no basis whatsoever for any conclusion as to
2 comparative costs."

3 I will characterize that as not a true statement,
4 and I will develop the evidence which bears upon it.

5 Now, in the first place, before we get to break-
6 ing down, we have at least some direct evidence in the case
7 that this is not true.

8 Mr. Marshall on page 1122 of the record is being
9 interrogated about that -- he was a witness called by Mr.
10 Hertz, by the way -- on direct examination:

11 "Was it possible to make a fair comparison of costs
12 of the two types without making allowance for that variable?"

13 He is speaking of the variable about frost suscep-
14 tible soils, which I will get to later.

15 "Well," he says, "we thought it was a fair com-
16 parison.

17 "You did the best you could?

18 "Answer: That is right.

19 "Question: Is it a true comparison?

20 "Answer: I think it is reasonably valid.

21 "Question: Is it valid?

22 "Answer: That is what I said.

23 "Question: Reasonably valid?

24 "Answer: Reasonably valid.

25 "Question: All right, how close to being valid?

1 Well, when you say that it is reasonably valid, what do
2 you mean by that?

3 "Answer: Well, what I mean by that is that it
4 gave us what I thought was a fair comparison of the costs
5 of the types."

6 Now, that brings me into a consideration of the
7 basis for the claim and the statement by Mr. Hertz that
8 the figures of the Greiner Company were a rough estimate
9 and that they are not a proper basis to make a comparison
10 on economics.

11 Before I get into that, I want to say this --
12 this is not evidence in the case yet, but I have made some
13 investigation of this thing, and although Mr. Shafer denied
14 two or three times that whether things were actually built
15 in accordance with the cost estimate of the engineer was
16 no criterion of whether they were good estimators or not,
17 other witnesses said that it was, and I think common sense
18 would indicate that when an engineer doing estimating is
19 consistently right that that is some evidence of the worth
20 or ability of their estimates.

21 Now, over the years the Greiner Company has made
22 a good many engineering reports and a good many estimates
23 of the costs of toll projects as a basis for the issuing of
24 bonds and the like to build them, and for the purpose of
25 determining whether it was economic to build them. There

1 has never been a case on any estimate of the cost of a toll
2 project made by them in which the actual cost of the project
3 exceeded their estimate.

4 Now, there is one thing which might be thought
5 to be an exception, and that is the original section of the
6 Pennsylvania Turnpike. There the estimate was made by the
7 Pennsylvania Turnpike Commission, but it was approved by
8 the Greiner Company, by the R. F. C., and by the Public Works
9 Administration. The latter two assisted in its financing.
10 In that case the actual cost was approximately six per cent
11 in excess of the estimated cost, almost the entire difference
12 relating to the extra work on the tunnels of the Turnpike
13 rather than the other work.

14 Now, I suggest that you compare that with the
15 situation existing in all the other recent turnpikes that
16 we know anything about: New Jersey, where some sixty millions
17 of bonds additional have had to be issued to take care of
18 extra construction costs: In Oklahoma where the amount was
19 some seven million; in Maine where the amount was some five
20 and a half million or so, all to take care of construction
21 costs in excess of the original estimates. Whereas the
22 only other turnpike projects that have been constructed in
23 that time have been the several Pennsylvania projects,
24 estimated by Greiner, in all of which cases the construction
25 was actually done within the estimates.

1 If you will bear with me, in order to explain this
2 very technical point upon which I believe the Relator is
3 resting much of his claim as to the failure of the Greiner
4 Company to disclose, because so much of the record is de-
5 voted to it, I think it is important that I try to make you
6 understand it, and I have brought in the tablet that we have
7 been using in the courtroom in order to try to show you.

8 What I want to try to explain is the basis upon
9 which the Greiner Company made their comparison of cost.

10 The rigid pavement consists of ten inches of
11 Portland Cement concrete and six inches of what is called
12 a granular sub-base. Whereas the flexible consists of
13 about three and a half inches of asphaltic concrete and
14 eight inches altogether of macadam, part of it penetration
15 macadam, three inches, I think, and five of it waterbound.

16 How many more inches do I have left?

17 MR. MCKAY: Thirteen.

18 MR. LANSDALE: And thirteen inches of a
19 granular base not, however, of as high quality as the six
20 inches of the rigid.

21 Am I about right?

22 MR. HERTZ: There was a sixteen and a
23 half in there some place.

24 MR. LINZELL: Sixteen and a half.

25 MR. LANSDALE: Yes, sixteen and one-half.

1 MR. MCKAY: Sixteen and one-half.

2 MR. LANSDALE: Now, it will readily be
3 seen that there is more depth to the flexible than there
4 is to the rigid.

5 CHAIRMAN SHOCKNESSY: I am not seeing that very
6 well.

7 MR. LANSDALE: Do you want me to bring
8 it up closer?

9 CHAIRMAN SHOCKNESSY: Well, can the other members
10 see it?

11 MR. MCKAY: Yes.

12 MR. TEAGARDEN: From his conversation, I
13 am getting it.

14 Now, you can see it.

15 MR. LANSDALE: In making a comparison
16 it is assumed that whether -- this is precisely not math-
17 ematically true, but for practical purposes it is true and
18 it is assumed to be true for purposes of comparison -- that
19 whether the road is built of flexible pavement or built of
20 rigid pavement, the finished grade line of the surface of
21 the road will be at the same grade.

22 So that you have a situation where the natural
23 topography of the ground might be something like that line
24 that I have drawn, and the finished grade line of the road,
25 that is, the surface of the pavement, will be straight like

1 that, and the balance will be filled in in some way or other
2 where the surface, the natural surface, is below the road,
3 and cut where the natural surface is above the road.

4 Now, if you have a twenty-eight-inch pavement ,
5 what is called the sub-grade line, which I have marked with
6 little patches through it, would be twenty-eight inches
7 below the surface of the road, and in fills the embankment
8 would be sufficient to bring it up to twenty-eight inches
9 after compaction below the finished grade line. In cuts
10 the excavation would be down to a point twenty-eight inches
11 below the finished grade line before the construction of
12 the part relating to the pavement is done.

13 In the sixteen-inch pavement, however, this so-
14 called sub-grade line would be only sixteen inches below
15 the surface, and in doing the construction there would be
16 included in the grading contract and in the grading cost
17 sufficient embankment to bring this up to a point sixteen
18 inches below the finished grade line, and somewhat less
19 cost in the cuts because you only have to dig down to a
20 point sixteen inches below the finished grade line.

21 Now, you have one other factor additional. The
22 specifications, or, rather, the design, calls for the re-
23 moval of what are called excessively frost susceptible
24 soils even below the sixteen-inch depth, and also to a
25 minor degree below the twenty-eight inch depth. That means

1 that in some places in cuts there will be even under the
2 rigid pavement an extra excavation to some depth, probably
3 at least down as far as the twenty-eight inch depth, of
4 soils which are in place and the replacement of those by
5 other soils.

6 Additionally, there might be a situation in which
7 the excavation here of frost susceptible soils would not be
8 available to put on the top of this embankment, because
9 you wouldn't put them directly under the road, therefore,
10 you would have to go and get somewhere -- and that's part
11 of the issues in the case I will get to in a moment -- some
12 material to place there instead of what you would naturally
13 place there, that taken out of the excavation.

14 Now, the Greiner Company had the figures and they
15 might have, and Mr. Marshall testified it was feasible to
16 do so, simply estimated the amounts of the additional
17 excavation and fill and put in an estimate for that. But
18 instead they say, "We will be conservative in this com-
19 parison." So in making their comparison they did this:
20 For the flexible pavement they added up the cost of laying
21 in place all of the various courses of the twenty-eight inch
22 flexible pavement. For the rigid pavement they added the
23 cost of placing the concrete slab and the sub-base in place,
24 and then additionally they said they added in the cost of
25 twelve inches, enough to bring this down to twenty-eight

1 inches, of additional material under the sixteen-inch pave-
2 ment for the 241 miles of the Turnpike, and they called
3 that borrow.

4 They put that in there at the price that they had
5 in the estimate, the unit price they had in the estimate
6 for borrow. And they said that inasmuch as it is perfectly
7 obvious, and the evidence shows that it would be for a very
8 minor part, that there will not have to be this importation
9 of borrow for anything like the full length of the Turnpike,
10 when we add it in for the full length of the Turnpike we
11 are being conservative and we do not have to worry about
12 whether our estimates of the amount of this extra excavation,
13 which they call under-grading or under-cutting, is correct
14 or not.

15 So that in the sum of the rigid pavement is con-
16 tained the pavement proper and additionally a figure which
17 in the actual estimate you would ordinarily find under-
18 grading cost, is included in this pavement in order to make
19 it comparable.

20 That is the basis upon which the examination was
21 made, and a large part of the issues in this case have
22 turned around the propriety of using what is called borrow
23 at the price that borrow is in there to make that comparison.
24 And that is what I will now get into.

25 If anybody doesn't understand that, I wish they

1 would tell me now.

2 CHAIRMAN SHOCKNESSY: Would any members of the
3 Commission like to ask Mr. Lansdale any questions at this
4 time, particularly with respect to the illustration?

5 MR. MCKAY: What was the price that
6 the borrow was in under the additional?

7 MR. LANSDALE: It varied from thirty-
8 eight to sixty cents I believe.

9 MR. MCKAY: Around sixty?

10 MR. LANSDALE: That is right.

11 Isn't that correct, Ben?

12 MR. LESUEUR: Yes.

13 MR. LANSDALE: A little better than sixty.
14 It was different prices at different places on the Turnpike.

15 MR. MCKAY: Probably closer to sixty-
16 five?

17 MR. LANSDALE: Probably closer to sixty-
18 five, yes, sir.

19 Now, Mr. Parker stated, this expert, that in his
20 opinion the estimates of the Greiner Company were of
21 limited significance, and we had a considerable amount of
22 cross examination on that, because at first he said the
23 whole report was of limited significance.

24 CHAIRMAN SHOCKNESSY: Did you identify Mr.
25 Parker adequately for this record?

1 MR. LANSDALE:

I did earlier, I believe.

2 He is an expert resident in Portland, Maine, and the Chief
3 Engineer of a big contractor in Portland, and also the Chief
4 Engineer of some associated companies with the contractor,
5 specializing particularly in the design and analysis of the
6 bituminous mixes. I think I have said that my personal
7 investigation indicated to me that his reputation in that
8 field was quite good. I was, however, unable to verify any
9 reputation or experience in the precise fields to which he
10 primarily testified and to which we are going to direct our
11 attention now.

12 CHAIRMAN SHOCKNESSY: You were not able to verify
13 that?

14 MR. LANSDALE:

I was not able to verify it.

15 Now, he stated as his opinion that the Greiner
16 estimate was of limited significance. We had a considerable
17 amount of cross examination on that, and it developed that
18 what he was really talking about was the economic comparison
19 of pavements was of limited significance because he believed
20 that insufficient soil studies had been made in order to
21 arrive at a conclusion. And I want to develop that.

22 Now, in the first place, on page 2026 I asked him
23 this question: "If both of the pavements which you were to
24 compare were the same depth, would you be concerned about
25 the details of the soil studies in reaching or making an

1 estimate as to the comparative costs?

2 "Answer: It depends upon what depth you are
3 talking about.

4 "Question: Twenty-eight inches."

5 The answer is; "No. I stated in my previous
6 testimony that I wouldn't be as much concerned."

7 So that he felt that if they were both twenty-
8 eight inches deep, the data were sufficient to make the
9 comparison.

10 To point that up further, I went into that again
11 because I didn't think that last statement was too strong,
12 and my question is -- this is on 2030 of the record --
13 "Now, if both of those are the same depth, the same amount
14 of excavation would have to be done for each, would it not?"

15 He answers, "Yes, sir."

16 "And the same amount of fill would have to be
17 done for each, would it not?

18 "Yes.

19 "Question: So that if you are looking for a
20 comparison, do you need any other data?"

21 And he answered, "I would think that you could
22 get a very good comparison that way."

23 Now, on page 2068 we come to the explanation as
24 to why he doesn't think the comparison is any good.

25 CHAIRMAN SHOCKNESSY: Mr. Lansdale, that last

1 reference was 2060?

2 MR. LANSDALE: 2068.

3 CHAIRMAN SHOCKNESSY: Not this one, but just
4 before that you had a reference.

5 MR. LANSDALE: I had a reference to page
6 2030.

7 CHAIRMAN SHOCKNESSY: 2030.

8 MR. LANSDALE: Now, on 2068 it points up
9 what his objections are to the Greiner study, and my
10 question is: "What you are saying is that, in your judgment,
11 the Greiner Company had no basis or no valid basis upon
12 which to estimate the unit price or cost of borrow, as
13 shown in Exhibit 21?

14 "Answer: With sufficient accuracy to determine
15 the difference between the two types of pavement."

16 But he states on page 2070 of the record as
17 follows: My question is, "So that, leaving aside the fact
18 that in your opinion they have no valid basis to arrive
19 at a conclusion as to unit prices, there is an element of
20 conservatism there -- " -- that is, in the comparison --
21 "-- that will take up, in some degree, any error they have
22 on the low side in that price?

23 "Answer: I think that there is."

24 Now, that explains Mr. Parker's approach to it.

25 I then went on to examine Mr. Parker as to what

1 basis he had for an opinion that the soil studies of the
2 Greiner Company were insufficient for them to reach a
3 determination that borrow, or the material classified as
4 borrow at this low price, which means that it is readily
5 available, and that substantially all the cost of it is in
6 hauling, what basis he had for an opinion that the Greiner
7 Company was not able to exercise valid judgment that this
8 frost susceptible material could be replaced by what is
9 denominated borrow.

10 Now, I asked him about Mr. Marshall's analysis
11 of the frost situation in Ohio. And you will remember that
12 there is an exhibit in the case in which Mr. Marshall, and
13 in which Mr. Allen joined, commented upon the frost
14 situation in Ohio.

15 My question is, "Well, what I am trying to get at
16 is, this document was among the data which you considered
17 as the foundation for your conclusions and your opinion.
18 What I am trying to get at is, did you accept that as a
19 fact, or did you believe that it required further substan-
20 tiation? Or did you think that perhaps he was stretching
21 it a little or overstating it or what?"

22 And his answer is, "My opinion was that it was
23 overstated a little bit, but, of course, I am not familiar
24 with Ohio conditions."

25 And on page 2024 of the record, I am telling him

1 in the form of a question, well, the testimony is that this
2 frost susceptible material is found in pockets 200 and 300
3 feet long. That testimony was by Mr. Marshall, the geolo-
4 gist, in pockets 200 to 300 feet long, and we were speaking
5 with reference to the running length of the highway.

6 "Answer: I am sure that he -- " -- Mr. Marshall --
7 "-- would know much more about that than I know about it."

8 Now, at page 2042 I had read to Mr. Parker a
9 statement in the literature on taking care of frost in soil
10 by Mr. Stokestad, who is an official of the Highway Depart-
11 ment in Michigan, I believe, and Mr. Stokestad stated that
12 in Michigan the practice was when this frost susceptible
13 material was dug out that they replace it with material of
14 whatever character immediately surrounding the frost suscep-
15 tible material along the highway, which is just exactly
16 the recommendation of the Greiner Company here approved by
17 the Highway Department, which means that it can be got as
18 borrow.

19 In that place this is my question, "You agreed
20 with that -- that statement of the theory as given by Mr.
21 Stokestad?"

22 "Answer: It sounds reasonable."

23 Now, at page 2086 then we have -- and this is
24 almost the end of Mr. Parker's testimony, in which I am
25 cross examining him, and my question is, "You are not

1 familiar with the geology of Northern Ohio?"

2 His answer is, "No."

3 Mr. Hertz says, "That is admitted."

4 "Question: You don't know whether non-frost
5 susceptible material is available, or is available as what
6 you call ordinary borrow, do you?"

7 And he answers, "No."

8 That is Mr. Parker.

9 Now, Mr. Knoerle, the disgruntled employee of the
10 Greiner Company, to whom previous reference has been made,
11 also did extensive testifying on that, and in general he
12 stated that the --

13 CHAIRMAN SHOCKNESSY: I would like you to state
14 Knoerle's full name, too. I think we have been calling
15 him Mr. Knoerle always and characterizing him. I would
16 like you to state his full name.

17 MR. LANSDALE: Joseph K. Knoerle, J. K.
18 Knoerle (spelling) K-n-o-e-r-l-e.

19 Mr. Knoerle also said that the economic comparison
20 made by the Greiner Company was no good, because in his
21 judgment all of the soil underneath the top twelve inches
22 would have to be removed and would have to be replaced not
23 with borrow but with some manufactured material, quite
24 expensive, brought in from the outside.

25 But in order to make sure that he wasn't

1 differing on some other point, I asked him this question --
2 this is page 2200 of the record -- "So that, confining our-
3 selves to the economic comparison, the sole difference is
4 in the character and the corresponding unit prices of the
5 material which you think should be there and which the
6 Greiner Company thinks should be there?" That is under
7 the top twelve inches under the rigid pavement.

8 And the answer is, "That is right."

9 So that was the sole difference there.

10 So that however you slice it, you come down to
11 a difference between the experts submitted by the plaintiff
12 on the one hand and the Greiner Company, Mr. Allen, Mr.
13 Marshall, Mr. Kauer, on the other hand, as to whether --

14 CHAIRMAN SHOCKNESSY: That is Mr. Allen of the
15 Highway Department?

16 MR. LANSDALE: Mr. Allen of the Highway
17 Department, not Mr. Allen of the Turnpike.

18 CHAIRMAN SHOCKNESSY: Mr. Marshall of the Highway
19 Department?

20 MR. LANSDALE: Mr. Marshall of the High-
21 way Department.

22 CHAIRMAN SHOCKNESSY: And the third one was who?

23 MR. LANSDALE: Mr. Kauer, Chief Engineer,
24 and then Highway Director -- as to their opinion on the
25 other hand, that this sub-grade surface for twelve inches

1 below the rigid pavement could be filled with what is called
2 borrow at the price at which borrow is estimated in the
3 report.

4 Now, I should say on that point that, compared
5 with Mr. Knoerle -- Mr. Knoerle stated that his knowledge
6 of the geology in Ohio was gained by riding over it many
7 times in an automobile. Mr. Parker, of course, said he
8 knew nothing about the geology of Ohio. The Greiner
9 Company soil experts, on the other hand, spent six weeks
10 in the field and many weeks studying data in the office.
11 They took some borings. They made what they called
12 resistivity tests. They had these borings tested in the
13 laboratory, and reference, and they took aerial photographs
14 and compared them with soil maps, and the like. It took
15 an extended number of weeks to do it.

16 CHAIRMAN SHOCKNESSY: Mr. Lansdale.

17 MR. LANSDALE: Yes, sir.

18 CHAIRMAN SHOCKNESSY: Mr. Lansdale, I don't
19 believe you adverted to any work which Mr. Knoerle himself
20 may have done on this project.

21 MR. LANSDALE: Well, the evidence shows
22 that he prepared in 1946, at the instance of Senator Winter,
23 what he termed a feasibility report on an Ohio Turnpike, in
24 which he made some studies and arrived at a preliminary
25 estimate of cost and of traffic, and determined what he

1 termed to be its feasibility for further study.

2 Later when the Greiner Company became consultants
3 for the Highway Director, he did some work, according to
4 his testimony, in the preliminary work for the location of
5 the Turnpike.

6 CHAIRMAN SHOCKNESSY: Well, I seem to remember
7 in his testimony statements as to hours which might con-
8 stitute full days in 1951.

9 MR. LANSDALE: Well, that testimony was
10 this: The records of the Greiner Company, which I examined,
11 showed that he put in something in excess of seventy hours
12 of work on the Ohio Turnpike Project during the year 1951,
13 some of the hours up into October.

14 I might add that he left the Greiner Company --
15 how long ago? November of '51.

16 Now, he denied doing any work to speak of on the
17 Ohio Turnpike Project beyond the early spring of '51. And
18 I interrogated him as to what those hours were for, but I
19 never got any satisfactory answer on that part.

20 CHAIRMAN SHOCKNESSY: Well, I remember some reply
21 of his in that transcript in which he said that it was for
22 entertaining, time consumed entertaining the Ohio Turnpike
23 Commission. But so far as I am aware, no member of the
24 Ohio Turnpike Commission was ever over there.

25 MR. LANSDALE: Well, I asked him what he

1 spent nine hours for in October, 1951. He said, well, it
2 might have been for entertainment of the Ohio Turnpike
3 Commission and Ohio Turnpike Commission Staff in Baltimore
4 at the time the Greiner Company had, as he termed it, a
5 housewarming when they opened some new offices.

6 So far as my investigation ascertains -- this
7 point is not in the record. He was unable to state who
8 he entertained from the Ohio Turnpike Commission or its
9 Staff, and so far as I am able personally to determine, and
10 I made some effort to do so, nobody from the Turnpike Staff
11 has ever been in Baltimore at the Greiner Company, except
12 Mr. Dunbar, and he was there two or three days before the
13 event related.

14 CHAIRMAN SHOCKNESSY: This occasion, if I
15 remember correctly, upon which at least some of the time
16 was recorded was when the Greiner Company was having a
17 housewarming, and I believe that you asked him, weren't
18 there two or three hundred persons there? And he said,
19 "Yes." You asked wasn't it rather unusual, or some such
20 question, that all the time he consumed and recorded on
21 such an occasion would have been charged as Ohio Turnpike
22 Project time. And I believe he indicated that would have
23 been unusual, too.

24 MR. LANSDALE: Well, I remember his
25 answer was rather indefinite on that point.

1 CHAIRMAN SHOCKNESSY: Well, I do, too. But I
2 was just interested in checking my recollection on that
3 portion of his testimony.

4 MR. LANSDALE: Okay, sir.

5 Now, I have attempted to state to you what the
6 experts of the Relator say about this frost business and
7 the reasons why the economic comparison is not valid, be-
8 cause they had no basis to determine whether borrow could
9 be used to replace soil removed on account of its suscep-
10 tibility to frost.

11 On the other hand, I think I stated that the
12 Greiner Company spent many weeks examining the soils along
13 the route of the Turnpike. Additionally, Mr. Marshall,
14 the State Department Pavement Expert and Soils man, has
15 spent more than fifteen years of his life doing substantially
16 nothing else but pavement design and consideration of the
17 soils over which the Ohio State highways run in relation to
18 the pavement design.

19 Now, on page 1120 in the record -- and this again
20 is on Mr. Hertz's examination --

21 "Question: Is it possible to approximate the sub-
22 base needs --

23 CHAIRMAN SHOCKNESSY: This to Mr. Marshall?

24 MR. LANSDALE: This is to Marshall, yes.

25 "-- down to thirty inches for the entire length of

1 the Turnpike of 241 miles before your detailed subsoil
2 studies are made?

3 "Answer: Yes."

4 Now, I should elaborate on that. There is no
5 question but that the design engineers who are working on
6 this Turnpike in connection with their detailed designs
7 make soil studies far more detailed than the Greiner Company
8 made for the purpose of the engineering estimate. They
9 put down these holes every three hundred feet, and the like,
10 and get a rather exact what they call soil profile.

11 CHAIRMAN SHOCKNESSY: Is this the man about
12 whose recall by you I remember something in the record,
13 an ejaculation somewhat like, "Oh, the irony of it"?

14 MR. LANSDALE: That's right.

15 Now, he answered that it was possible to do so,
16 that you could do so in his opinion before these detailed
17 soil studies were made.

18 Mr. Marshall thereafter was pressed to state what
19 percentage in his judgment of the soils along the Turnpike
20 were these soils that had to be removed on account of frost
21 susceptibility. He said, well, it was very small, but he
22 didn't want to be pressed to state a per cent.

23 So I asked him on the telephone if he would look
24 at what data he had or needed to for that and arrive at
25 some conclusion in that regard, if he was able to. And he

1 said he was sure he could do it.

2 So he made some studies and I called him back to
3 the stand, and that is when he testified and said that he
4 had looked over a recent actual soil profile in the area
5 near the Turnpike, and my question is this:

6 "What is your judgment, without attempting to
7 require you to be exact about it, as to approximately the
8 percentage of this especially frost susceptible soil that
9 is likely to be encountered in the eastern third of the
10 Turnpike?

11 "Well," he says, "on this particular project --"
12 -- that is not the turnpike, but the one he examined --
13 "-- the percentage of this soil which we would consider
14 it desirable to remove and replace with non-frost heaving
15 material was about two per cent of the length of the pro-
16 ject.

17 "Question: Would you think that a fair indication
18 of what would be apt to be encountered in the eastern third
19 of the Turnpike?

20 "Answer: Well, yes, I think that you could say
21 that that would be a fair -- perhaps a little high -- ."

22 Then the Referee says, "Two per cent of the
23 material?"

24 And the answer is, "Two per cent of the length
25 of the project."

1 Then he goes on to say, "That would be a liberal --
2 that would really be a liberal estimate of how much such ma-
3 terial might be encountered.

4 "Question: Now, with reference to the more wester-
5 ly sections of the Turnpike, do you have any judgment as to
6 the amount of such soils which would probably be encountered
7 compared with that in the easterly third?

8 "Answer: It would be much less."

9 We come then to the consideration of, once you re-
10 move this frost susceptible soil can you fill it up with
11 what we call ordinary borrow at sixty-five cents a cubic
12 yard, or do you have to bring in more expensive stuff, which
13 is the crux of the claim by these people, who don't know any-
14 thing about the geology in northern Ohio.

15 So I asked Mr. Marshall about that, and he states,
16 after defining what is especially frost susceptible soil as
17 they have experienced trouble with it in Ohio -- I asked
18 this question -- this is 2540 of the record --

19 "Question: Well, now, did you understand that it
20 was contemplated --" -- that is, in building the road --
21 " -- that backfilling on the Turnpike -- " -- that is re-
22 placing this frost susceptible soil removed --" -- would be
23 done only with granular material?"

24 He answered, "No, I didn't.

25 "Question: You did not so understand?

1 "Answer: No.

2 "Question: Well, what do you understand it is
3 contemplated that backfill will be with?

4 "Answer: It is my understanding that the plan
5 now is to use -- "

6 And Mr. Hertz interrupts and he starts again:
7 "It is my understanding that the plan now is to use soil
8 which is not susceptible to, that is, not especially
9 susceptible to frost heaving, and which otherwise fulfills
10 our requirements on the Turnpike's requirements for sub-
11 grade soil.

12 "Question: May I restate it and see if I get it
13 correctly? That is, backfill will be made with any material
14 which would not have to be removed, had it been found in
15 place?"

16 He answered, "That is right."

17 Then I asked him on the same page, 2540, if he
18 concurred in this method of handling the replacement of the
19 soil removed because of its frost susceptibility, and he
20 answered, "Yes, I do."

21 Then my question was, "Is it your statement that
22 the material for this backfilling that we are talking about
23 will be available as borrow?"

24 He answered, "Yes."

25 Now, on further cross examination I wanted to be

1 sure that that was perfectly clear, so I said this on page
2 2552 of the record, "Mr. Marshall, you have testified that
3 the plan is to use soils other than these fifty per cent
4 silt and low plasticity soils --" -- that is the frost
5 susceptible --"--for backfilling purposes, to fill up
6 excavations of especially susceptible frost soils?

7 "Answer: That is right.

8 "Question: And that such material is available
9 as ordinary borrow?

10 "Answer: That is right."

11 Now, I think that there is enough to show the con-
12 flict, such as there is, in the testimony as to whether it
13 is valid for the Greiner Company to have used, to make this
14 comparison, an assumption that borrow would be used beneath
15 the sixteen inches for the 241 miles of the Turnpike.

16 Now, I want to pass to the second phrase. I
17 want to mention this business where they say in the state-
18 ment that the comparative costs were subject to a probable
19 error involving each type of pavement which may be either
20 five per cent too high or five per cent too low.

21 CHAIRMAN SHOCKNESSY: Mr. Lansdale, we have
22 been analyzing this testimony and Judge Hertz's statement
23 now for, oh, about two hours. I wonder if it might be --

24 MR. LANSDALE: Has it been that long?

25 CHAIRMAN SHOCKNESSY: I wonder if it might be a

1 good plan to recess.

2 MR. LANSDALE: I haven't talked for two
3 hours, have I?

4 MR. CRAWFORD: No.

5 CHAIRMAN SHOCKNESSY: Well, it has been most
6 interesting, most illuminating.

7 MR. LANSDALE: I judge I have about another
8 half hour.

9 MR. HERTZ: I object. Mr. Shocknessy
10 is thinking of me. I talked almost two hours, not you.

11 CHAIRMAN SHOCKNESSY: Well, I wonder Mr. Lansdale,
12 what you would think about taking a recess for about fifteen
13 minutes. Let's count on being at work again at 4:15.

14 MR. MCKAY: That's twenty minutes.

15 CHAIRMAN SHOCKNESSY: Well, I said at work again.
16 I would like you to be back here in about fifteen minutes.

17 (Recess taken.)

18 (See next page.)
19
20
21
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25

1 CHAIRMAN SHOCKNESSY: Will you proceed, Mr.
2 Lansdale?

3 MR. LANSDALE: O.K., sir.

4 We have taken up paragraphs 1 and 4 of Mr. Hertz's
5 memorandum. I would like now to pass to the second para-
6 graph, which I will read:

7 "That the original cost calculations showed the
8 flexible design less costly to construct, although the unit
9 prices used were admittedly too high. When based upon
10 unit costs as finally adopted by the State Highway Director
11 and the Consulting Engineer, the comparison would show that
12 a thirty-inch flexible pavement could be built for lower
13 cost than a sixteen-inch rigid pavement, as now contemplat-
14 ed."

15 I am going to have to take this up piece by piece.

16 First, the first phrase of the first sentence,
17 "That the original cost calculations showed the flexible
18 design less costly to construct".

19 That, you remember, was the comparison made by
20 the Greiner Company and never shown to anyone. That is a
21 true statement. On the basis of those designs and the
22 unit prices then being used at that preliminary stage, the
23 flexible would have cost approximately \$225,000.00 less
24 than the rigid design.

25 The second phrase is, "Although the unit prices

1 used were admittedly too high."

2 That statement is true only in part. The unit
3 prices used gave a higher cost than the unit prices finally
4 adopted would have given in total. Individually, some of
5 the earlier unit prices used were too high, some were too
6 low.

7 Now, in order to follow out that one and the next
8 statement, I am going to use the tablet again. I am going
9 to use this blackboard again, because I think this is im-
10 portant.

11 Now, the second sentence is, "When based upon
12 unit costs as finally adopted by the State Highway Director
13 and the Consulting Engineer, a comparison would show that a
14 thirty-inch flexible pavement could be built for lower cost
15 than a sixteen-inch rigid pavement, as now contemplated."

16 I say that statement is out of the whole cloth,
17 and I will show you why. And I will also show you what
18 they base it on in the record.

19 When the Greiner Company made their original
20 draft, what we have referred to as Exhibit K, that draft
21 which you received on July the 3rd, which was later revised
22 many times and finally came to you on August the 7th, and
23 was later approved by you subject to revisions on September
24 4th -- this Exhibit K used a construction cost arrived at
25 on the basis of the unit prices which were used for the

1 estimated cost of this first thirty-inch pavement. These
2 prices were as follows:

3 It is necessary for me to do this in order to make
4 this point.

5 Now, these all relate to flexible pavement.

6 The asphaltic concrete surface, this three and a
7 half inches of what we know as asphalt, the original unit
8 prices varied from section to section on the Turnpike, but
9 they were \$2.45 to \$2.50, depending upon which section of
10 the Turnpike, per square yard.

11 The course known as penetration macadam, and on
12 that design two and one-half inches thick, was in there at
13 a unit cost of \$1.02 per square yard.

14 The waterbound macadam, which on that design was
15 five inches, was \$1.25 to \$1.28 per square yard, depending
16 upon the section of the Turnpike.

17 The special sub-grade, which in that design was
18 nineteen inches, was divided into two parts. One of them,
19 six inches deep, was in there at \$4.15 a cubic yard, and the
20 thirteen-inch balance was of lesser quality and was in there
21 at \$1.92.

22 These are original prices.

23 Then consultations were held with the State High-
24 way Department, and the evidence is repeated a number of
25 times that when Mr. Kauer first saw this \$2.45 price he was

1 very unhappy about it. As the testimony is, he blew his
2 top, because in Ohio you were paying no such prices for as-
3 phalt.

4 In any event, after consultation with the Highway
5 Department, the unit prices were revised, and this was ar-
6 rived at:

7 The asphaltic concrete, this three and a half
8 inches, was reduced to \$1.56 in the easterly portions of
9 the Turnpike, and \$1.61 in the more westerly portions.

10 The penetration macadam -- I cannot make an exact
11 price comparison here, because that course was later in-
12 creased half an inch -- but that came to \$1.33. And I am
13 informed that that is in fact the same price. It is on a
14 square yard basis, except this is thicker. So that one
15 was the same.

16 On the waterbound macadam, that remained precise-
17 ly the same.

18 Now, here is where another difference comes. In
19 the later design used as the basis for comparison, the dif-
20 ference in gradation or quality between these two courses
21 was eliminated and one of a single quality was taken, which
22 was \$3.00 a yard. Now, that \$3.00 a yard was in fact re-
23 lated to this material in here at \$1.92, which was the
24 Highway Department experience for that kind of material.
25 It was one of the gradations of what they call material

1 SS-5, and that went in at \$3.00 a yard.

2 Now, we come to the basis of this next statement
3 of Mr. Hertz, that, "When based upon unit costs as finally
4 adopted by the State Highway Director and the Consulting En-
5 gineer, the comparison would show that a thirty-inch flex-
6 ible pavement could be built for lower cost than a sixteen-
7 inch rigid pavement, as now contemplated."

8 Now, the cost for flexible, the original thirty-
9 inch flexible design, on these prices came to \$58,275,545.

10 Now, in the testimony -- and I am trying to find
11 the place -- Mr. Hertz had Mr. Le Sueur on the stand, who
12 was principally responsible for these designs. He asked
13 him to make a new calculation for him -- and that appears
14 at pages 1805 to 1806 of the record -- and calls his atten-
15 tion to the fact that the exhibit showed this fifty-eight
16 million dollar price. He refers then to this asphaltic
17 concrete course, which is known in the record as T-50, which
18 is the Ohio Highway Department designation for roughly simi-
19 lar material, and calls attention to this comparison in
20 price, and then says:

21 "Question: Now, I have done the arithmetic here,
22 and you can accept it or check it, whichever you please.
23 If you have used for the same item the lower figures that
24 you used the second time, the cost would have been reduced
25 by \$5,743,891, and then the total cost of your thirty-inch

1 flexible pavement would have been \$52,531,654?"

2 Mr. LeSueur did the arithmetic and then agreed
3 with Mr. Hertz, and agreed that if he had in this design
4 substituted this final unit price for asphaltic concrete for
5 this price over here, but left the others undisturbed, the
6 fifty-eight million dollar figure would have been reduced
7 to \$52,531,654.

8 Then he compares that figure to the figure in Ex-
9 hibit 21 in the case, which gives the cost comparison be-
10 tween the final designs of rigid and flexible, which is
11 \$52,934,369.

12 So he says that, "When based upon unit costs as
13 finally adopted by the State Highway Director and the Con-
14 sulting Engineer, the comparison would show that a thirty-
15 inch flexible pavement could be built for lower cost than a
16 sixteen-inch rigid pavement, as now contemplated."

17 But no such thing, because it is awfully easy to
18 pick out one price that is lower and then lower the rest of
19 them and thus make a comparison.

20 Had all of the final prices adopted been substi-
21 tuted, the price, instead of fifty-two million, would have
22 been something different, and this is what it would have
23 been, \$56,596,178, which is comparable to the fifty-eight
24 million dollars originally found on the basis of the pre-
25 liminary unit costs, which were later changed.

1 So much for that comparison there.

2 However, he attempted to fill the gap in this way
3 -- Mr. Knoerle, the former employee of the Greiner Company
4 previously referred to, was on the witness stand and he tes-
5 tified that in his opinion as of now the proper price for
6 this material, which was originally in Exhibit K for \$1.92
7 and then after checking with Highway Department experience
8 the price of \$3.00 was originally adopted -- Mr. Knoerle
9 testified that an appropriate price was \$1.80 to \$1.97, be-
10 tween those figures.

11 MR. HERTZ: Jack, may I ask you some-
12 thing? Just put sixteen and a half inches next to that
13 \$3.00.

14 MR. LANSDALE: Next to which?

15 MR. HERTZ: Where you have \$3.00, just
16 put sixteen and a half inches there, and let's see what it
17 is, because that \$3.00 is for a sixteen and a half inch
18 thickness.

19 MR. LANSDALE: It is on a cubic yard
20 basis, and I have applied \$3.00 per cubic yard for the nine-
21 teen inches here, which is appropriate for that.

22 MR. HERTZ: And I say you have no right
23 to.

24 MR. LANSDALE: It is the same price on a
25 cubic yard basis. What difference does it make whether it

1 is sixteen inches or forty?

2 MR. HERTZ: It isn't \$3.00 a cubic yard.

3 MR. LANSDALE: It isn't \$3.00 a cubic yard?

4 MR. HERTZ: That is, you have no right
5 to use that \$3.00 a cubic yard.

6 But, go ahead. I didn't mean to interrupt you
7 too much.

8 MR. LANSDALE: No. I am glad you did.

9 MR. HERTZ: I just wanted you to point
10 out the whole story.

11 MR. LANSDALE: I am glad you did, because--

12 MR. HERTZ: I am not going to talk very
13 long to the Commission this afternoon, so I thought we might
14 as well get that cleared up.

15 MR. LANSDALE: Because in Exhibit 21, Item
16 4 -- this is page 2 of Exhibit 21, which is the Greiner Re-
17 port on Comparative Costs, showing the final unit prices
18 used in determining the comparative costs. Item 4 is on a
19 cubic yard basis and refers to blanket course SS-5 and is in
20 there at \$3.00 on a cubic yard basis.

21 MR. HERTZ: What is the depth of it?

22 MR. LANSDALE: The depth of it is some-
23 thing different. But what difference does it make if it is
24 on a cubic yard basis?

25 MR. HERTZ: Well, it does make a good

1 deal of difference.

2 CHAIRMAN SHOCKNESSY: I didn't understand you.

3 MR. HERTZ: It makes a difference in
4 quantity. It makes a difference in unit price. But go
5 ahead.

6 MR. LANSDALE: No. I am sorry. It is
7 just like a lot of other stuff, I don't see it. The price
8 is on a per cubic yard basis, and the price is the same
9 whether there is a slightly additional quantity or a slight-
10 ly less quantity.

11 Now, to continue -- Mr. Knoerle testified that
12 that price ought not to be \$3.00, but it ought to be \$1.80
13 to \$1.97. And I cross examined him as to what he based the
14 price on --

15 CHAIRMAN SHOCKNESSY: May I interrupt a moment?

16 The record will show your exception anyhow, Judge
17 Hertz, so the Commission will accordingly have its attention
18 called to the exception you are taking.

19 MR. LANSDALE: Now, I asked Mr. Knoerle
20 upon what he based his opinion as to the fact that the \$3.00
21 price was wrong and it should have been something less, to-
22 wit, \$1.80 to \$1.97. He testified eventually that he got
23 that information from Mr. Shafer.

24 Now, when Mr. Shafer was on the stand it so hap-
25 pened that he had with him some --

1 CHAIRMAN SHOCKNESSY: Mr. Lansdale, one of the
2 members of the Commission has just suggested, and I think it
3 is a very good plan, that when you finish that we preserve
4 those charts and have them photostated --

5 MR. LANSDALE: All right.

6 CHAIRMAN SHOCKNESSY: -- and made part of the
7 record in the proper place.

8 MR. LANSDALE: All right.

9 Now, Mr. Shafer, the relator, was on the witness
10 stand and I took the occasion to interrogate him about some
11 bid papers of a job that he had bid on for the State of Ohio
12 in the past two or three years, and the bid price for SS-5
13 in that particular document was something in excess of
14 \$6.00 -- I have forgotten the exact figure -- per cubic yard.
15 So I interrogated him about that.

16 He said, well, obviously that was not applicable
17 to the Turnpike, because that was a very small quantity,
18 whereas the Turnpike was a very large quantity, which seemed
19 to me a valid objection to using the \$6.00 as any real evi-
20 dence of what it ought to be in the Turnpike.

21 So I further interrogated him on that point and he
22 finally said this -- well, my question is, "Why is this --"
23 -- that is this bid price -- "-- three or four times higher
24 than what Mr. Knoerle said should be the price?

25 "Answer: Well, there would be a number of millions

1 of yards in the Turnpike, and this is only some odd thousand
2 yards, so naturally a man getting out millions of yards would
3 do a much cheaper price than he would some thousands of
4 yards.

5 "Question: Well, the same man doesn't get out
6 all the yards used on the Turnpike, does he?

7 "Answer: No, but he might.

8 "Question: If he is low bidder on all of it he
9 might?

10 "Answer: I rather imagine it will be like the
11 New Jersey Turnpike. Somebody will come in here from the
12 outside and set up a contract and a producer and produce
13 this material for the various contracts.

14 "Question: I see. And it was on what you thought
15 might happen like that that Mr. Knoerle based his price?

16 "Answer: Because we haven't anybody in northern
17 Ohio with capacity enough to get it out.

18 "Question: I see. And nobody in northern Ohio
19 could produce it at that price?

20 "Answer: No, sir."

21 So that the \$1.80 to 90 price was something that
22 Mr. Knoerle testified to that was not based on any price
23 which anybody in northern Ohio could produce it at, whereas
24 the \$3.00 price is based upon the experience of the Ohio
25 Highway Department.

1 Now, I think that it is pertinent, while we are
2 talking about prices here of highways, to mention also that
3 the Highway Department has recently reviewed their prices
4 and they have changed slightly from the unit prices used in
5 the Greiner Report. They are also slightly variant, and I
6 will not bother to list them here, but just generally tell
7 you about them.

8 The price of asphalt is again down. It is less
9 than \$1.56. It is in the 40's somewhere. The other ma-
10 terials have gone up somewhat, such that the total for
11 flexible, which on the original comparison was some fifty-
12 five million, has now become approximately sixty-one million;
13 whereas the price of rigid, which before was fifty-two
14 million nine, has now become slightly more than fifty-three
15 million. In other words, the rigid is up only slightly,
16 whereas the flexible is up considerably.

17 On that point also I think we should mention that
18 Mr. Shafer testified -- and this is important when you are
19 considering the question of alternative designs and competi-
20 tive designs -- Mr. Shafer testified that neither of the
21 proposed designs was really what was the best road for Ohio.
22 He says what you ought to have is a rigid highway with as-
23 phalt on top of it. And he suggested three and a half
24 inches of asphalt and eight inches of reinforced concrete
25 and twelve inches of this granular material.

Now, I asked Mr. LeSueur to calculate some figures for me, and using Mr. LeSueur's calculations --

CHAIRMAN SHOCKNESSY: Have we identified Mr. LeSueur for this record?

MR. LANSDALE: Mr. LeSueur is the pavement expert for the Greiner Company who was in charge of the pavement design for the Ohio Turnpike.

MR. DUNBAR: His full name is?

MR. LANSDALE: Benjamin W. LeSueur.

It is his calculation that Mr. Greiner's design would cost something more than nine million dollars in excess of the Greiner's estimate of fifty five million for flexible.

He points out, however --

CHAIRMAN SHOCKNESSY: You had better have the reporter read that again, please.

(The reporter read the last statement by Mr. Lansdale.)

CHAIRMAN SHOCKNESSY: That is Mr. Shafer's?

MR. LANSDALE: Mr. Shafer's design would cost something more than nine million dollars in excess of the calculated or the estimated cost of the flexible design proposed by Greiner to compare with the rigid, and he, Mr. LeSueur, says, however, that Mr. Shafer's proposed rigid design with asphalt on top of it is not adequate for the loads

1 expected on the Turnpike, and there would have to be a nine-
 2 inch concrete slab rather than an eight-inch. The addition
 3 of that extra inch of concrete would add another three
 4 million dollars to the cost, which would make it approximate-
 5 ly twelve million dollars in excess of Greiner's flexible,
 6 and approximately seventeen million dollars in excess of
 7 Greiner's recommended design rigid.

8 Now, I want to pass to the proposition number 3:
 9 "That the maintenance costs represented to this Commission
 10 have no foundation in the experience of the State Highway
 11 Department."

12 CHAIRMAN SHOCKNESSY: Mr. Lansdale, I confess
 13 some bad manners there for a moment, because I was talking
 14 with Mr. Crawford and Mr. Dunbar and I didn't hear your full
 15 discussion on that design which Mr. Shafer mentioned. I
 16 wonder if you would mind if I would ask the reporter to read
 17 that back.

18 MR. LANSDALE: Go ahead.

19 (The last statement by Mr. Lansdale was read by
 20 the reporter.)

21 CHAIRMAN SHOCKNESSY: Off the record.

22 (Discussion off the record.)

23 MR. HERTZ: Mr. Shafer never presented
 24 himself as an engineer in this case, nor did he ever intend
 25 to present any design he recommended to this Commission.

1 He testified only because he was the Plaintiff in this case
2 for the purpose of showing that he is a taxpayer, and so
3 forth, and that he has a right to bring this action.

4 It was only on cross examination that Mr. Shafer
5 was led by Mr. Lansdale into posing as an engineer. And
6 then Mr. Shafer expressly said, "I am not an engineer and I
7 am not testifying as an engineer."

8 So that for Mr. Lansdale to use anything that Mr.
9 Shafer said when asked by Mr. Lansdale as an engineer, which
10 he didn't claim to be and nobody claims him to be, is an ex-
11 tremely unfair thing.

12 CHAIRMAN SHOCKNESSY: Well, Mr. Hertz, I indi-
13 cated here Saturday that when I read the transcript I was
14 interested in that original design.

15 MR. HERTZ: And what did I say to you
16 when you told me of that interest? I said if you are in-
17 terested the thing to do would be to appoint an engineer who
18 has the rigid pavement point of view, another engineer who
19 has the flexible pavement point of view, appoint your own
20 engineer who will be neutral about it, and see what you can
21 do with the idea. But nobody ever represented to you that
22 that was a serious recommendation made by the relator in the
23 case.

24 CHAIRMAN SHOCKNESSY: Well, in any event --

25 MR. HERTZ: If you are really interest-

50
1 ed, that's the way to do it.

2 CHAIRMAN SHOCKNESSY: In any event, we considered
3 it of sufficient importance and significance, coming the way
4 it did, that we did seek a prima facie examination of it, of
5 the recommendation.

6 MR. HERTZ: It isn't even a recommenda-
7 tion. It was something elicited on cross examination when
8 it shouldn't have been.

9 MR. LANSDALE: You mean, we should pay no
10 attention to what is elicited on cross examination?

11 MR. HERTZ: No. No. You should pay
12 attention to cross examining a witness concerning what he
13 says and what he claims to say, but not force him into situ-
14 ations where he is talking about something where he admitted-
15 ly doesn't know what he is talking about.

16 CHAIRMAN SHOCKNESSY: Well, now, Judge Hertz,
17 this morning at the end of the session -- you were standing
18 there, Mr. Hamilton, when Mr. Shafer did seriously discuss
19 that proposal with me and suggested that it was his belief
20 that it had greater merit. And I believe that you endorsed
21 that, Mr. Hamilton.

22 MR. HAMILTON: I think that is right. I
23 think he thought that there was considerable merit to that
24 proposition. That is what he said this morning, based upon
25 his experience.

1 MR. HERTZ: I don't deny that that is
2 his opinion. But I say, what of it?

3 MR. LANSDALE: Well, O.K., I say that, too.
4 (Laughter)

5 CHAIRMAN SHOCKNESSY: Well, now, Mr. Lansdale, I
6 would like to --

7 MR. HERTZ: We are making some progress.

8 CHAIRMAN SHOCKNESSY: I would like to check again
9 that last statement of yours on the comparative costs of
10 that design as developed by Mr. LeSueur.

11 Off the record.

12 (Discussion off the record.)

13 MR. LANSDALE: Well, the effect of that is
14 that it would, in effect, add if adopted and properly de-
15 signed seventeen million dollars to the estimated construc-
16 tion cost of the project, with whatever additional charges
17 would result from the necessary debt to produce it.

18 CHAIRMAN SHOCKNESSY: All right, thank you.

19 MR. LANSDALE: Now, I would like to pass
20 to the third proposition, which is as follows:

21 "That the maintenance costs represented to this
22 Commission have no foundation in the experience of the State
23 Highway Department. At the same time the maintenance fig-
24 ures set forth in the Consulting Engineer's report had no
25 application to the case of rigid pavement although purport-

1 ing so to have."

2 I would like to take that up, the first sentence,
3 that is to say, the maintenance costs have no foundation in
4 the experience of the State Highway Department.

5 It is true that the evidence does not disclose
6 that there was any analysis of the actual dollar cost of
7 maintaining various of the highways in Ohio, or any of the
8 highways of Ohio, as bearing upon the expected cost of main-
9 tenance on this highway. However, the statement that the
10 maintenance costs have no foundation in the experience of
11 the State Highway Department, I state to be untrue as dis-
12 closed by the record.

13 In the first place, in the testimony of Mr.
14 Masheter, he brought in certain records --

15 MR. DUNBAR: Who is he?

16 MR. LANSDALE: Mr. Masheter is Assistant
17 Chief of one of the bureaus. Which one escapes me at the
18 moment.

19 MR. KAUER: Construction.

20 MR. LANSDALE: Construction.

21 Exhibit 23 shows that there was transmitted from
22 the Highway Department to the Turnpike Commission for trans-
23 mission to Greiner a tabulation of the experience of the
24 Highway Department as to labor costs of maintenance for the
25 use of the Greiner Company in preparing their estimates.

1 Secondly, it appears from the testimony of Mr.
2 Masheter at 1373 of the record, from Mr. Reppel at 1061,
3 1066 and 1068 of the record, Mr. Makeever at 1395 of the
4 record, that maintenance costs and maintenance experience
5 were discussed in meetings between Greiner and the Highway
6 Department.

7 Moreover, Mr. Reppel testified that he particular-
8 ly discussed the estimates of the number of times and the
9 quality of the various resurfacings, of the various times
10 that the highways would have to be resurfaced, or seal coats
11 would have to be placed on them. And that was one of the
12 important factors in the estimate of maintenance costs.

13 Now, I take it that Mr. Reppel, who is the Assist-
14 ant Chief of the Maintenance Bureau, would necessarily be
15 speaking on the basis of his experience with maintenance in
16 the State of Ohio, which extended over a period of many
17 years.

18 On that point, Mr. Knoerle, who was presented by
19 the relator as a maintenance expert, testified at pages 2117
20 and 2118 of the record that as to the validity of any analy-
21 sis of the dollar cost, or the square yard cost of maintain-
22 ing various highways, existing highways on state highway
23 systems -- I was cross examining him about maintenance ex-
24 perience in other places:

25 "You say you couldn't give too much credence to

1 the figures. By that you mean the figures from Massachus-
2 etts, New York, New Jersey, Maine and Pennsylvania?

3 "Answer: I would like to correct that. What I
4 meant to say was that we could not give too much considera-
5 tion to the figures in relation to their bearing on the
6 maintenance costs for the New Jersey Turnpike."

7 With which we were then concerned.

8 "Question: And that would be the same with refer-
9 ence to Ohio?

10 "Answer: I think that is what I stated last week."

11 I think that it was pretty generally agreed, al-
12 though there was some dispute upon this point, that since
13 the roads from which the actual per square yard maintenance
14 costs were derived in Ohio and elsewhere were roads twenty
15 years old and one year old, were concrete roads that were
16 sixteen feet wide and were twenty-four feet wide, they
17 carried varying amounts of traffic, that were subjected to
18 varying degrees of maintenance and quality of maintenance,
19 that the per square yard figures themselves were of little
20 importance.

21 Now, what actually was done was that the Greiner
22 Company used in their estimates for Ohio precisely the same
23 figures that were used in the estimates in New Jersey and
24 were recommended by the Paving Committee of the New Jersey
25 Turnpike, on which one of their representatives participated,

1 to-wit, Mr. Knoerle, and Mr. LeSueur, where an extensive
2 study was made of maintenance.

3 Now, that brings us to the second sentence: "At
4 the same time the maintenance figures set forth in the Con-
5 sulting Engineer's Report had no application to the case of
6 rigid pavement although purporting so to have."

7 Then Mr. Hertz made a rather impassioned statement
8 about the fact that the Commission had been led to put the
9 maintenance figures in their prospectus on the basis of
10 which bonds were sold, and that the figures were all wrong.
11 He stated as a fact that the maintenance figures contained
12 in the engineering report purporting to apply to rigid pave-
13 ment were the precise figures used and recommended in New
14 Jersey for application to flexible. And I state to you
15 that that statement is wholly false.

16 MR. HERTZ: That is not what I said.

17 MR. LANSDALE: The record will show. --

18 MR. HERTZ: That is not what I said.

19 MR. LANSDALE: We will read it out of the
20 record.

21 MR. HERTZ: I said that the maintenance
22 figures that appeared in your prospectus for your bonds are
23 the maintenance figures that also appear in Exhibit K, and
24 that Exhibit K was prepared for flexible pavement. I did
25 not refer to New Jersey in that connection.

1 CHAIRMAN SHOCKNESSY: Would you read that? I
2 remember the statement.

3 MR. LANSDALE: Now, this engineering firm
4 -- this is Mr. Hertz's statement --

5 CHAIRMAN SHOCKNESSY: Well, identify it, please.

6 MR. LANSDALE: Beg pardon?

7 CHAIRMAN SHOCKNESSY: Identify it.

8 MR. LANSDALE: Yes, I will.

9 MR. HERTZ: The figures used in the
10 comparison were the New Jersey figures, but that's not the
11 same as the figures used in your report, or in your prospec-
12 tus.

13 MR. LANSDALE: "Now, this engineering firm--

14 MR. DUNBAR: Wait just a minute. What
15 are you reading from, sir?

16 MR. LANSDALE: Wait just a minute. I
17 find that I have in my notes that Mr. Hertz stated that the
18 New Jersey flexible maintenance figures were used in the es-
19 timate of the Greiner engineering report. I do not find
20 New Jersey referred to --

21 MR. HERTZ: Exhibit 21.

22 MR. LANSDALE: I do not find New Jersey
23 referred to in the statement, but I do find this on page 136
24 of the transcript of last Saturday's testimony, which is as
25 follows:

1 "Now, this engineering firm, with all of its emi-
2 nence, slipped up. They tell you in one breath that it
3 costs less money to maintain a rigid pavement, and then in
4 their official report they give you maintenance figures that
5 were based upon a flexible pavement. And, gentlemen, this
6 is the serious part about this. In the prospectus that you
7 issued and upon which you sold your bonds you represented as
8 probable maintenance costs figures that were prepared for a
9 thirty-inch flexible pavement and which were never prepared
10 for the sixteen-inch rigid concrete pavement. Now, that's
11 the record."

12 MR. HERTZ: That's right. That's what I
13 said. And the thirty-inch flexible pavement is the one de-
14 scribed in Exhibit K and has no relation to the New Jersey
15 figures.

16 CHAIRMAN SHOCKNESSY: Say, Jack, I asked Mr. Oli-
17 phant to come up here a moment ago, or signaled him to come
18 up a moment ago to ask you to identify Mr. Reppel for the
19 record, because I don't --

20 MR. LANSDALE: I already did. Mr. Reppel
21 is the Assistant Chief of the Bureau of Maintenance of the
22 Ohio Department of Highways.

23 CHAIRMAN SHOCKNESSY: Well, I missed that.

24 MR. LANSDALE: While you were in the process
25 of telling Mr. Oliphant that, I did identify him.

1 CHAIRMAN SHOCKNESSY: That is what I called him
2 for, because I didn't want to continue interrupting you, and
3 I do want to be sure that we all understand who these per-
4 sons are who were referred to.

5 MR. LANSDALE: Mr. Oliphant says I didn't
6 identify Mr. McKeever to whom I referred. He is the As-
7 sistant Chief of the Bureau of --

8 MR. KAUFER: Planning and Program.

9 CHAIRMAN SHOCKNESSY: Well, I will try not to in-
10 terrupt, but I asked Mr. Oliphant to interrupt you every
11 time so that we will know who these people are. Some of us
12 know and some of us do not.

13 MR. LANSDALE: Now, I would like to devel-
14 op this point.

15 MR. HERTZ: Well, John, can't you be
16 candid and admit you were wrong about that just now?

17 MR. LANSDALE: I will be candid and admit,
18 as I already admitted, that I was wrong in stating that you
19 said that the maintenance figures in the engineering report
20 are the same as the maintenance figures used in New Jersey.

21 MR. HERTZ: Right.

22 MR. LANSDALE: What you did say is what I
23 read, and that is what you asserted flatly as a fact, that
24 the maintenance figures in the engineering report are main-
25 tenance figures developed as the cost of maintenance of a

1 thirty-inch flexible pavement, and I say that that is out of
2 the whole cloth, and I will demonstrate it.

3 Now, I think I know what that is based on.

4 Exhibit K, to which reference has been made -- do
5 we have it here?

6 MR. HERTZ: Here it is.

7 MR. LANSDALE: Exhibit K, which is you
8 will recall the preliminary draft of the tentative engineer-
9 ing report, the first engineering report presented to you on
10 July 3rd, in the section covering roadway we find a page or
11 two of description of the roadway, but the only thing tend-
12 ing to indicate the depth of it, or the character of it, is
13 as follows; "Selected materials having non-frost heaving
14 characteristics are placed to a depth of thirty inches be-
15 low the road surface to preclude the possibility of segre-
16 gated ice layers in the sub-grade which may produce a heav-
17 ing of pavement during freezing weather and a reduction of
18 foundation support during spring thaws."

19 And then they go on to describe some more about
20 frost.

21 Now, of course, from that alone it is impossible
22 to tell what pavement they are talking about.

23 Now, let us find out what the record shows as to
24 what those things are. The first reference is to the tes-
25 timony of Mr. LeSueur, who has already been identified, at

1 page 1420 of the record. Mr. Hertz is interrogating him
2 about the various items of pavement as alluded to in Exhibit
3 K. The reference in Exhibit K to the lower twelve inches
4 of the roadway, he is trying to find out what the specifica-
5 tion for it is.

6 Mr. LeSueur's answer on 1420 is: "I am not sure
7 that we had a specification for it in there because we put
8 these figures in here to indicate a cost of pavement, --" --
9 he is referring to the figures in the back of the book,
10 which I will come to in a moment -- "-- without naming a
11 type.

12 "Question: I know, but the report deals with the
13 design of the road, doesn't it?

14 "Answer: Yes, in this report, but --"

15 And then there were some interruptions.

16 "Answer: This report was made at a time when the
17 pavement had not been thoroughly discussed with the Highway
18 Department and we used a figure in it which we thought would
19 cover that item."

20 Now, the next reference, I think, in order of log-
21 ic is Mr. Donnelly's testimony at page 683 of the record, in
22 which I am examining him. I have just had him read the
23 paragraph in Exhibit K which I alluded to a moment before,
24 and my question then is, at page 683:

25 "Now, I will ask you if that paragraph which you

1 read does not conform to the design covering both types of
2 pavement, and by that I mean flexible and rigid, contained
3 in your then outstanding recommendation to the Director of
4 Highways dated June 11, 1951, and in evidence as Relator's
5 Exhibit 20?

6 "Answer: It is the same design."

7 Now, that is the end of that one.

8 The next item logically is Mr. LeSueur at page
9 605 of the record. His attention had been called to an ex-
10 hibit in the case on which the original comparison of thir-
11 ty-inch types of pavement was made, cost comparison, and
12 which was not shown to anyone. That was Exhibit G.

13 "Question: Now, referring to the figures for nor-
14 mal flow on Exhibit G, what did your estimate show as to
15 whether flexible pavement or rigid pavement was the cheaper?

16 "Answer: It showed flexible pavement to be slight-
17 ly cheaper than the rigid pavement.

18 "Question: Referring to Exhibit, Respondents' Ex-
19 hibit F, what type of pavement did you use as a basis, so
20 far as pavement was concerned, in arriving at the estimates
21 which are set out in -- have you got that letter?"

22 And then I correct myself to Respondents' Exhibit
23 E. Now, Respondents' Exhibit E was the letter dated June
24 28th covering the transmission of Exhibit K and which con-
25 tained in it in summary form the total estimated cost of

1 construction.

2 The answer is: "We used the figures arrived at
3 for flexible pavement.

4 "Question: Flexible pavement. All right."

5 That, of course, shows that the estimates of cost
6 covering this un-named pavement in Exhibit K were in fact
7 the estimates of cost arrived at on the comparison for flex-
8 ible pavement thirty inches deep.

9 Now, the next logical reference is to again Mr.
10 LeSueur's testimony at page 1471 of the record, and he is
11 referring to Exhibit K. There was a long question, and I
12 won't bother to read the question because it is not particu-
13 larly pertinent.

14 "Answer: When we prepared the cost, as shown in
15 this report -- " And he is referring to Exhibit K -- " --
16 we had not discussed the pavement item with the Highway De-
17 partment. We had to have this report in, by our contract,
18 by July 1, so it made it necessary that we get out a report
19 which would include cost for pavements.

20 "The pavement costs that we used were the costs as
21 shown on Exhibit G for flexible pavement. We couldn't in
22 this report say that we were using flexible pavement or
23 recommending it when we had not agreed -- or had not discuss-
24 ed the matter with the Highway Director's people in the
25 Highway Department. For that reason we have shown in here

1 items 83 and 84 to discuss a cost for pavement."

2 Then he goes on to discuss the individual items of
3 it.

4 Now, the next logical reference is page 1479 of
5 the record, again Mr. LeSueur's testimony.

6 Here then we have established -- and I first es-
7 tablished it in direct examination, Mr. Hertz went back to
8 it in cross, that no pavement, particular pavement, was de-
9 scribed in Exhibit K. However, the actual figures used
10 were those applicable to a flexible pavement.

11 Now we come to page 1479 of the record, where Mr.
12 Hertz is examining Mr. LeSueur with reference to maintenance
13 figures. The question is this: "Now, I will ask you, Mr.
14 LeSueur, to take Exhibit K, which is based upon a flexible
15 pavement, and Exhibit 1, which is based upon a rigid pave-
16 ment, and compare the maintenance figures.

17 "Answer: There are no square yard maintenance
18 figures in either one," and then so on.

19 Now, I want to call your attention to the fact
20 that the previous testimony which I have read in my memory
21 is all of the testimony in the record with reference to
22 pavement type in Exhibit K. And on the basis of that, Mr.
23 Hertz now says that Exhibit K is based upon a flexible pave-
24 ment.

25 Then he asks Mr. LeSueur to compare the total

1 figures for maintenance contained in the estimates of oper-
2 ating expenses in Exhibit K with the same expenses contained
3 in the estimates in Exhibit 1, which is the final engineer-
4 ing report, and it is discovered that in the fifth year of
5 operations the figures are precisely the same.

6 Now, it is upon the basis of that that Mr. Hertz
7 makes the assertion that the maintenance figures in Exhibit
8 K are maintenance figures for maintaining flexible pavement,
9 and that since in the fifth year of operation the mainten-
10 ance figures are the same in the final engineering report
11 that, therefore, the maintenance figures contained in the
12 final engineering report and thus also in the prospectus are
13 the estimated, Greiner's estimated costs of maintaining
14 flexible pavement thirty inches deep.

15 Mr. Hertz was told by Mr. LeSueur further on in
16 the examination to which I have just made reference that he,
17 Mr. LeSueur, did not handle the estimates of maintenance;
18 that he didn't know anything about the detail of it; that
19 Mr. Donnelly would have to testify to it.

20 At Mr. Hertz's request for the papers, Mr. Donnelly
21 has been carrying his working papers on maintenance back and
22 forth to the Court House for so many days now until they are
23 practically dog-eared, but they have never yet been called
24 for, and I personally have not yet had a chance to interro-
25 gate Mr. Donnelly to bring them out in the evidence.

1 But Mr. Hertz has established that in the fifth
2 year of operation the costs in the two exhibits are the same.

3 I will tell him that had he inquired it would have
4 also been disclosed that all of the maintenance estimates in
5 Exhibit K were dollar for dollar the same as the maintenance
6 figures in the final engineering report. He would further
7 have ascertained had he inquired that the maintenance fig-
8 ures in Exhibit K are in fact based upon rigid pavement and
9 correspond exactly to the estimates for rigid maintenance
10 costs contained in Exhibit 21 in the comparison, and that
11 the reason for it was exactly as Mr. Donnelly and Mr. Le-
12 Sueur stated.

13 In Exhibit K they were not selecting a type of
14 pavement; that the two pavements on that selection as then
15 made were within two hundred thousand dollars of each other,
16 such that on the basis of construction costs no choice could
17 be made between them upon the basis of economies, and they
18 were simply putting a price in there for pavement; that,
19 however, when it came to estimating operating costs, they
20 had already made their comparative estimates of the mainten-
21 ance, and it was obvious to Mr. Donnelly then that if a
22 choice were made on economies it would go to rigid, so that
23 in his estimates in that first engineering report he put in
24 the estimated maintenance costs for rigid.

25 And he will show in his working papers in consid-

1 erable detail precisely how the estimated costs for mainten-
2 ance were worked up, based in large measure upon the actual
3 experience with the Pennsylvania Turnpike, with which he has
4 been intimately concerned, applying thereto the labor costs
5 as experienced by the Ohio Highway Department.

6 And I think that takes care of that one.

7 Now, the last item to which reference was made is
8 some allusion to the unfairness of the Commission's earlier
9 hearings, and also we have heard lately some allusion to the
10 unfairness of this particular series of hearings of the Com-
11 mission.

12 I think that the basis for his allegation of un-
13 fairness is that whereas the recommended rigid design was
14 known to everybody, that there was some secretiveness about
15 revealing their recommended flexible design for comparison
16 with it.

17 Without going into any discussion as to whether
18 there was anything sinister about not disclosing the working
19 papers involved in arriving at the economic comparison be-
20 tween pavement types, it is quite immaterial because, as Mr.
21 Donnelly develops, both the rigid pavement industry and the
22 flexible pavement industry for making comparisons developed
23 designs of their own which were so close to the Greiner de-
24 sign as to not make any material difference for comparative
25 purposes.

1 Now, there were also some oral statements made by
2 Mr. Hertz disparaging the report made by Mr. Donnelly at the
3 last meeting.

4 I think that Mr. Donnelly's report speaks for it-
5 self.

6 I will only allude to one of them, and that is
7 that when Mr. Donnelly referred to two things -- one of them
8 was, Mr. Donnelly referred to suitable borrow. Mr. Hertz
9 wanted to ask some questions about that.

10 I think I have sufficiently developed by dis-
11 cussion of the evidence what the significance of that was.

12 The other one was, he referred to the weasel words
13 of the report, where Mr. Donnelly stated that the estimates
14 on contract section C-1 by the design engineers, and the es-
15 timates and bid on the sub-structure of the Cuyahoga River
16 Bridge, confirm the adequacy of their engineering estimates.
17 Mr. Hertz criticized that use of that word "adequacy" and
18 said it was a weasel word.

19 So I thought it would be interesting to get the
20 right, get the exact figures, which at my request Mr. Don-
21 nelly has given to me.

22 Now, the engineering report's estimate on the
23 section of the highway dealing with contract section C-1 was
24 \$3,796,984. The estimate of the contract engineer on the
25 basis of their design work, their detailed soil studies,

1 which the Relator has believed were so important, is
2 \$3,157,057.

3 Now, that difference of some six hundred thousand
4 dollars relates primarily to a difference in rock excavation.
5 The Greiner engineering studies had developed the fact that
6 there was a considerable amount of shale in that area, which
7 Greiner had put in their estimate as rock excavation. On
8 closer examination the design engineers came to the conclu-
9 sion that that shale was of such a character that it could
10 be excavated in the same manner as ordinary excavation and,
11 therefore, estimated it at that cost in place of the more
12 expensive rock excavation, and that accounts for the differ-
13 ence. Otherwise they would have been practically on the
14 nose.

15 Now, on the quantities: the engineering report es-
16 timate on road excavation was 1,230,203 cubic yards. The
17 contract engineers' estimates on the detail was 1,175,369.

18 MR. MCKAY: Is that C-1?

19 MR. LANSDALE: Sir?

20 MR. MCKAY: Is that C-1?

21 MR. LANSDALE: C-1. They were within --

22 MR. HERTZ: Gentlemen, I appreciate the
23 fact --

24 MR. LANSDALE: -- 155,000 cubic yards
25 apart.

1 Now, would you mind letting me finish, please?

2 MR. HERTZ: Go ahead.

3 MR. LANSDALE: Now, on the estimate for the
4 Cuyahoga River Bridge, the engineering report estimate was
5 1,796,190. The low bid of the Horvitz Company was
6 1,163,433, which I think tends to characterize the validity
7 of the Greiner Company estimates.

8 And now I am through, unless there are specific
9 questions.

10 CHAIRMAN SHOCKNESSY: Mr. Lansdale, I think the
11 Commission is indebted to you for a cool, calm, dispassion-
12 ate and objective analysis. I will ask the members at this
13 time if they have any questions they would like to direct to
14 you.

15 Mr. Allen?

16 MR. ALLEN: No.

17 CHAIRMAN SHOCKNESSY: Mr. Teagarden?

18 MR. TEAGARDEN: I have no questions.

19 CHAIRMAN SHOCKNESSY: Mr. Linzell?

20 MR. LINZELL: No.

21 CHAIRMAN SHOCKNESSY: Dr. McKay?

22 MR. MCKAY: No, none.

23 CHAIRMAN SHOCKNESSY: Mr. Lansdale, I have one
24 that I want a bit of illumination on.

25 In your discussion of the memorandum of Relator's

1 Counsel on the monopoly cause of action, you indicated it
2 your belief, I believe -- I want to check my recollection --
3 that the mere presence in a manufactured article or in a con-
4 tract which a public body might enter into of a minor in-
5 gredient under monopoly, that the whole contract would not
6 likely be vitiated.

7 MR. LANSDALE: That's correct. I think
8 I feel even more strongly than that about it.

9 CHAIRMAN SHOCKNESSY: You made the point also
10 that this Commission, of course, is not expecting to pur-
11 chase any paving material directly, but such paving material
12 as it purchases would be indirectly, or as it comes to pos-
13 sess, would be acquired indirectly through the purchase by
14 a contract. I want to ask further, if you didn't discuss
15 it -- and if you did, I don't remember it -- the impact or
16 effect legalistically which the presence of a patented ar-
17 ticle might have in a specification, a patented article be-
18 ing an article protected by a legal monopoly.

19 MR. LANSDALE: There is some law to the
20 effect that in certain circumstances the specification of a
21 patented article might vitiate the competitive bidding as-
22 pect of, or might violate a competitive bidding statute,
23 when a patented article is specified. There is no law to
24 that effect in Ohio. Indeed, there is no law one way or
25 the other. And there is a difference of authority outside.

1 However, we do have in Ohio on the patented
2 article a situation like this, where in the old days pave-
3 ments used to be patented, and it was customary to specify
4 a particular patented pavement, where the only additional
5 thing not monopolized was the labor of putting the pavement
6 down. In that situation there is at least one holding that
7 where there is assurance that all contractors can get the
8 pavement on equal terms, it is quite immaterial that they
9 are limited to the using of a patented material.

10 CHAIRMAN SHOCKNESSY: That they are restricted
11 from using it?

12 MR. LANSDALE: No. That they are re-
13 stricted from using any but a patented material.

14 CHAIRMAN SHOCKNESSY: I see.

15 MR. LANSDALE: Now, in a case like this,
16 where (a) it is not a legal monopoly, (b) there is no show-
17 ing that it is a monopoly, (c) it is such a minor portion of
18 the whole thing as practically to be of no consequence, as
19 is evidenced by the effect of the price of cement on the
20 Cuyahoga Bridge, my personal opinion is that it is just of
21 no consequence. I can't state it --

22 CHAIRMAN SHOCKNESSY: De minimis non curat lex.

23 MR. LANSDALE: Precisely. I know a good
24 limerick about that, too.

25 MR. DUNBAR: Well, I think it would be

1 pertinent, then, in view of what has been said, and bearing
2 in mind that the Commission has before it not only the
3 question of paving and design criteria related thereto, but
4 also the general and supplemental specifications relating
5 to everything, to inquire of the Chief Engineer whether
6 there are any patented articles or anything else as so speci-
7 fied as would restrict its supply to only one supplier or
8 one manufacturer, or anything about it that others couldn't
9 also furnish.

10 MR. KAUER: Well, Mr. Dunbar and mem-
11 bers of the Commission, there is nothing in the specifica-
12 tions, either supplemental or the general specifications or
13 the plans for contract C-1 requiring a proprietary material.
14 In any event, where a proprietary material is permitted
15 there is competition. There is competition with other ma-
16 terials. There is no exclusive specifications or specify-
17 ing of a proprietary or a patented material, so far as I
18 know.

19 CHAIRMAN SHOCKNESSY: So far as you know?

20 MR. KAUER: Yes.

21 CHAIRMAN SHOCKNESSY: Are there any other
22 questions, Mr. Dunbar?

23 MR. DUNBAR: Well, no, I didn't have any
24 particular questions. I just thought that since the sub-
25 ject had been broached here it might be well for the Com-

1 mission to have whatever information on that subject the
2 Chief Engineer could give.

3 CHAIRMAN SHOCKNESSY: Well, I can see how it
4 might become enormously burdensome upon a public body if it
5 were required to determine finally whether or not any in-
6 gredient which might go into a manufactured article which it
7 would buy competitively might be under a monopoly.

8 MR. DUNBAR: It certainly could be enor-
9 mously burdensome.

10 CHAIRMAN SHOCKNESSY: Just as it could be enor-
11 mously burdensome, and I believe would be beyond the intent
12 of any competitive bidding statute, to require a public body
13 to ascertain at its peril that no article specified for a
14 construction contract might not be the subject of a monopoly.

15 MR. DUNBAR: Speaking as the Commission's
16 lawyer, I should say that the important thing when you are
17 making any decision is that the members of the Commission
18 should have procured all the information which they desire
19 and which is available to them, and would suggest that they
20 be sure before taking action on this matter, which has ob-
21 viously been quite controversial, should seek any additional
22 enlightenment that they might require by way of questions as
23 to facts or advice as to law or technical advice before act-
24 ing, and if there should be any questions on the part of the
25 members of the Commission, it would be an appropriate time

1 for them to seek answers to them.

2 MR. McKAY: Mr. Chairman, I would like
3 to ask Chief Counsel a question that has been on my mind
4 since Ralph first presented the argument last Saturday deal-
5 ing with the question of monopoly.

6 Do you have any idea how long it would take for
7 the Federal Trade Commission to resolve the question of
8 monopoly raised in those cases? As far as I'm concerned
9 as an individual, if I were predisposed to wait until such
10 time, does anybody know when it would be resolved as to
11 whether it is a monopoly or no monopoly?

12 MR. DUNBAR: Of course, the question is
13 not before the Federal Trade Commission to --

14 MR. McKAY: What is the time on that
15 law?

16 MR. DUNBAR: There has been, as Mr.
17 Lansdale indicated, an order issued by the Court, and sev-
18 enty-five I think he said out of seventy-seven defendants,
19 and that is my recollection of what appeared in the telegram
20 that Mr. Hertz presented --

21 MR. LANSDALE: That is right.

22 MR. DUNBAR: Seventy-five out of the
23 seventy-seven have filed reports indicating they had com-
24 plied. And, as Mr. Lansdale further indicated, if the Fed-
25 eral Trade Commission be of the opinion that there be any

1 violation of the decree by any of the Defendants, then the
2 normal and legal course of action is for the Federal Trade
3 Commission to seek punitive or other action through the
4 Courts against the contumacious defendant. That kind of a
5 thing could conceivably transpire today or tomorrow or many
6 years from now if evidence were presented to the Federal
7 Trade Commission.

8 There is nothing really before it for decision,
9 and I would suppose that the answer is that there might nev-
10 er be a conclusion in the form of any further action by the
11 Federal Trade Commission.

12 MR. LANSDALE: I would like to amplify
13 that a little bit.

14 MR. McKAY: That is sufficient.

15 I would like to ask a further question. On the
16 assumption, Mr. Dunbar, that the matter were resolved tomor-
17 row, just supposing that, is there any guarantee so far as
18 I am concerned now as an individual member of this Commission
19 that the price of cement per barrel might be lower as re-
20 flected in a bundle contract or might be higher as of two
21 months from now or a year from now?

22 MR. DUNBAR: Well, if the Commission were
23 to award a contract for the construction of section C-1 on
24 the basis of the general and supplemental specifications
25 which have been here presented and upon the basis of the con-

1 tract documents relating alone to that contract, it will
2 not be contracting for the purchase of any concrete -- or,
3 put it another way, it will not be contracting for the pur-
4 chase of any cement. It will be making a contract with a
5 person to build a highway --

6 MR. McKAY: 5.3 miles long. I under-
7 stand that.

8 MR. DUNBAR: -- which will have as one
9 of its ingredients cement. What he will have to pay for
10 that the Commission doesn't know, probably will never know,
11 just as it will not know what he pays for a pound of nails
12 to nail up a form.

13 MR. McKAY: That is right.

14 CHAIRMAN SHOCKNESSY: The Cuyahoga River Bridge
15 example which you mentioned is quite compelling.

16 MR. DUNBAR: Yes. You see, from the
17 standpoint of competition, the competition is between the
18 prospective furnishers of not only cement which, as Mr.
19 Lansdale indicated, is about, oh, one per cent of the total
20 cost of the project --

21 MR. LANSDALE: Three per cent.

22 MR. DUNBAR: Three per cent, I mean --
23 but to furnish every other ingredient that goes into the
24 section, all the labor, supervision, the insurance costs,
25 the overheads that he incurs. And there were seventeen

1 people, as I now recall, weren't there -- is that right?

2 MR. LANSDALE: Seventeen.

3 MR. DUNBAR: -- competing for that par-
4 ticular job.

5 MR. McKAY: That is all.

6 CHAIRMAN SHOCKNESSY: Do you have any question,
7 Mr. Linzell?

8 MR. LINZELL: No.

9 CHAIRMAN SHOCKNESSY: Mr. Teagarden?

10 MR. TEAGARDEN: No.

11 CHAIRMAN SHOCKNESSY: Mr. Allen?

12 MR. ALLEN: No.

13 CHAIRMAN SHOCKNESSY: Mr. Kauer?

14 MR. KAUER: No, I have no other
15 questions that haven't been answered.

16 CHAIRMAN SHOCKNESSY: Has anybody at the table
17 any questions?

18 (No response.)

19 Mr. Hertz indicated earlier that he wanted to
20 speak to the Commission, and I would like to give him that
21 opportunity now to do so.

22 MR. HERTZ: Mr. Chairman, my indication
23 was merely because of the fact that you read into the record
24 that I was here and that Mr. Hamilton and Mr. Griffith are
25 here. I didn't want our failure to speak in any way to

1 indicate that we agreed with anything that was said or that
2 we accepted as true what we consider a highly perverted and
3 distorted version of the evidence in the Shafer case.

4 CHAIRMAN SHOCKNESSY: Is there anything Mr.
5 Hamilton or Mr. Griffith would like to say?

6 MR. HAMILTON: No.

7 MR. GRIFFITH: No, thank you, sir.

8 CHAIRMAN SHOCKNESSY: I have been making notes
9 as I went along here.

10 You have no further questions you wanted to ask,
11 Mr. Dunbar?

12 MR. DUNBAR: Oh, I think not.

13 CHAIRMAN SHOCKNESSY: Nor you, Mr. Crawford?

14 (Mr. Crawford shook his head negatively.)

15 MR. DUNBAR: Unless Mr. Lansdale might
16 have any further comment.

17 MR. LANSDALE: Well, I do have something
18 I want to say. I don't know whether this is the time to
19 say it or not.

20 I am sorry that Mr. Hertz thinks my analysis of
21 the testimony is perverted. I tried to confine it to read-
22 ing from the actual record.

23 MR. HERTZ: Not all of it.

24 MR. LANSDALE: Beg pardon?

25 MR. HERTZ: Not all of it, Jack, and I

1 will show you one example where you didn't.

2 MR. LANSDALE: Where I didn't read from
3 the record?

4 MR. HERTZ: No. Where you didn't
5 read the whole record. You gave the Commission only a
6 part of the story.

7 MR. LANSDALE: Well, I did the best I
8 could, and I tried to be objective about it.

9 Now, there is one thing I want to say about which
10 I will admit that I am not being objective now, and I want
11 to say it because there has been so much innuendo, both in
12 the case and in the streets of Columbus, about the Greiner
13 Company.

14 We were surprised to find coming on the stand in
15 this case Mr. Knoerle, to whom reference has been made.
16 To prepare to cross examine him I went on very short notice
17 to Baltimore and spent a weekend there, and the Greiner Com-
18 pany accorded me the very great courtesy of turning over to
19 me carte blanche their files, and I had the privilege of
20 examining rather carefully at least three dozen very, very
21 thick files relating to jobs that they had done for public
22 bodies.

23 This is something which perhaps properly can't go
24 in evidence in the case, but I want to state it because I
25 believe it and I can personally testify to it, that I found

1 absolutely no evidence or suggestion that in any one of
2 these jobs there had been any improper, unethical methods
3 used, or methods to which even the most right-minded person
4 could take exception. On the contrary, there was in a con-
5 siderable number of these files relating to projects in oth-
6 er states affirmative evidence that they were exceedingly
7 careful to avoid utilizing improperly or otherwise persons
8 whom those in political power suggested it might be wise for
9 them to work through.

10 I saw everything there was in the way of records
11 in these cases. I consider that I found affirmative evi-
12 dence of their integrity and the professional manner in
13 which they sought work, and I came away convinced that they
14 conducted their business, their affairs, both external and
15 internal, to the highest professional standards.

16 CHAIRMAN SHOCKNESSY: Thank you, Mr. Lansdale.

17 MR. DUNBAR: May I say something?

18 CHAIRMAN SHOCKNESSY: Yes.

19 MR. DUNBAR: As is high-lighted by what
20 Mr. Lansdale said, and bearing in mind that the foundation,
21 principal foundation perhaps, of the claims made by the Re-
22 later in the Shafer case is the contention that the Com-
23 mission has been in effect misled by the Greiner Company and
24 the former Director of Highways and had inadequate informa-
25 tion, and that generally an attempt has been made to impugn

1 the validity of the reports and recommendations which have
2 been made by the Greiner Company to the Commission, I sug-
3 gest to you, each member of the Commission, that it is of
4 the greatest importance that you have eliminated, if that
5 be the case, or that, if that not be the case, that you seek
6 the answers by which you can reach a conclusion on the
7 question of whether or not you have complete and unqualified
8 faith in the integrity of these engineers upon whose esti-
9 mates and reports and advice you presumably will rely in
10 some greater or lesser degree in reaching your conclusions.
11 If there be any doubts on these points, it would seem to me
12 that they should be expressed and explored, or whatever in-
13 formation you desire in connection with them should be made
14 available if it has not been made available to you.

15 MR. ALLEN: Mr. Chairman.

16 CHAIRMAN SHOCKNESSY: Yes, Mr. Allen.

17 MR. ALLEN: We have had a great deal
18 of discussion. I think we could make greater progress if
19 we had before us some resolution or motion that we would be
20 talking to. If General Counsel could suggest the proper
21 form, I would like to offer a motion or resolution that we
22 approve the criteria in the Greiner Report with the modifi-
23 cations on the drainage, farm drainage, the drain pipe and
24 on the guard rail.

25 MR. DUNBAR: Your request is for

1 language appropriate to approve the Greiner Report, by which
2 I assume you mean the Greiner Report of August 15, 1951.

3 MR. ALLEN: That's right.

4 MR. DUNBAR: Subject to the supplemen-
5 tation and change, if any, that you referred to?

6 MR. ALLEN: Yes, so that we would have
7 something definite before us to be talking to and discuss-
8 ing.

9 MR. DUNBAR: I'll start.

10 Whereas the Director of Highways transmitted to
11 the Commission on August 7, 1951, the engineering report
12 made to him by the J. E. Greiner Company, together with his
13 recommendations thereon, both relating to Ohio Turnpike Pro-
14 ject No. 1.

15 Whereas between said date and September 4, 1951,
16 the Commission held public hearings, conferences and public
17 meetings with reference to various aspects of said recommen-
18 dations;

19 Whereas on September 4, 1951, the Commission adopt-
20 ed a resolution approving said report and recommendations,
21 except for that part thereof relating to transposed traffic
22 flow, following which the report as so approved was printed
23 and dated August 15, 1951;

24 Whereas on October 2, 1951, the Director of High-
25 ways approved the alignment and design standards of said

1 Ohio Turnpike Project No. 1;

2 Whereas the J. E. Greiner Company, consulting en-
3 gineers to the Commission under contract of employment made
4 on October 2, 1951, by letter dated June 4, 1952, confirmed
5 to the Commission the said engineering report dated August
6 15, 1951, and the estimates therein contained;

7 Whereas fifteen months have elapsed since the
8 aforesaid approval of the said engineering report by the
9 Commission, and in the meanwhile continuing examination has
10 been made of the validity of said report, and the Commis-
11 sion now has two members who are new to it since said ap-
12 proval;

13 Whereas the Commission having fully considered
14 said engineering report and the recommendations therein con-
15 tained, and all the other information brought to the atten-
16 tion of the Commission, and the knowledge and experience of
17 the several members of the Commission, records its present
18 concurrence in said engineering report and its independent
19 determination of the validity of the recommendations there-
20 of;

21 Now, therefore, be it resolved that, after due and
22 full consideration thereof, this Commission hereby approves
23 the engineering report of J. E. Greiner Company dated August
24 15, 1951, as modified and supplemented as to design criteria
25 for agricultural drainage, guard rails and drainage pipe in

1 accordance with resolutions numbers 107-1952, 109-1952, and
2 110-1952 adopted on December 2 and 6, 1952.

3 There is a suggestion, sir.

4 MR. McKAY: I think I would like to
5 suggest, Mr. Chairman, in addition to the word "adopts"
6 that it be confirms and adopts.

7 MR. DUNBAR: Didn't I say "approve"?

8 MR. McKAY: I thought he said "adopts."

9 MR. DUNBAR: I thought I had said "ap-
10 proves and adopts."

11 MR. McKAY: Well, what was it there?

12 (The suggested resolution was read by the report-
13 er.)

14 MR. DUNBAR: That probably is satisfac-
15 tory.

16 MR. McKAY: I suggest it be identified
17 as resolution 117.

18 MR. ALLEN: Well, I would offer that
19 as a resolution before the Commission.

20 CHAIRMAN SHOCKNESSY: You have heard the resolu-
21 tion offered by Mr. Allen. Is there a second?

22 MR. LINZELL: Second.

23 MR. TEAGARDEN: I second the motion.

24 CHAIRMAN SHOCKNESSY: Who has seconded it? Has
25 Mr. Linzell seconded it?

1 MR. LINZELL: Yes.

2 CHAIRMAN SHOCKNESSY: Both Mr. Teagarden and Mr.
3 Linzell spoke about the same time, but, Mr. Linzell, you
4 being ahead of Mr. Teagarden in the alphabet, I'll take you
5 as to the second.

6 Mr. Allen's resolution has been seconded by Mr.
7 Linzell.

8 Now, as Mr. Allen mentioned, the resolution is
9 before the Commission for consideration. The discussion
10 is open.

11 Dr. McKay, do you want to make any comment on that?

12 MR. MCKAY: Why, yes.

13 Since the original report there have been four
14 changes that I have had in mind. By the original report I
15 mean the August 15, 1951, report. Transverse flow, agri-
16 cultural drainage, drainage pipe, guard rail, they have been
17 given consideration by many members.

18 I think I would say also that I feel about this
19 entire proceedings with respect to this particular matter
20 that has been before this Commission all afternoon, that as
21 an individual member of this Commission I have the right at
22 all times to arrive at my own decision with respect to poli-
23 cy and to vote accordingly with respect to the best sources
24 of information that I am possibly able to contact, whether
25 it be the consulting engineers, the former Director of High-

1 ways, the present Director of Highways, or whether it be in-
2 dependent sources that as a research man I am usually in-
3 sisting that I check out and look at.

4 I with a great deal of satisfaction indicate that
5 I would like to ask this Commission to call the question on
6 this matter. I have seen no evidence since the original
7 report, that disturbed me, as I know it did the other mem-
8 bers of the Commission, on July 3rd, from that date to this
9 date, except with respect to the four modifications in the
10 criteria which we have made, notwithstanding all the minor
11 supplementary details of evidence and information.

12 I wish to express my opinion forcefully today.
13 I trust and hope that in the future, coming from a family
14 that was brought up on a farm and a family that for over
15 sixty-five years has been engaged in the lumber business,
16 that when we come, for example, to the question of specifi-
17 cations of the building of these entrances at the Turnpike
18 that we are not going to be concerned as to whether it is
19 going to be a half inch of wallboard, or southern pine, or
20 Pacific Coast fir, or Idaho white pine.

21 I would like to see the questions disposed of and
22 see this Commission on its way to complete the major objec-
23 tive which in my mind is before us. I trust that the ques-
24 tion will come to a prompt vote.

25 CHAIRMAN SHOCKNESSY: Mr. Teagarden, do you have

1 anything to say?

2 MR. TEAGARDEN: Mr. Chairman, as one of
3 those members that were on this Commission at the time the
4 first engineering report was presented, and voicing my ap-
5 proval of it at that time, and since then there has been
6 some modifications in the matter of drainage, guard rails,
7 and so forth, and having expressed myself last Saturday, I
8 have at this time read nothing in the exhibits which were
9 left over the weekend for my observation and checking, to
10 determine whether or not there were other important matters
11 that might change my position. In fact, I have a list here
12 of twenty-seven exhibits which were presented to this Com-
13 mission by Mr. Hertz for us to look over.

14 MR. DUNBAR: There are more than twenty-
15 seven.

16 CHAIRMAN SHOCKNESSY: There are more than twenty-
17 seven.

18 MR. TEAGARDEN: I know there are more than
19 twenty-seven, but there are a number of exhibits that I had
20 already had in my possession. The twenty-seven I listed
21 were merely those that I had not seen.

22 I want to reiterate my confidence in the integri-
23 ty and honesty and the ability of the J. E. Greiner Company,
24 Ted Kauer as previously Highway Director, and as Ted Kauer
25 Chief Engineer of this Commission, when I say at this time

1 that I see no reason for altering or changing my support of
2 the resolution as amended at this time.

3 CHAIRMAN SHOCKNESSY: Mr. Linzell, do you want
4 to make any comment?

5 MR. LINZELL: No, I don't have anything
6 to add. I am ready for the question.

7 CHAIRMAN SHOCKNESSY: With the indulgence of the
8 Commission, I'd like to do something which we haven't cus-
9 tomarily done, but there are people in the room who are in-
10 terested in this action. I see the Counsel for the Trus-
11 tee and I see Mr. Murphy, the principal underwriters' repre-
12 sentative. I would be glad to hear from either if it is
13 agreeable to the Commission, about what either the Trustee
14 or the principal underwriters' or both might care to say.

15 Do you want to say anything, Mr. Murphy?

16 MR. MURPHY: Well, Mr. Chairman and mem-
17 bers of the Commission:

18 CHAIRMAN SHOCKNESSY: This is Mr. Dennis Murphy,
19 Vice-President of the Ohio Company.

20 MR. MURPHY: I think I can state what
21 the position of the principal underwriters is with respect
22 to this matter.

23 We are greatly concerned with any litigation which
24 might result in a delay in the construction of the Ohio Turn-
25 pike. We were quite concerned with the litigation which

1 originated in Maumee, and we made it a condition of our bid
2 for the bonds that that litigation should be cleared up be-
3 fore the bonds were to be delivered to us. The delay in
4 the construction of the Ohio Turnpike is and would be a very
5 serious matter not only to the principal underwriters, but
6 to the investors as well.

7 When the engineering reports of the J. E. Greiner
8 Company and Parsons, Brinkerhoff, Hall and McDonald were
9 first delivered to our group for study to determine the
10 feasibility of the Ohio Turnpike Project No. 1, it was our
11 understanding that the Turnpike was to be constructed in
12 accordance with the design criteria in the Greiner Company
13 report. Our study of the feasibility of that project was
14 based upon the design contained in that report and upon the
15 estimated costs as contained therein. Our study of the fi-
16 nancial feasibility of it was predicated largely on the re-
17 port of estimated revenues as made by Parsons, Brinkerhoff,
18 Hall and McDonald.

19 We had great confidence in the integrity and abil-
20 ity of those two engineering firms, based upon our experi-
21 ence with them in the financing of the Pennsylvania Turn-
22 pike. We still have confidence in their integrity and in
23 their ability.

24 Because of the importance, in fact, absolute nec-
25 essity from a financial standpoint, of completing the con-

1 construction of the Ohio Turnpike within the time schedule con-
2 tained in the Greiner Company report, it is the opinion of
3 the principal underwriters that the Commission should pro-
4 ceed as promptly as possible with the letting of contracts
5 for construction in accordance with the Greiner Company re-
6 port. We hope it will do so. In fact, we as principal
7 underwriters think that the Commission has an obligation to
8 do so, because when we submitted our proposal for the bonds
9 we made the Greiner Company report, the Parsons, Brinker-
10 hoff, report, and the official statement, a part of our bid,
11 and it was our understanding that the Turnpike would be con-
12 structed in accordance with those official documents. The
13 bonds were marketed on that assumption, and it is our be-
14 lief the Turnpike should be built in accordance with those
15 documents.

16 I believe that states rather simply what the po-
17 sition of the principal underwriters with respect to this
18 matter is.

19 CHAIRMAN SHOCKNESSY: Thank you, Mr. Murphy.

20 Would the members of the Commission like to ask
21 Mr. Murphy any questions?

22 (The members of the Commission shook their heads
23 negatively.)

24 CHAIRMAN SHOCKNESSY: Would you, Mr. Donnelly,
25 Mr. Crawford, Mr. Lansdale?

1 MR. CRAWFORD: No.

2 MR. LANSDALE: No.

3 (Mr. Donnelly shook his head negatively.)

4 CHAIRMAN SHOCKNESSY: Mr. Kauer?

5 MR. KAUER: No.

6 CHAIRMAN SHOCKNESSY: Thank you, Mr. Murphy.

7 Mr. Christenson, do you want to speak on behalf
8 of the Trustee?

9 MR. CHRISTENSON: Mr. Chairman, members of
10 the Commission:

11 I think I can state very briefly the position of
12 the Trustee here.

13 CHAIRMAN SHOCKNESSY: This is Mr. John Christenson
14 of Counsel for the Ohio National Bank, Trustee under the in-
15 denture pursuant to which the Commission's bonds were issued.

16 Pardon me.

17 MR. CHRISTENSON: That is all right.

18 The Trustee is naturally concerned about any de-
19 lay in the progress and completion of this project. It
20 would be detrimental, of course, to the bondholders to incur
21 additional expenses and loss of revenues.

22 The Trustee, therefore, is interested in the cov-
23 enant of this Commission, and to quote from the indenture,
24 "To complete construction with all expedition practicable."

25 If the situation should develop that there be un-

1 due delay, it would be necessary for the Trustee to examine
2 it's duties under this indenture to determine whether there
3 is anything that it could do under the terms of the inden-
4 ture or under general law to see that this project is
5 carried out. It would be the view of the Trustee that that
6 would be it's duty in connection with this issue of bonds.

7 Thank you.

8 CHAIRMAN SHOCKNESSY: Thank you, Mr. Christenson.

9 Do you want to make any statement, Counsel for the
10 Relator in the Shafer case?

11 MR. HERTZ: None except to register our
12 dissent.

13 CHAIRMAN SHOCKNESSY: It is thus duly noted.

14 Mr. Dunbar, before putting the question, I want
15 you to state -- and I'd like whatever statement you make to
16 have the adherence and concurrence of special counsel --
17 whether or not there is any court order outstanding or any
18 proceeding in violation of whose letter or spirit action
19 upon this resolution might be considered.

20 MR. DUNBAR: There is none such, and
21 special counsel in this case can speak for themselves.

22 MR. CRAWFORD: We concur in Mr. Dunbar's
23 statement. So far as we know, we know of no such proceed-
24 ing.

25 MR. HERTZ: On that point I would like

1 to point out that I agree that there is no such order, there
2 never has been, and all this talk about the lawsuit having
3 delayed the Turnpike is hocum.

4 CHAIRMAN SHOCKNESSY: Well, I think I have to
5 speak to that. The lawsuit did not have any legal compul-
6 sion delaying action, but had it not been for the interven-
7 tion of the lawsuit, I believe that bids would have been
8 sought several weeks ago.

9 Would you even take exception to that?

10 MR. HERTZ: There was no restraint up-
11 on this Commission. You folks had your minds made up last
12 September. You could have acted then if you had wanted to.

13 CHAIRMAN SHOCKNESSY: Very well, are we ready for
14 the question?

15 MR. McKAY: Question.

16 CHAIRMAN SHOCKNESSY: You may call the roll on
17 the resolution of Mr. Allen, seconded by Mr. Linzell, in ap-
18 proval of the Greiner Report dated August 15, 1951, as sup-
19 plemented, amended or modified by resolutions numbered 107,
20 109 and 110 respectively, 1952.

21 You may call the roll, please.

22 - - -

23 The members answered the roll call as follows:

24 MR. ALLEN: Yes.

25 MR. LINZELL: Yes.

1 MR. McKAY: Yes.

2 MR. TEAGARDEN: Yes.

3 CHAIRMAN SHOCKNESSY: Yes.

4 - - -

5 CHAIRMAN SHOCKNESSY: The resolution is adopted.

6 We will proceed with the next business before the
7 Commission. The general specifications --

8 Do you have something?

9 MR. DUNBAR: I was going to say, I have
10 already put that before you, but I want to make a comment
11 about it.

12 I want to point out that since the -- no. I
13 have already commented on those when I started today. No,
14 there is nothing I have to say about that.

15 CHAIRMAN SHOCKNESSY: Well, the general and sup-
16 plemental specifications are before the Commission.

17 MR. LINZELL: I move their adoption.

18 MR. McKAY: I second.

19 MR. DUNBAR: I suggest you ought to pro-
20 ceed with some formality, to the extent of appropriate reso-
21 lution, if I might.

22 MR. LINZELL: Do you have a resolution
23 prepared on that?

24 MR. DUNBAR: I have got part of one.
25 I can finish it.

1 Whereas general and supplemental specifications
2 and standard drawings have been completed, subject to ap-
3 proval of the Commission, and are before it this day for
4 consideration; and

5 Whereas the Commission has duly and fully consider-
6 ed the same;

7 Now, therefore, be it resolved that the general
8 specifications, supplemental specifications and standard
9 drawings which have been presented to this meeting are ap-
10 proved and adopted for Ohio Turnpike Project No. 1.

11 CHAIRMAN SHOCKNESSY: I believe they were pre-
12 sented to the meeting of December 6th, weren't they?

13 MR. DUNBAR: Well, yes. They are re-
14 presented today, though.

15 CHAIRMAN SHOCKNESSY: I think they were presented
16 then and have been before the Commission ever since.

17 MR. DUNBAR: All right, but I want to
18 make sure that you realize that your action should be on
19 them in the form presented today, because I have commented
20 upon a change in one sentence.

21 CHAIRMAN SHOCKNESSY: All right, then, say it,
22 as they are before us today.

23 MR. DUNBAR: All right, that's good.

24 Can we back up? Change, "Which have been pre-
25 sented to this meeting," to "Which are before this meeting."

1 Can you do that?

2 I think I stopped with the words, "Ohio Turnpike
3 Project No. 1, and shall be printed; provided that any
4 changes which are in the nature of adding or changing head-
5 ings, captions, tables of contents, and style of writing or
6 printing, or in the nature of filling in blank spaces, or
7 correcting typographical, clerical or arithmetical errors,
8 may be made upon the authorization of either the Chief En-
9 gineer or General Counsel.

10 And may I comment --

11 CHAIRMAN SHOCKNESSY: Is that the end of the
12 resolution?

13 MR. DUNBAR: That's the end of the reso-
14 lution.

15 CHAIRMAN SHOCKNESSY: That's the resolution that
16 Mr. Linzell is going to offer?

17 MR. DUNBAR: Well, I don't know whether
18 he is or not, but I want to say that there are two or three
19 places where dates have been left blank, for example, the
20 date of the specifications, which, if they are adopted to-
21 day, would be today, as I understand. There in all human
22 probability still remain some typographical errors which
23 will probably be caught, even though they have been gone
24 over many times.

25 CHAIRMAN SHOCKNESSY: All right.

1 MR. DUNBAR: And there will be, I am
2 sure, almost a necessity for adding certain tables of con-
3 tents, and so forth.

4 That's the reason for this language that I suggest
5 in addition to the bare approval.

6 MR. LINZELL: I present that resolution.

7 MR. McKAY: I will second it, Mr. Chair-
8 man, with this statement about them, that so far as I am
9 concerned individually, the check of the contract engineers
10 with respect to all the details, both general and supplemen-
11 tary, plus the Director of Highways' comments and the re-
12 view that has gone on since they were first presented and,
13 secondly, because the printing time to have available sup-
14 plies could well mean that if the general specifications as
15 they stand today are not adopted and are not into printing,
16 that delays can occur, and I am having no part in any pro-
17 cedure, which is sound in my opinion to start with, that
18 will result in a delay of any contract that will result in
19 a delay of any opening, even of section No. 1 of this Turn-
20 pike. And I, therefore, second Mr. Linzell's resolution
21 No. 118.

22 CHAIRMAN SHOCKNESSY: Thank you, Dr. McKay.

23 MR. DUNBAR: Before you go further, may
24 I suggest one change in language?

25 Mr. Kauer has just pointed out to me that it might

1 be desirable, and I agree with him, to identify these stan-
2 dard drawings in the resolution as numbers 1 to 18, and I
3 suggest the insertion after the word drawings in the reso-
4 lution of "Nos. 1 to 18, both inclusive."

5 CHAIRMAN SHOCKNESSY: Is that satisfactory, Mr.
6 Linzell?

7 MR. LINZELL: Yes, that is satisfactory.

8 CHAIRMAN SHOCKNESSY: Is that satisfactory to
9 you, Dr. McKay?

10 MR. MCKAY: Yes, indeed.

11 CHAIRMAN SHOCKNESSY: All right, now, shall we
12 discuss these specifications further? Would the Commission
13 like any further comment at this time from Mr. Kauer or from
14 Mr. Donnelly?

15 Mr. Kauer, these have come to us with your ulti-
16 mate recommendation?

17 MR. KAUER: Yes, sir, they meet with
18 my approval, Mr. Chairman.

19 CHAIRMAN SHOCKNESSY: Mr. Donnelly, these speci-
20 fications come to us with your ultimate recommendation, en-
21 compassing that of the J. E. Greiner Company?

22 MR. DONNELLY: They do, sir.

23 CHAIRMAN SHOCKNESSY: All right, is there any-
24 thing the Commission would like to ask?

25 MR. TEAGARDEN: No, sir.

1 MR. ALLEN: No.

2 CHAIRMAN SHOCKNESSY: Any discussion?

3 (The members shook their heads negatively.)

4 CHAIRMAN SHOCKNESSY: Shall we have the question?

5 (No response.)

6 You may call the roll, please.

7 - - -

8 The members answered the roll call as follows:

9 MR. LINZELL: Yes.

10 MR. McKAY: Yes.

11 MR. ALLEN: Yes.

12 MR. TEAGARDEN: Yes.

13 CHAIRMAN SHOCKNESSY: Yes.

14 - - -

15 CHAIRMAN SHOCKNESSY: The resolution is unani-
16 mously adopted.

17 MR. McKAY: Does it require any motion
18 to order them printed, or not?

19 CHAIRMAN SHOCKNESSY: No.

20 The plans and specifications for the Maumee Bridge
21 have been placed before the Commission today, I believe.

22 MR. DUNBAR: They are lying here.

23 MR. KAUER: These are the plans for
24 the sub-structure of the bridge over the Maumee River in
25 Lucas and Wood counties.

1 CHAIRMAN SHOCKNESSY: The members of the Com-
2 mission have been quite well familiar with the situation
3 with respect to this bridge which will span the Maumee Riv-
4 er for some long while, and the existence of the litigation
5 in Lucas County has been a deterrent to our earlier action,
6 but the plans are before the Commission today. Now that
7 the general specifications have been adopted, it would seem
8 to me that action might well be taken on the plans for the
9 sub-structure of the Maumee River Bridge, being described
10 as Contract C-46-A.

11 Do these plans and specifications have your ap-
12 proval, Mr. Kauer?

13 MR. KAUER: Yes, sir, Mr. Chairman,
14 these plans do have my approval.

15 CHAIRMAN SHOCKNESSY: And Mr. Donnelly?

16 MR. DONNELLY: They do, sir.

17 CHAIRMAN SHOCKNESSY: Would the Commission like
18 to ask any questions of the engineers with respect to these
19 plans?

20 MR. McKAY: I would like to ask a minor
21 question, Jim.

22 CHAIRMAN SHOCKNESSY: Yes, sir.

23 MR. McKAY: What would be the normal
24 period of time subsequent to approval of plans of this or
25 any subsequent project, Mr. Kauer, of being able to get

1 working plans in existence prior to a period of time of bid-
2 ding? What is involved on the various prints and all the
3 details that are involved? What have you got about three
4 weeks or a month of work, plus contract papers and all of
5 that involved?

6 I am still talking, Mr. Chairman, of the question
7 of delay time with respect to contracts and opening of the
8 project.

9 MR. KAUER: Well, Dr. McKay, the pre-
10 paration of the prints and the special provisions and pro-
11 posals probably could be accomplished within two weeks' time.
12 It's believed desirable that the work be advertised from
13 three to four weeks, or as much as thirty days perhaps in
14 some instances, in complex structures, to give contractors
15 an opportunity to thoroughly review the work and the plans
16 and the specifications before bids are submitted.

17 CHAIRMAN SHOCKNESSY: While we have been talking,
18 Mr. Dunbar, have you been able to develop a resolution?

19 MR. DUNBAR: No, I haven't any, but I
20 can do that in a hurry.

21 CHAIRMAN SHOCKNESSY: All right, Mr. Teagarden,
22 this is up in your bailiwick.

23 MR. TEAGARDEN: I will be glad to offer the
24 resolution if Counsel will prepare it.

25 MR. DUNBAR: Whereas there have been

presented to this meeting plans for the sub-structure of the Maumee River Bridge, the approval of which has been recommended by the Commission's Chief Engineer and Consulting Engineer;

And whereas the Commission has duly and fully considered the same;

Now, therefore, be it resolved that the Commission does hereby approve said plans for contract C-46-A.

MR. TEAGARDEN: I offer that resolution, Mr. Chairman.

MR. ALLEN: Second.

CHAIRMAN SHOCKNESSY: You have heard the resolution offered by Mr. Teagarden, seconded by Mr. Allen, approving the plans for the --

MR. DUNBAR: I think that's wrong. I think I left out plans for the sub-structure of --

CHAIRMAN SHOCKNESSY: No. You said that.

MR. DUNBAR: Did I get that in?

CHAIRMAN SHOCKNESSY: -- for the sub-structure of the Maumee River Bridge, being Contract C-46-A.

As I said before, the Commission has had this problem before it for a long, long while and is certainly well conversant with the plans for this bridge.

Is there any discussion?

(No response.)

1 Shall we have the question?

2 (No response.)

3 Will you call the roll?

4 - - -

5 The members answered the roll call as follows:

6 MR. TEAGARDEN: Yes.

7 MR. ALLEN: Yes.

8 MR. McKAY: Yes.

9 MR. LINZELL: Yes.

10 CHAIRMAN SHOCKNESSY: Yes.

11 - - -

12 CHAIRMAN SHOCKNESSY: The resolution is unani-
13 mously adopted.

14 MR. McKAY: Mr. Shocknessy, I have an-
15 other question I would like to ask the Consulting Engineer,
16 Mr. Donnelly, if he doesn't mind.

17 Your progress report on November 15th, as I re-
18 call it, showed general contract engineers' plans completed
19 as of about fifty-five per cent.

20 MR. DONNELLY: That's right, sir.

21 MR. McKAY: As of December 15th what
22 percentage of completed plans do you think it would be then,
23 just approximately, seventy, sixty-five?

24 MR. DONNELLY: It would be between sixty-
25 five and seventy, I would say.

1 MR. McKAY: May I ask you a second
2 question? Is it to be anticipated, then, that there will
3 be following these plans that are in here now a steady flow
4 progressively growing in volume of plans which all are re-
5 lating to our schedule of construction for opening on time
6 of the original plan of financing and the prospectus and
7 the engineering report?

8 MR. DONNELLY: They will, as you have
9 stated, Dr. McKay, come in in a regular schedule and a regu-
10 lar flow in increasing number from now on. This Commission,
11 in our opinion, will be taking bids almost weekly from now
12 until sometime in May, until the whole contract, the whole
13 job will be under contract.

14 MR. McKAY: Thank you, Mr. Donnelly.

15 CHAIRMAN SHOCKNESSY: We have the Cuyahoga River
16 crossing super-structure plans here today, too, I believe.

17 MR. KAUER: Yes, sir.

18 CHAIRMAN SHOCKNESSY: The Commission also is well
19 conversant with the Cuyahoga River Bridge, having approved
20 the plans for the sub-structure some weeks ago and ground
21 having been broken for this bridge on the 27th of October.

22 I believe it would be in order for a resolution
23 to be before the Commission in approval of the plans for the
24 super-structure of the Cuyahoga River Bridge, being Contract
25 No. C-15-B.

1 Do we have a resolution?

2 MR. DUNBAR: Well, I would suggest that
3 a resolution can be worded identically with the last one,
4 except to substitute for "sub-structure," "super-structure,"
5 for "Maumee," "Cuyahoga," and for the contract number make
6 it C-15-B. And I don't believe that Mr. Kauer's and Mr.
7 Donnelly's comments on the other plans were at least specifi-
8 cally addressed to these. They may have been.

9 MR. McKAY: Mr. Chairman, for the same
10 reasons, again, of keeping on schedule and not getting into
11 any delay time with respect to the opening of this project,
12 with all the consequences involved, I move the adoption of
13 the resolution as provided or suggested by Chief Counsel,
14 with such modifications as are made with respect to the ap-
15 proval of sub-structure of C-46-A, relating to the super-
16 structure of the Cuyahoga River Bridge.

17 MR. LINZELL: Second the motion.

18 CHAIRMAN SHOCKNESSY: It has been moved by Dr.
19 McKay and seconded by Mr. Linzell that the plans for the
20 super-structure of the Cuyahoga River Bridge, being contract
21 No. C-15-B, be approved.

22 Is there any discussion?

23 As I said before, the Commission is well convers-
24 ant with this bridge and probably is ready to take action.

25 MR. KAUER: Mr. Chairman, these plans

meet with my approval, and although work has just started on the sub-structure for this bridge, there is a great deal of fabrication work that must go forward and must start very soon.

CHAIRMAN SHOCKNESSY: Is it your belief, too, Mr. Donnelly, that these plans should be made the subject of action today?

MR. DONNELLY: I do, sir, definitely.

CHAIRMAN SHOCKNESSY: You are recommending to the Commission that action be taken today, Mr. Kauer, and you, Mr. Donnelly?

MR. KAUER: Yes, sir.

MR. DONNELLY: That is correct.

CHAIRMAN SHOCKNESSY: You have heard the resolution offered by Dr. McKay and seconded by Mr. Linzell. Is there any discussion? Shall we have the question?

(No response.)

Will you call the roll, Mr. Soller?

- - -

The members answered the roll call as follows:

MR. MCKAY: Yes.

MR. LINZELL: Yes.

MR. TEAGARDEN: Yes.

MR. ALLEN: Yes.

CHAIRMAN SHOCKNESSY: Yes.

- - -

1 CHAIRMAN SHOCKNESSY: The resolution is unanimous-
2 ly adopted.

3 MR. SOLLER: Mr. Chairman, may that be
4 identified in the record as No. 120-1952?

5 CHAIRMAN SHOCKNESSY: It may.

6 Now, the plans for contract C-1 are before us, I
7 believe, but have not been the subject of any discussion so
8 far today, have they?

9 MR. DUNBAR: No, sir.

10 I had those here at a previous meeting and those
11 remaining contract documents. Of course, you will appreci-
12 ate that the general specifications, supplemental specifica-
13 tions and standard drawings will also be contract documents.
14 The remaining ones I have here, being a form of a notice to
15 bidders, a form of special provisions, a form of proposal,
16 and a form of contract, should be acted upon by the Com-
17 mission, and I have prepared again in the rough, a resolu-
18 tion by which that might be accomplished. I can only read
19 this again, I'm sorry.

20 CHAIRMAN SHOCKNESSY: Mr. Allen says that he
21 would like to offer a resolution approving the plans for
22 Contract C-1 and the documents for the contract.

23 MR. DUNBAR: Do you want me to state it?

24 CHAIRMAN SHOCKNESSY: Yes, state it.

25 MR. DUNBAR: Whereas there are before

1 this meeting forms of contract documents for construction
2 contract C-1, to-wit, forms of notice to bidders, proposal,
3 plans, special provisions, and contract; and

4 Whereas the Commission has duly considered the
5 same;

6 Now, therefore, be it resolved that the Commission
7 hereby approves the forms before it at this meeting of con-
8 tract documents, to-wit, the notice to bidders, the propos-
9 al, the plans, the special provisions, and the contract (to
10 be known as Contract No. C-1) for the construction of that
11 portion of Ohio Turnpike Project No. 1 which is known as
12 Construction Section C-1, which begins at a point about
13 five hundred feet east of South Range-Center Road at Turn-
14 pike Center Line Station 1015 + 00 in Mahoning County and
15 eastwardly to the Ohio-Pennsylvania State Line at Center
16 Line Station 1292 + 03.83 at the eastern boundary of Mahon-
17 ing County.

18 Further resolved that the Chief Engineer and Gen-
19 eral Counsel shall do all things needful to publish statu-
20 tory and any additional notice which they deem desirable of
21 the taking of bids for the performance of said contract No.
22 C-1, and to take and open the same on January 3, 1953, and
23 report the results thereof to the Commission;

24 And further resolved that the Chief Engineer and
25 General Counsel shall, as promptly as feasible, do all things

1 requisite to cause and they shall cause to be published ad-
2 vertisements of notices for the taking of bids for the con-
3 struction of the remaining portions of Ohio Turnpike Pro-
4 ject No. 1.

5 Gentlemen, if I may comment just a moment -- that
6 date January 3rd is one that I have discussed with the Com-
7 mission's Chief Engineer and Consulting Engineer. It is on
8 a Saturday. It appears to be the earliest practicable date
9 upon which bids could be received with advertising to com-
10 mence forthwith, and in the light of the requirements for
11 the printing of the general specifications. The Commission
12 will have, according to its schedule, a regular meeting on
13 Tuesday, the 6th of January, so that there would elapse
14 three days after the opening of bids, during which it might
15 be possible for the engineers to compile and tabulate the
16 bids and the information contained in them for the benefit
17 of the Commission.

18 This last paragraph I tacked on the resolution as
19 an afterthought, because I think the staff of the Commission
20 ought to be under a mandate to do the things that need to be
21 done to get the work under way as fast as possible, leading
22 ultimately toward the advertising for the remaining portions
23 here. There is, as you know, more to be done besides the
24 adoption of the plans.

25 CHAIRMAN SHOCKNESSY: All right, you have heard

1 the resolution of Mr. Allen as stated by Mr. Dunbar. Is
2 there a second?

3 MR. TEAGARDEN: Second the resolution.

4 CHAIRMAN SHOCKNESSY: The resolution has been
5 seconded by Mr. Teagarden. Shall we have any discussion of
6 this contract in addition to that that we have been having
7 for weeks?

8 MR. KAUER: Mr. Chairman, may I make a
9 comment?

10 CHAIRMAN SHOCKNESSY: Mr. Kauer, do you want to
11 make a statement?

12 MR. KAUER: Mr. Chairman and members of
13 the Commission;

14 First of all, I would like to say that the plans
15 consist of two rolls of drawings here. One is the general
16 plan showing the details, and the other roll of drawings or
17 part of the official plans are the cross sections. The
18 first set consists of fifty pages, fifty sheets, and the
19 cross sections consist of one hundred and twenty-three
20 sheets. There will be submitted to contractors with these
21 plans soil profile drawings, which are not official plans
22 but are for informational purposes.

23 Since the checking and the approval of the plans
24 in detail, Mr. Chairman, the special provisions have been
25 carefully written and reviewed. The proposal is now ready.

1 If advertisement can be inserted promptly, plans can be made
2 available to contractors promptly, I am confident that we
3 will get good bids on January 3rd. I believe there will be
4 ample time for it.

5 MR. DUNBAR: There is something that I
6 should say that I didn't about these probably. It is minor
7 in character.

8 The plans involved here in this contract C-1 were
9 first brought before you formally on December 2nd, and since
10 then the Chief Engineer has informed me that certain ambi-
11 guities were discovered in some of the column headings where
12 quantities were tabulated, and those have been changed, with
13 some minor changes in language. I discussed it with him,
14 and I am very sure that it is an improvement. And a change,
15 he tells me, has been made on one plan that had to do with
16 some particular guard rail on some particular bridge ap-
17 proach. If you want to know about it, ask him.

18 But as I understand it, with those exceptions,
19 these are what have been before you since last Tuesday.

20 CHAIRMAN SHOCKNESSY: All right, is there any fur-
21 ther discussion? Do the members have any further discus-
22 sion?

23 Mr. Allen?

24 MR. ALLEN: No.

25 CHAIRMAN SHOCKNESSY: Mr. Teagarden?

1 MR. TEAGARDEN: No.

2 CHAIRMAN SHOCKNESSY: Mr. Linzell?

3 MR. LINZELL: No.

4 CHAIRMAN SHOCKNESSY: Dr. McKay?

5 MR. MCKAY: No.

6 CHAIRMAN SHOCKNESSY: Counsel?

7 MR. LANSDALE: No.

8 MR. MCKAY: Question.

9 CHAIRMAN SHOCKNESSY: The question has been
10 called. Will you call the roll, please, Mr. Secretary?

11 - - -

12 The members of the Commission answered the roll
13 call as follows:

14 MR. ALLEN: Yes.

15 MR. TEAGARDEN: Yes.

16 MR. MCKAY: Yes.

17 MR. LINZELL: Yes.

18 CHAIRMAN SHOCKNESSY: Yes.

19 - - -

20 CHAIRMAN SHOCKNESSY: The resolution is adopted.

21 Now, Mr. Dunbar, do we have another resolution we
22 need for advertising or anything?

23 MR. KAUER: No, that is all done.

24 MR. DUNBAR: No. I have enough in this
25 to carry that forward. I don't have anything to suggest

1 further other than a resolution for approval of the actions
2 of the administrative officers.

3 CHAIRMAN SHOCKNESSY: All right, who wants to
4 offer this?

5 MR. TEAGARDEN: I move this resolution.

6 CHAIRMAN SHOCKNESSY: I have a resolution offered
7 by Mr. Teagarden:

8 "Now, therefore, be it resolved that all official
9 actions taken by the aforesaid administrative officers of
10 the Commission on its behalf since the Commission's meeting
11 on December 2, 1952, are hereby ratified, approved and con-
12 firmed."

13 Is there a second?

14 MR. LINZELL: Second.

15 CHAIRMAN SHOCKNESSY: This resolution ratifying
16 the actions of the administrative officers offered by Mr.
17 Teagarden has been seconded by Mr. Linzell. Is there any
18 discussion?

19 (No response.)

20 Will you call the roll, please, Mr. Secretary?

21 - - -

22 The members answered the roll call as follows:

23 MR. TEAGARDEN: Yes.

24 MR. LINZELL: Yes.

25 MR. McKAY: Yes.

1 MR. ALLEN: Yes.

2 CHAIRMAN SHOCKNESSY: Yes.

3 - - -

4 CHAIRMAN SHOCKNESSY: The resolution is unanimous-
5 ly adopted.

6 The Chairman will entertain a motion to adjourn
7 subject to call of the Chairman.

8 I can say that we were allowed this room until
9 6:45. It is now 6:47.

10 (The meeting then adjourned.)

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COURT REPORTER'S CERTIFICATE

I, Ira W. Pratte, do hereby certify that I reported the proceedings of meeting of Ohio Turnpike Commission held in the Blue Room of the Seneca Hotel, Columbus, Ohio, on Tuesday, December 9, 1952, beginning at 1:30 o'clock, P. M.; that all of the above and foregoing is a true and correct transcript of the proceedings as reported by me in this matter on the 9th day of December, 1952.

Ira W. Pratte
Ira W. Pratte, Court Reporter