

OHIO TURNPIKE COMMISSION

Resolution No. 45-1955
Pertaining to Final Payment to Contractors

WHEREAS some of the Commission's construction and steel-fabrication contracts provide that work thereunder shall be completed by dates which are earlier than is necessary for the opening of Ohio Turnpike Project No. 1 on October 1, 1955, as scheduled, and some of the Commission's construction contracts relating to the Eastgate Section have contained dates of completion which were earlier than was necessary for the opening of the Eastgate Section on the date scheduled therefor;

WHEREAS some of the contractors having such contracts with the Commission have not or may have not performed their contracts completely within the time or times required thereby;

WHEREAS the Commission has been advised by its consulting engineer, chief engineer, and executive director that it has not been damaged by the delays in performance of some such contracts, and in such instances the Commission's consulting engineer, chief engineer, and executive director have recommended that it make final payment under those contracts providing for liquidated damages without deduction of any amount for such damages in such instances;

WHEREAS in some of the Commission's contracts, having partial- or final-completion dates earlier than October 1, 1955, no provision for liquidated damages is contained, and the Commission is likewise advised that, even though some such contracts be not completed within the time or times required thereby, the Commission may not be damaged, and such fact may in some instances be ascertainable and in other instances may not be ascertainable upon the completion of said contracts; and

WHEREAS the Commission's consulting engineer, chief engineer, and the executive director have recommended that final payment be made under such contracts containing no provision for liquidated damages, notwithstanding delays which may have occurred in the completion thereof, without deduction of any amount for damages in those instances in which it appears that no damage to the Commission has resulted, or that the existence of damage or the amount thereof cannot practically be ascertained when the payment becomes due and is proposed to be made;

NOW, THEREFORE, BE IT

RESOLVED that the Commission's executive director and general counsel, acting jointly, may, upon the recommendation or concurrence of its consulting engineer, direct that final payment under any of its construction and steel-fabrication contracts containing clauses providing for liquidated damages for failure to complete within the time or times required thereby, respectively, be made notwithstanding any delays which may have occurred in the performance thereof, but such authority shall be applicable only to final payments under contracts having partial- or final-completion dates earlier than October 1, 1955, and shall not be construed to eliminate any requirement which is otherwise prerequisite to the making of such final payment; and

FURTHER RESOLVED that the Commission's executive director and general counsel, acting jointly, may, upon the recommendation or concurrence of the consulting engineer, likewise direct that payment be made under any of the Commission's contracts having partial- or final-completion dates earlier than October 1, 1955, in which no provision for liquidated damages is contained, notwithstanding any delays which may have occurred in the performance thereof, provided that such final payment be accompanied by a written reservation, in form satisfactory to general counsel, of the Commission's rights to damages for breach by the contractor of the contract.

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