

OHIO TURNPIKE COMMISSION

Resolution No. 6 -1956 Modifying Resolution
No. 127-1954, Regarding Affidavits From Con-
tractors Before Final Payment

WHEREAS the Commission has heretofore, in resolution No. 127-1954, provided for the taking of affidavits from contractors that all bills, payrolls, and costs of every type and nature whatsoever connected with the performance of the contract have been paid in full, as more specifically set forth in said resolution and the form of affidavit attached thereto and made a part thereof;

WHEREAS it has become apparent that in some instances contractors cannot furnish said affidavit without either paying claims which they do not consider to be justly due and which in fact may not be justly due or making exceptions for such claims in said affidavit;

WHEREAS the Commission desires to permit the making of such exceptions in those instances in which a bona fide dispute appears to exist between a contractor and any third party, and to provide for the furnishing of a bond by the contractor in those instances in which the furnishing of a bond appears to be necessary so that financial protection may be maintained for such of said claims as may legally be determined to be due, in such manner as not to delay the final payment under the contract; and

WHEREAS the Commission is informed that in some instances it may be difficult or impractical for contractors having contracts with the Commission to pay to their subcontractors percentages which they are entitled to retain under their subcontracts, prior to the making of final payment to them by the Commission;

NOW, THEREFORE, BE IT

RESOLVED that in any instance in which an affidavit or affidavits are required pursuant to the Commission's resolution No. 127-1954, the officer or employee requiring same may permit one or more exceptions to be made therein for any and all claims with respect to which a bona fide dispute exists between the contractor and the claimant or claimants, which shall be deemed to include all unresolved claims covered by insurance carried by the contractor; provided, however, that in any such case the officer or employee requiring the affidavit pursuant to said resolution shall seek the advice of general counsel as to whether or not it is desirable that the contractor be required to furnish a bond with surety in favor of said claimant or claimants conditioned in substance upon the payment to said claimant or claimants of any amount which shall be found to be due from the contractor to said claimant or claimants by virtue of any final judicial determination, and that said officer or employee, if advised that such bond is desirable, shall require the filing of same by the contractor in form satisfactory to general counsel and in an amount equal to 125 per cent of said claim;

FURTHER RESOLVED that the officer or employee of the Commission requiring said affidavit may permit it to contain exceptions for any retained percentages which the contractor filing same is entitled to retain under his contracts with his subcontractors; provided, however, that said retained percentages shall be paid by the contractor or arrangements satisfactory to the chief engineer made for their payment, prior to or contemporaneously with the making of final payment by the Commission to said contractor.