

MINUTES OF THE TWO HUNDREDTH MEETING  
July 5, 1966

Pursuant to the bylaws of the Ohio Turnpike Commission permitting the Chairman to change the place of the meeting the Commission met in regular session in the conference room of the Ohio Department of Highways Building at 139 East Gay Street, Columbus, Ohio at 11:00 A. M., eastern standard time, on July 5, 1966 with the key members of the staff; a representative, Mr. H. A. Harnden, of the Consulting Engineers; a representative, Mr. P. Joseph Sesler, of the Trustee; members of the press and others in attendance. The meeting was called to order by the Chairman, the roll was called, and the attendance was reported to be as follows:

Present: Mr. E. C. Redman, Mr. Charles J. Chastang, Mr. O. L. Teagarden, Mr. James W. Shocknessy.

Absent: Mr. P. E. Masheter.

The Chairman announced that a quorum was present. He said Mr. Masheter was represented by Mr. C. H. Makeever, First Assistant Director of Highways, who, in accordance with the provision of law, was the Member ex-officio in the absence of the Director of Highways. He said the Commission's General Counsel and the Commission's Fiscal Counsel had given the Commission opinions as requested at the meeting before the last as to the status of the Assistant Director when the Director was absent and that thereafter when the roll was being called it would be called for the Assistant Director when the Director was absent. He said the record thereafter would show the basis on which the Commission received the vote of the Assistant Director in the absence of the Director. He said the opinions of the General Counsel and of the Fiscal Counsel would be made part of the record of the meeting. He thanked Mr. Makeever for calling the matter to the attention of the Commission. The opinions of the General Counsel and of the Fiscal Counsel follow:

"June 1, 1966

"TO: Chairman

FROM: General Counsel

SUBJECT: Duties of First Assistant Director of Highways in  
Attending Meetings of the Ohio Turnpike Commission  
in the Absence of the Director of Highways

"The Ohio Turnpike Act (Revised Code, Sec. 5537.02) provides for a commission to be known as the Ohio Turnpike Commission. The Commission is declared to be a body both corporate and politic in the State of Ohio. The membership of the commission is then stated to be as follows:

'The commission shall consist of four members, appointed by the governor, with the advice and consent of the senate, no more than two of whom shall be members of the same political party, and the director of highways who shall be a member ex officio without compensation. The appointive members shall be residents of the state, and shall have been qualified electors therein for a period of at least five years next preceding their appointment. \*\*\*A member of the commission shall be eligible for re-appointment. Each appointed member of the commission, before entering upon his duties, shall take an oath as provided by Section 7 of Article XV, Ohio Constitution.'

Such appointed members shall also give a surety bond to the state in the penal sum of \$25,000 and shall receive an annual salary of \$5,000.

"The same section provides that the commission shall elect one of its appointed members as chairman, and another as vice chairman, and shall appoint a secretary-treasurer who need not be a member of the commission. It is further declared that three members of the commission shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the commission.

"It will be noted from the foregoing that certain requirements as to appointive members of the commission do not apply to the ex officio member. Thus the four appointed members of the commission who are appointed by the governor are to be appointed 'with the advice and consent of the senate'. Furthermore, the appointive members shall be residents of the state and shall have been qualified electors in Ohio for at least five years next preceding their appointment. Likewise, each appointed member shall give bond and also take an oath as provided by Section 7 of Article V of the Ohio Constitution. Again, appointed members alone are eligible to be elected chairman or vice chairman.

"As distinguished from the qualifications for an appointed member, the director of highways becomes a member of the commission ex officio and he need not, so far as eligibility as member of the Ohio Turnpike Commission is concerned, be a qualified elector, i. e.

a resident of the state, for more than one year preceding his appointment. (Ohio Constitution Article XV, Section 4, provides that 'no person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector'.) Furthermore, the director of highways is not required to take an oath before entering upon his duties nor to give bond.

"The question has recently arisen as to whether, in the case of the absence of the Director of Highways the First Assistant Director of Highways may perform the duties of the Director of Highways as a member ex officio of the Ohio Turnpike Commission.

"After careful study of this question, and particularly the applicable Ohio statutes, I come to the conclusion that, in the absence of the Director of Highways the First Assistant Director of Highways may perform the duties of the Director of Highways and he may therefore and to that extent take his seat as a member ex officio of the Ohio Turnpike Commission. This may seem to be a surprising conclusion, in view of the general principle of the law that responsibilities of a highly personal and fiduciary nature stemming from a position of trust and confidence cannot ordinarily be delegated to another to perform. I reach the conclusion that, in this instance, the First Assistant Director of Highways may perform the duties of his chief, including that of serving as a member of the Ohio Turnpike Commission because of certain specific Ohio statutes which appear to make the matter an exception to the general law. I find this exception engrafted on the general principle in the case in The Ohio Bar for May 23, 1966 entitled Burkholder v. Lauber, 6 Ohio Misc. 152, a decision rendered by Judge Ham of the Fulton County Common Pleas Court under date of November 2, 1965. In that case, discussing the certain duties of the county commissioners not subject to delegation, the court makes the following statement:

'Where the powers of judgment and discretion are by law reposed in a public officer, the presumption is that such officer was selected because of his fitness and competency to exercise that judgment and discretion, and unless the authority to do so is expressly conferred upon him, he may not delegate his powers and duties to another.' (44 O. Jur. (2d), 'Public Officers,' Section 65, p. 552)

"The statutes I have reference to which provide for an appointment by the Director of Highways of the State of Ohio of a First Assistant Director of Highways are found in Revised Code of Ohio, Section 5501.04, providing in part as follows:

'The director of highways shall appoint a first assistant director of highways, who shall be a competent registered professional civil engineer, who shall serve during the pleasure of the director, and who shall act as chief engineer of the department of highways. In the absence of the director such first assistant shall perform and discharge all the duties of the director.'

and also in Revised Code of Ohio, Section 121.04, providing in part as follows:

'Offices are created within the several departments as follows:

\*\*\* In the department of highways:

First assistant director of highways.'

See also R. C. Sec. 121.05 in part as follows:

'In each department there shall be an assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in section 121.04 of the Revised Code, \*\*\*. When a vacancy occurs in the office of director of any department, the assistant director thereof shall act as director until such vacancy is filled. (Eff. 9-9-57.)'

"From examination of the statutes quoted it is apparent that the General Assembly has provided that (1) in the absence of the Director of Highways and (2) in the event of a vacancy, the First Assistant Director shall perform and discharge the duties of the director.

"I should add that the significance of the statutes giving to the First Assistant Director of Highways authority to act when a vacancy occurs in the office of Director of Highways has been recognized by the Attorney General of Ohio in March, 1958 as a result of an inquiry by the then Auditor of State (Honorable James A. Rhodes). The Attorney General considered the question whether when a vacancy occurs in the office of the Director of Highways the First Assistant Director of Highways who had been legally appointed to that position would have the authority to perform all the duties and possess all the powers of the Director of Highways. The Attorney General held that under such circumstances the Assistant Director of Highways had in fact all the duties and powers of the Director of Highways but that he

in no sense thereby became Director of Highways. The language of the opinion on this point was as follows:

'Thus it is my opinion in answer to your first question, that when a vacancy occurs in the office of Director of Highways, the First Assistant Director of Highways performs all the duties and possesses all the powers of the Director of Highways, but in no sense becomes Director of Highways.' 1958 OAG 157 (No. 1868)'

See also State, ex rel. Kendrick vs. Thormyer, 78 Abs. 95 (Court of Appeals for Franklin County, March 4, 1958), to similar effect.

"It is to be noted that the opinion of the Attorney General covered a situation in which there was a vacancy in the office of the Director of Highways and therefore Revised Code, Section 121.05, was applicable. In the present circumstances, where there is no vacancy in the office of the Director of Highways so that that particular statute would not apply, we are merely concerned with the question whether the First Assistant Director of Highways may serve ex officio as a member of the commission during the absence of the Director of Highways. Under these latter circumstances it would appear that Revised Code, Section 5501.04, would apply and grant to the First Assistant Director of Highways the authority to perform or discharge all the duties of the Director. No opinion of the Attorney General, and no court opinion, has directly discussed the circumstances in which the absence of the Director authorizes the First Assistant Director to perform the duties of Director. It is my opinion that the absence of the Director, to enable the First Assistant Director to act in his stead, would have to be such an absence as would permit or require the First Assistant Director to fulfill all of the duties of the Director within the State of Ohio before he would be entitled to fulfill the duties of the Director of Highways as an ex officio member of the Ohio Turnpike Commission.

"The records of the commission show that under date of January 22, 1957 Squire, Sanders & Dempsey rendered an opinion as to whether a person acting as Director of Highways but not appointed as such by the Governor and confirmed by the Senate could be a member ex officio of the Ohio Turnpike Commission. In the opinion from Squire, Sanders & Dempsey, copy of which hereto is attached, it is declared as follows:

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'As the Turnpike Act provides that the fifth member shall be the Director of Highways who shall be a member ex officio, and Section 121.05 provides that the Assistant Director shall act as Director in the event of a vacancy and Section 5501.04 provides that the First Assistant in the absence of the Director shall perform and discharge all of the duties of the Director, we conclude that in the absence of the Director or in the event of a vacancy the First Assistant Director may perform the duties of the Director of Highways as a member ex officio of the Ohio Turnpike Commission.'

It is to be noted that in the case in which an opinion was asked of fiscal counsel for the commission there was an acting Director of Highways and the implication of the opinion is that an acting Director of Highways, being neither the Director of Highways nor the First Assistant Director of Highways, was not a member ex officio of the Ohio Turnpike Commission."

/s/ Lockwood Thompson  
General Counsel

"\*Attachment  
cc: Executive Director"

Squire, Sanders & Dempsey  
Counsellors at Law  
Union Commerce Building  
Cleveland

"January 22, 1957

"James W. Shocknessy, Chairman  
Ohio Turnpike Commission  
8080 Prospect Road  
Berea, Ohio

"Dear Sir:

"You have requested our opinion as to whether the person acting as Director of Highways but not appointed as such by the Governor and confirmed by the Senate can be a member ex officio of the Ohio Turnpike Commission.

"Revised Code Section 5537.02 provides that 'the Commission shall consist of four members \* \* \* and the Director of Highways who shall be a member ex officio without compensation'.

"It is our opinion that only the Director of Highways appointed by the Governor under Revised Code Section 5501.03, or in certain cases the First Assistant Highway Director provided for by Revised Code Sections 121.04 and 5501.04, can constitute the member ex officio of the Commission.

"In our opinion the statutes clearly provide for the office of Director of Highways and the office of First Assistant Director, which offices are subject to the qualification requirements of Article XV, Section 4, Ohio Constitution.

"The Revised Code makes provision for the absence of the Director of Highways or a vacancy in that office.

"Section 121.05 relates generally to the office of Assistant Director in each of the several state departments while Section 5501.04 makes particular provision for such an officer in the Department of Highways. It would appear that with respect to other departments, the Assistant Director provided for in Section 121.05 may be either one of the officers listed in Section 121.04 or the head of a division created within a Department as authorized by Section 121.07. However, with regard to the Department of Highways, Section 5501.05 provides for four and only four divisions and requires that the Director shall distribute the work of the Department among the four divisions therein created so that there is no room for the application of Section 121.07 with regard to the creation of divisions or Section 121.05 with regard to the appointment as an Assistant Director of the head of such a division. We conclude therefore that the First Assistant Director of Highways provided for in Sections 121.04 and 5501.04 is the officer to whom would relate the provisions regarding vacancy and absence in Sections 121.05 and 5501.03.

"As the Turnpike Act provides that the fifth member shall be the Director of Highways who shall be a member ex officio, and Section 121.05 provides that the Assistant Director shall act as Director in the event of a vacancy and Section 5501.04 provides that the First Assistant in the absence of the Director shall perform and discharge all of the duties of the Director, we conclude that in the absence of the Director or in the event of a vacancy the First Assistant Director may perform the duties of the Director of Highways as a member ex officio of the Ohio Turnpike Commission.

"We find no statutory provisions by which any other person could act as a member of the Ohio Turnpike Commission, aside from the four members appointed as such by the Governor.

"Respectfully submitted,

"Squire, Sanders & Dempsey"

A motion was made by Mr. Chastang, seconded by Mr. Redman, that the minutes for the meeting of June 7, 1966 which had been examined by the Members of the Commission and on which the corrections suggested by the Members had been made be approved without reading.

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

Ayes: Chastang, Redman, Teagarden, Makeever, Shocknessy.

Nays: None.

The Chairman said the minutes stood adopted with all Members voting in the affirmative.

The Chairman reported that the 100th meeting of the Commission was held on September 15, 1955 in that same building. He said the Members at that time were the current Chairman and Vice Chairman and Maj. Gen. Robt. S. Beightler, U.S.A. (Ret.), Mr. A. J. Allen and Mr. Samuel O. Linzell, the Director of Highways. He said that on that day the Ohio Turnpike Project No. 1 was designated the Ohio Turnpike. He said Mr. Linzell reported at the 100th meeting on the progress of determining the location of Ohio Turnpike Project No. 2. He said the Chairman discussed the arrangements for opening the Ohio Turnpike at 12:01 A.M. on October 1, 1955, and the Commission adopted a code of bylaws.

The Chairman said also with respect to Ohio Turnpike Project No. 2 that it did not materialize as Ohio Turnpike Project No. 2 but it did materialize as Interstate Route 71 so that the project currently known as I-71 was the project that at the 100th meeting was in general discussed as a prospective Ohio Turnpike Project No. 2.

The Chairman reported also that during the month of June the tolls paid by commercial users for the first month since the turnpike opened exceeded one million dollars. He said that for June they were estimated at \$1,024,000. He said the previous best month for truck toll revenue was



\$985,577 in August of 1965. He said truck tolls collected in June of 1965, which was the corresponding month the previous year of the month just concluded, were \$951,171. He said he kept going back to days long ago when he thought a million dollars was a good total revenue from all sources for the month.

The Chairman said also that the revenue in June was another record - \$3,269,000 - which was \$180,000 more than in June of 1965, and the revenue for the first six months of 1966 was approximately \$14,032,000, or a little more than three quarters of a million dollars more than for the first half of 1965.

The Chairman reported also that the Commission could take satisfaction in the fact that there was not one single fatal accident on the turnpike during the period of the holiday week end just finished. He said that from 6 o'clock the previous Friday until midnight of the day before there had not been one single fatal accident on the turnpike. He said that during the four day period there were exited 302,610 vehicles. He said the biggest day was Saturday when 86,272 vehicles were exited. He said the cash revenue during the four day week end exclusive of charges and of the moneys that would come from the concessionaires was \$405,912. He said that was an increase of 11,834 vehicles over the same period in 1965 and an increase in revenue of \$8,604. He said the Commission had a big and successful week end on the Ohio Turnpike and in addition to big and successful, it was safe.

The Chairman reported further that there were two fatal accidents on the turnpike in June, each resulting in a death. He said the total number of deaths in six months was sixteen and for the six months of 1965 was seventeen. He said more money had been taken in and more miles traveled in 1966 and there had been one less fatality.

The Chairman reported further that at a meeting that morning of the I-71 group the report from the City of Cleveland's Consulting Engineers on the damaged I-71 piers in the downtown Cleveland area was received and the recommendation of the engineers was rather bleak. He said the engineers said that several of those piers would have to be removed and a reconstruction job done. He said the engineers thought that meanwhile it would be possible by the use of a crossover and by establishing two lane traffic each way at the area of the problem to open the road for traffic on the 31st of October 1966 as planned subject to all the conditions suffered at that time, of which there were many.

The Chairman said that in the absence of questions, the report of the Chairman was accepted as offered. He said the report of the Secretary-Treasurer would be received.

The Assistant Secretary-Treasurer reported that since the last meeting the following had been sent to all Members:

1. Traffic and Revenue Report for May 1966.
2. Financial Statements as of May 31, 1966.
3. Draft of the minutes of the June 7, 1966 meeting.
4. Detail of investment transactions for June 1966.

The Assistant Secretary-Treasurer reported further that late in June the Trustee purchased an additional \$8,000 in turnpike bonds, making the June total of purchases \$2,273,000 and the bonds outstanding at the end of June \$268,665,000.

He said June net revenue for the first time for that month permitted a transfer from the Revenue Fund completely filling the Bond Interest Account. He said that in addition there would be a transfer from the Revenue Fund to the Redemption Account that day of about \$366,000 which would allow the Trustee to purchase \$435,000 to \$440,000 of Turnpike bonds the next week.

The Assistant Secretary-Treasurer reported also that some time before he had reported that a survey was being made of the Commission's existing computer in comparison to other computers that had been developed and were or would be available. He said the survey which was being made by the Commission's auditors, Peat, Marwick, Mitchell & Co., had been completed and it indicated that the IBM model 1401 currently used by the Commission was adequate but that there was some possible cost saving in going to a different type. He said no conclusion had been reached as to whether to plan a replacement. The Assistant Secretary-Treasurer said also that a change would involve complete reprogramming and there was no one in the Commission's organization who had the time to do the programming or was skilled in that field. He said the Commission could contract to have the work done on the outside but it still would take a great deal of the Commission's time and there always was the possibility that someone retained to do the job would not have the same interest in developing the very best program as would a person who had to continue to operate with those programs.

The Assistant Secretary-Treasurer said also that it still remained to be determined whether by working through a third person the Commission could get the rental rate reduced on its existing equipment. The third

person in such case would purchase the Commission's equipment from IBM and then rent it to the Commission and maintain it. He said that if such an arrangement appeared economical it would involve not only the computer but the peripheral equipment as well. He said the problem was that with continuing traffic and with payroll preparation processing, delays occasioned by the transition to the new programs and new equipment could not be tolerated.

In response to questions by the Members, the Assistant Secretary-Treasurer said the Commission did not own the computer equipment in the headquarters but rented it from International Business Machines Corporation. He said it was determined to make a study because other manufacturers had come into the business and IBM had come out with more sophisticated types of equipment. He said the goals of the study were to determine whether, with increasing turnpike traffic, operations could continue with the model 1401 in view of the existing necessity for some overtime work during the summer, and whether there was a computer that would better serve the Commission's purpose and give some room for expansion. He said Sperry Rand Corp., Univac Division, had submitted a proposal. He said Univac was a good computer which was considerably different from the IBM type of computer. He said Sperry Rand Corporation did not have a staff that would do the programming for the Commission and that that was a rather serious consideration.

Mr. Redman said he would be glad to look over the Sperry Rand proposal, if it would be helpful to do so. The Assistant Secretary-Treasurer said he welcomed Mr. Redman's offer. He said he would be happy to send that company's proposal to Mr. Redman and to any of the other Members who might care to review it. He said he was merely reporting that the whole matter was under study. He said action probably would not be taken within the next month. He said there was a rather long delivery time on such equipment. He said Univac would deliver in January of 1967. He said that if the Commission should go to the IBM 360 model 20, delivery would be in January of 1968.

The Assistant Secretary-Treasurer said also that it was the transition from one computer to another that concerned him because there must not be any failure in processing the constant flow of toll tickets. He said both methods of changing computers would represent not an increased expenditure of money but a reduction in rental costs.

The Chairman said that in the absence of further questions, the report of the Secretary-Treasurer was accepted as offered. He said the report of the Committee on Service Plazas would be received.

The Chairman of the Committee on Service Plazas, Mr. Teagarden, reported that restaurant sales for the first five months of 1966 in comparison with the same period of 1965 showed a 3.1 percent increase. He said passenger vehicle and commercial vehicle total miles of travel for the same comparison period showed an increase of 3.9 percent. He said that based upon that short comparison period it would appear that restaurant sales currently were keeping closer pace with increases in traffic.

Mr. Teagarden said also that several members of the Committee had been looking into the matter of restaurant sales in comparison with traffic. He said they had made much progress but a report would not be forthcoming for some time. He said the Committee members were looking into influencing factors such as shorter trips, increase in number of restaurants along the highways of connection with the turnpike which competed for some of the same business, decrease in number of persons per passenger vehicle, change in traffic patterns as a result of new highways being opened to traffic, greater travel distance between meal stops as a result of highway improvements, and resistance, if any, to buying food on the turnpike.

Mr. Teagarden reported further that service station sales for the first five months of 1966 in comparison with the same period of 1965 showed an increase of \$232,506, or a gain of 34.1 percent.

Mr. Teagarden reported also that the Commission's Supervisor of Patron Services reported with respect to 4th of July traffic that all the restaurants were well provided with help and service on all days of the holiday weekend, in his opinion, was good.

Mr. Teagarden reported further that plans and specifications for the construction of truckers' showers at Wyandot, Vermilion Valley, Portage and Brady's Leap Service Plazas were complete. He said the contracts for construction would be advertised for bids on July 7 and 14. He said the showers would replace showers eliminated in the food-area remodeling program.

The Chairman said that in the absence of questions the report of the Committee on Service Plazas was accepted as offered. He ascertained that there would be no report by the Committee on Employee Relations. He said the report of the Committee on Interchange Development would be received. The Chairman of the Committee on Interchange Development, Mr. Chastang, said the report of the Committee would be given by the Executive Director.

The Executive Director reported for the Committee on Interchange Development that Mr. Masheter; the Engineer of the Bureau of Location and Design of the Department of Highways, Mr. R. N. Ricketts; and the Executive Director appeared before the special subcommittee on the Federal Aid Highway Program of the Committee on Public Works of the United States House of Representatives in Washington on June 9, 1966.

Mr. Hartford said also that the subject for the special subcommittee was relationship of toll facilities to the Federal Aid Highway Program. He said that because of the unity of purpose that existed in Ohio, which unity might not be unique to Ohio but possibly was somewhat strained in other states where unity prevailed, the three witnesses from Ohio were on the witness stand at the same time. He said they were on the stand about three and one-half hours and their testimony occupied some eighty pages of the Congressional Record. He said time did not permit going into details but copies of the record could be made available to any Members interested.

The Executive Director said also that basically the Ohio witnesses endeavored to support their contention that the attitude of the Bureau of Public Roads in refusing financial participation in that part of the connection between a highway on the Interstate System and the Ohio Turnpike from the toll plazas to the turnpike was capricious and unreasonable in view of the tripartite agreement executed by the Ohio Turnpike Commission, the Ohio Department of Highways and the United States Department of Commerce.

He said the subcommittee members expressed appreciation for the testimony and, he believed, were sympathetic toward the views of the Ohio witnesses.

The Chairman said the Commission had a formal opinion recently rendered by Fiscal Counsel with respect to the interpretation of the tripartite agreement and he would like that opinion to be offered for the record and for inclusion in the business of the meeting. The Executive Director said that Fiscal Counsel had forwarded a copy of the opinion which was dated June 28, 1966 to the special subcommittee for its information. The text of the opinion follows:

Squire, Sanders & Dempsey  
Counsellors at Law  
1857 Union Commerce Building  
Cleveland, Ohio 44115

"June 28, 1966

"Lockwood Thompson, Esq.  
General Counsel  
Ohio Turnpike Commission  
682 Prospect Street  
Berea, Ohio

"Re: Ohio Turnpike Commission--Tripartite  
Agreement

"Dear Mr. Thompson:

"You have requested our opinion, as fiscal counsel, on whether the terms of numbered paragraph 1 of the so-called Tripartite Agreement dated as of July 14, 1964 would prohibit the Commission, during the time that the Turnpike Revenue Bonds, Project No. 1, are outstanding, from engaging in such maintenance and making such improvements, payable from Turnpike revenues, as efficiency and safety may suggest. You give as an example the fact that the Commission is now constructing out of moneys in the Reserve Maintenance Fund, for the sake of safety and efficiency, a third westbound lane for about four miles to take care of a long ascending grade. Another example is the planned construction to preserve access to Route 42 in Strongsville after the new interchange with I-71 is completed.

"In our opinion the Tripartite Agreement does not so restrict the Commission. There is, in our opinion, no conflict between numbered paragraph 1 of the Tripartite Agreement and the Trust Agreement requirement that a portion of the revenues be deposited, in priority over deposit into the Redemption Account for use to redeem or purchase the revenue bonds, to the credit of the Reserve Maintenance Fund in accordance with the recommendations of the Consulting Engineers, which Fund is to be held as a reserve to pay the cost of 'major repairs, equipment replacement, bridge painting, renewals and replacements, engineering expenses relating to the functions of the Commission, improvements, unusual expenses of maintenance and repairs and premiums on insurance' (Section 509). Moreover, we do not construe the Tripartite Agreement as restricting or prohibiting the use by the Commission of the moneys standing to the credit of such fund for any of the stated purposes of the funds. We think it proper to add that if the Tripartite Agreement were construed to restrict deposits to or expenditures from the Reserve Maintenance Fund, or to require that the Turnpike become free to the public in advance of the retirement of all bonds by reason of proper deposits to and use of the Reserve Maintenance Fund, we have serious doubt whether, as to the Commission, the Agreement would be valid.

"In relevant part numbered paragraph 1 of the Tripartite Agreement provides that the Turnpike will become free to the

public 'upon the collection of tolls sufficient to liquidate the revenue bonds of the Commission outstanding as of the effective date of this Agreement . . . and to pay the cost of maintenance and operation, and debt service during the period of toll collections . . .'. The flow-of-funds provisions of the Trust Agreement require priority of payment, in a manner which is not inconsistent with the Tripartite Agreement, into the Reserve Maintenance Fund over the use of any revenues to 'liquidate' the bonds and to pay that portion of 'debt service' representing principal. This priority of payment is clear from the Trust Agreement in the light of which, we believe, the Tripartite Agreement must be read.

"The basic priorities for deposit of the revenues are set in Section 507 of the Trust Agreement, requiring the Trustee to deposit monthly the designated portion of the revenues 'to the credit of the following Accounts or Fund in the following order': (1) into the Bond Interest Account (for the ensuing twelve months' interest); (2) into the Reserve Maintenance Fund such amounts as will make the amount deposited in that Fund equal the amount recommended by the Consulting Engineers; (3) into the Reserve Account (for a two years' interest reserve); (4) finally, 'the balance, if any', into the Redemption Account to be used to purchase or redeem outstanding bonds. Thus only the Bond Interest Account aspect of 'debt service' (the next twelve months' interest) has priority over deposits to the credit of the Reserve Maintenance Fund, while moneys are permitted by the Trust Agreement to be deposited in the Redemption Account only after the Reserve Maintenance Fund requirements, which vary from year to year, are funded.

"These and the later discussed Trust Agreement provisions are entirely consistent with Section 5537.12, R.C., which authorized the 1952 trust agreement, and which provides that the Trust Agreement 'may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as are reasonable and proper and not in violation of law, including convenants setting forth the duties of the commission in relation to . . . the construction, improvement, maintenance, repair, operation, and insurance of the turnpike project . . ., the rates of toll to be charged, . . . and application of all moneys, and provisions for the employment of consulting engineers in connection with the construction or operation' of the Turnpike. All revenues received under Chapter 5537 are 'trust funds, to be held

and applied solely as provided in' such Chapter, and the bond resolution or trust agreement shall provide that the Trustee shall hold and apply the revenues subject to such regulations as Chapter 5537 'and such resolution or trust agreement' provide (Section 5537.14, R.C.).

"In the Trust Agreement, the Commission has pledged and assigned to the Trustee 'the tolls and other revenues of the Turnpike to the extent provided in this Agreement as security for the payment of the bonds and the interest thereon and as security for the satisfaction of any other obligations assumed by it in this Agreement in connection with such bonds . . .'. One of the requirements of the Trust Agreement is that the Commission shall ensure sufficient revenues so to permit the required payments by the Trustee into the Reserve Maintenance Fund created by Section 507.

"The Commission has covenanted (Section 504) that 'it will cause the Consulting Engineers' (the Commission covenants in Section 706 to employ such consulting engineers) to make an annual inspection of the Turnpike and to submit 'their recommendations as to the amount that should be deposited during the ensuing fiscal year to the credit of the Reserve Maintenance Fund for the purposes set forth in Section 509 . . .'. We understand, with respect to the example of the new third lane mentioned in your letter, that the Consulting Engineers noted in their report submitted in 1965 pursuant to Section 504, that the conclusion was reached, after analysis and study, that this third lane was needed for the safe and efficient operation of the Turnpike and that it be constructed in 1966. Further, the Commission has covenanted (Section 501) to revise tolls from time to time as may be necessary or proper, after requesting the Consulting Engineers to make recommendations as to revision, so that revenues 'will be sufficient at all time' to provide funds to pay current expenses (as defined in the Trust Agreement), 'to provide for making the deposits to the credit of the Reserve Maintenance Fund of the amounts recommended by the Consulting Engineers', and to provide for making the required deposits to the Sinking Fund. Specific provisions require that any deficiencies in the deposit requirements into the Reserve Maintenance Fund, which deficiencies are cumulative (Section 507), be made up in later years, and that any such deficiencies be considered in revising tolls so to provide revenues sufficient to eliminate such deficiencies (Section 501).



"Other provisions of the Trust Agreement recognize and emphasize the essential nature of the deposits (and of the revenues sufficient to make such deposits) into the funds (including the Reserve Maintenance Fund) created by it. The Commission pledges the tolls and other revenues from the ownership or operation of the Turnpike to the payment of principal and interest on the bonds 'in the manner and to the extent hereinabove particularly specified' (Section 701), and covenants that 'it will maintain and operate the Turnpike in an efficient and economical manner' (Section 703) and that 'until the bonds and the interest thereon shall have been paid or provision for such payment shall have been made, none of the revenues of the Turnpike will be used for any purpose other than as provided in this Agreement and no contract or contracts will be entered into or any action taken by which the rights of the Trustee or of the bondholders will be impaired or diminished' (Section 710).

"Thus, under the terms of the Trust Agreement, the bonds cannot be liquidated nor debt service, with respect to principal, provided for within the meaning of the Tripartite Agreement without first making provision for the required annual payments into the Reserve Maintenance Fund, which, in turn, may be used to pay for 'improvements'; further, the tolls must be revised from time to time so the revenues will be sufficient to, among other requirements, permit the required annual deposit to the Reserve Maintenance Fund.

"On its face, the limitation apparently intended by numbered paragraph 1 of the Tripartite Agreement is on the issuance of revenue bonds in addition to those outstanding as of July 14, 1964, or re-funding revenue bonds, to the extent that any such bonds would increase debt service requirements or extend beyond 1992 the period within which any of the Commission's revenue bonds would be outstanding. Plainly, the existing bonds represent a valid lien and the Trust Agreement prevents the Turnpike becoming free to the public so long as they are outstanding or provision is not made, pursuant to the Trust Agreement, for their payment. Equally plainly, the period of toll collections must continue until this lien is discharged as provided in Section 1201. Revenues cannot be used to retire or redeem the bonds until the requirements of the Reserve Maintenance Fund are satisfied. These circumstances were plainly known, or should have been known, to all parties at the time the Tripartite Agreement was executed. The Commission could not lawfully disable itself from complying with the terms of the Trust Agreement. In this circumstance we think it plain that the use of the phrase in the Tripartite

Agreement 'cost of maintenance and operation and debt service during the period of toll collections', which language was copied from the relevant federal statute, 23 U.S.C.A. Section 129 (d), signifies at the very least the agreement of the parties that the language of the federal statute with which the Tripartite Agreement is designed to comply permits the inclusion as part of the costs of operation and maintenance all those costs which under the Trust Agreement are to be met out of revenues during the period of toll collections, which collections must continue until all the bonds are retired or redeemed, or provision made therefor pursuant to the Trust Agreement. We think this is a proper construction of the statute.

"Respectfully submitted,

/s/ Squire, Sanders & Dempsey"

The Executive Director reported further for the Committee on Interchange Development that preliminary plans for the construction of the connection between new Interchange 10 and the existing Interchange 10, stipulated to be constructed by the consent decree in the case of Strongsville v. the Director of Highways and the Ohio Turnpike Commission, were delivered on June 29, 1966. He said the plans included a separation of grades of the off ramp of the connector from the off and on ramps of the I-71 interchange by a bridge. He said that in order to obtain construction of that bridge in time to permit the new interchange to function when that section of I-71 should be opened to traffic, the Director of Highways had been asked for his approval to add the bridge to the existing interchange construction contract as extra work. He said the Director of Highways had agreed and the Commission would proceed accordingly.

The Chairman said the report of the Committee on Interchange Development was accepted as offered. He said the Executive Director would offer the report of the Committee on Safety.

The Executive Director reported for the Committee on Safety that at the meeting of the Commission on June 7, 1966 he informed the Commission concerning a proposal of the Director of the Ohio Department of Natural Resources to cooperate in an effort to reduce the number of deer-crossing accidents. He said the proposal was accepted and the Commission offered to do some research on deer accidents over a five year period to determine as best it could any areas of the turnpike where controls might be productive of results. He said as deer accidents were plotted graphically by year for the period 1961-1965, inclusive, it soon became apparent that there was a

problem between mileposts 219 and 232 where there was an average of seven deer accidents per year for the first four years of the study. He said that deer, however, were unpredictable and there was not a single deer accident in that area during 1965. He said that had the Commission constructed deer protection in that area late in 1964, it would have been elated with the results.

The Executive Director said also that at the westerly end of the turnpike between the Indiana line and milepost 30 there were 41 accidents with an annual low of three in 1962 and a high of 11 in 1965. He said that between milepost 30 and milepost 170 there were but 27 accidents in 140 miles during the five year period. He said in the next 71 miles to the Pennsylvania line there were 79 deer accidents in five years.

The Executive Director said also that the total number of deer accidents, some of which would not be reportable as accidents under the usual definition because of the lack of personal injury or property damage resulting, was 147 for the five year period. He said the low was 21 in 1965 and the high was 39 in 1963. He said there did not appear to be any particular location where deer were apt to create a defined deer crossing. He said that determination would have to be made in the field.

The Chairman said the report of the Committee on Safety was accepted as offered. He said the report of the Executive Director would be received.

The Executive Director reported that the question arose frequently concerning commercial usage of the Ohio Turnpike and especially so when short term comparisons indicated unfavorable results. He said commercial usage on a monthly basis was influenced by the number of week ends in a particular month, weather, and positioning of holidays. He said that since all days in a month were not equal in commercial usage consideration must be given to those influences if valid comparisons were expected on short term comparisons. The Executive Director said also that generally normal growth was sufficient to overcome those influences when the influence was negative. He said that even so a positive influence in a particular month followed by a negative influence in that same month in the succeeding year might indicate a loss of usage.

The Executive Director said also that that could be illustrated in part by a comparison of commercial revenues for the first five months of 1966 with the first five months of 1965. He said adverse weather and general economic conditions produced more than a normal growth in commercial traffic during the period in 1965 to the extent that January and March of 1966 produced less commercial revenue than did those same two months in 1965 yet the commercial revenue in those two months in 1966 exceeded the commercial revenue for January and March of 1964 by 14%, or 7% on an annual

growth basis. He said that even though the 1966 experience was being compared with a very favorable experience in 1965, the commercial revenue so far in 1966 exceeded the commercial revenue for the same period in 1965.

The Executive Director said also that several years before and as a part of the projection of past experience to determine an anticipated amortization date, 1957 was established as a base year and it was concluded that truck traffic should increase at a rate of 7% annually of the 1957 experience. He said that using that projection the Commission's revenues from commercial traffic in 1965 should have been 56% greater than those of 1957. He said actual experience showed a growth of 92.5%, indicating that the projection was conservative in relation to the experience to date. He said that actual experience over projected experience provided a comfortable margin in protecting the projection.

The Executive Director said also that actually the average monthly revenue from commercial traffic for the year ending in May of 1966 amounted to \$896,000 and the projection indicated that that level should not be reached until some time during 1970. He said the May average was also an improvement of about \$43,000 a month over the monthly average for the year ending May 1965.

The Executive Director said also that a similar projection was made for passenger-car traffic and it was estimated that there would be a growth of between 2% and 2-1/2% annually on the 1957 base. He said that for an eight year period ending December 31, 1965 and based on those projections, tolls from passenger cars should have increased between 16% and 20%. He said the actual increase was almost 31%, indicating further that the projection was conservative.

The Executive Director said also that the monthly average for passenger car tolls reached \$1,200,352 for the year ending May 1966 and was an improvement of \$51,661 per month over the year ending May 1965.

The Executive Director said also that monthly averages for all toll revenue had improved about \$95,000 per month over the past 12 months.

The Executive Director reported further that he had received under date of May 21, 1966 a letter of commendation directed to the Ohio Turnpike Commission by the National Campers and Hikers Association Inc. which he thought was worthy of mention. He read the letter as follows:

National Campers and Hikers Association Inc.

"May 21, 1966

"Ohio Turnpike Commission  
Berea  
Ohio 44017

"Gentlemen:

"The National Executive Board in session at its bimonthly meeting on May 14, 1966, at West Mansfield, Ohio, unanimously voted to present this LETTER OF COMMENDATION to the Ohio Turnpike Commission on behalf of the entire membership of The National Campers and Hikers Association Inc. as an expression of their appreciation for your contribution to better camping.

"Your pioneering in the establishment of rest areas along the Ohio Turnpike for the safety, comfort, convenience and relaxation of traveling campers is an outstanding service.

"Copies of your excellent publications: CAMPING TONIGHT ALONG THE OHIO TURNPIKE, OHIO TURNPIKE TRAVEL TRAILER FACILITIES, and OHIO TURNPIKE POPULAR WITH TRAILER MOTORISTS were reviewed with interest and approval by the Board.

"It is with a great deal of native Ohioan pride that I, as President of this great Camping Association, affix my signature and our Seal to this official document.

"Sincerely yours,

/s/ Paul G. West

"Paul G. West, President

"NATIONAL CAMPERS AND  
HIKERS ASSOCIATION INC."

The Chairman said that was excellent. He said the promotion referred to in the letter was the promotion of the Executive Director and the Director of Information and Research personally. He said he thought both were responsible, perhaps equally, and jointly, for the program. He said the Commission could take satisfaction in it.

The Executive Director reported further that the United Nations was providing a fellowship for Haim Eilam, Economic Adviser in the Public Works

Department of Israel and had selected the Ohio Turnpike as an appropriate agency for Mr. Eilam to visit in connection with his study of the economic justification of a toll road system for Israel. He said Mr. Eilam was scheduled to arrive in Berea on July 10 and to be a visitor at the Commission's headquarters for the following week. He said Mr. Eilam, while in the United States, would visit a number of highway agencies in his study of the economic evaluation of highway works generally.

The Chairman said the report of the Executive Director was accepted as offered. He said there was something he wanted to say on behalf of all Members of the Commission. He said the Members had conferred among themselves after the last meeting and they thought they would like to show some recognition in a financial way of the excellent work that the Executive Director had done. He said it was not much more than a token recognition but still a recognition. He said accordingly he was going to himself offer the resolution as follows:

Resolution No. 12-1966

"WHEREAS it is the wish of the Commission to take note of, and give recognition to, the excellent service which the executive director has provided the Commission over a period of years; and

"WHEREAS he has not received any salary increase since 1957;

"NOW, THEREFORE, BE IT

"RESOLVED that the salary of the executive director of the Commission, Mr. C. W. Hartford, be \$21,000 per annum effective July 1, 1966."

The motion was seconded by all the other Members.

The Chairman said the Commission could not do enough for Mr. Hartford but one of the rewards of public service had to be the satisfaction that one got doing it so the Commission would make an increase in salary for him at that time which was comparable in percentage to the increases acceded to at the last meeting by the Commission for others working for the Commission.

A vote by ayes and nays was taken and all Members responded to roll call.

Ayes: Shocknessy, Redman, Chastang, Teagarden, Makeever.

Nays: None.

The Chairman declared the resolution adopted with all Members voting in the affirmative. The resolution was identified as No. 12-1966.

The Executive Director said he was grateful. The Chairman responded that the Commission was grateful to have him.

At this point Mr. Redman was excused.

The Chairman ascertained that there would be no reports by the Director of Highways, by the General Counsel, or by the Consulting Engineers. He said the report of the Director of Information and Research would be received.

The Director of Information and Research reported that at the last meeting he had mentioned that the Commission's chief map-folder was being replaced in the service plaza racks of turnpike information with a smaller, simpler map which was being printed in the Commission's reproduction department. He said the change was made because of the rate at which information in the racks was being taken by travelers. He distributed copies of the new Ohio Turnpike map-and-information card. He said that at one service plaza 3,000 of the map-cards were taken by travelers in two days' time. He said the map-cards cost about one-tenth of the cost of the larger map-folder.

The Chairman said he had read in the Columbus Dispatch of July 4, 1966 an article about Miss Gertrude Knott, Assistant to the Director of Information and Research. He said it was an excellent article and he wanted the Director of Information and Research to congratulate Miss Knott for the Commission and tell her that the Commission took note of the article and that the Commission also wanted to congratulate her not only for the article but for the good work that she was doing that the Commission heard about frequently. He said he congratulated the Director of Information and Research upon having developed Miss Knott into a public relations person for the turnpike. The Director of Information and Research thanked the Chairman and the Commission. He said Miss Knott was doing a fine job. She had made 115 talks in 1965 and would exceed that number in 1966.

The Chairman said the report of the Director of Information and Research was accepted as offered.

A resolution ratifying actions of administrative officers was moved for adoption by Mr. Teagarden, seconded by Mr. Chastang, as follows:

Resolution No. 13-1966

"WHEREAS the executive director, deputy executive director, chief engineer, general counsel, assistant general counsel, secretary-treasurer, assistant secretary-treasurer, comptroller, and the director of information and research 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 on June 7, 1966, 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 June 7, 1966 hereby are ratified, approved and confirmed."

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

Ayes: Teagarden, Chastang, Makeever, Shocknessy.

Nays: None.

The Chairman declared the resolution adopted with the four Members present voting in the affirmative. The resolution was identified as No. 13-1966.

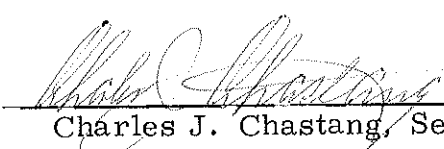
There being no further business to come before the Commission, a motion was made by Mr. Teagarden, seconded by Mr. Chastang, that the meeting adjourn subject to call of the Chairman. A vote by ayes and nays was taken and all Members present responded to roll call. The vote was as follows:

Ayes: Teagarden, Chastang, Makeever, Shocknessy.

Nays: None.

The Chairman declared the meeting adjourned. The time of adjournment was 11:54 A. M.

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

  
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Charles J. Chastang, Secretary-Treasurer