

MINUTES OF THE TWO HUNDRED AND SEVENTY-SIXTH MEETING
March 5, 1974

Pursuant to bylaws the Ohio Turnpike Commission met in regular session in the conference room of the Ohio Department of Transportation building at 139 East Gay Street in Columbus, Ohio at 11:00 a. m. on March 5, 1974 with the key members of the staff; a representative, Harvey A. Harnden, of the Consulting Engineers; a representative, P. Joseph Sesler, of the Trustee, The Ohio National Bank; 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: Teagarden, Richley, Shocknessy.

Absent: Anderson.

The Chairman announced that three Members constituted a quorum but no action could be taken unless the action was unanimous when a bare quorum was present. He said Mr. Anderson had been ill in Florida, but was then in good condition.

A motion was made by Mr. Teagarden, seconded by Mr. Richley, that the minutes for the meeting of February 5, 1974, which had been examined by the Members 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 present responded to roll call. The vote was as follows:

Ayes: Teagarden, Richley, Shocknessy.

Nays: None.

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

The Chairman said the meeting would have to move very fast and that if it were not for the fact that the Commission had so many serious things to do, he might have postponed the meeting, but the Executive Director, Allan V. Johnson, had arranged to come to Columbus by airplane because he was due back in Cleveland at the County Court House for a conference with counsel before a 3:00 p. m. hearing set before Judge Adrian B. Fink, Jr. of the Cuyahoga County Court of Common Pleas. He said the meeting would

move as fast as possible but the Commission was not going to move so fast as not to take note of the death of Wilson Hirschfeld. The Chairman said Mr. Hirschfeld had covered the Commission for The Cleveland Plain Dealer for many years having succeeded the distinguished James Dowler Hartshorne who came to the Commission from The Plain Dealer. The Chairman directed that the Assistant Secretary-Treasurer extend the Commission's expressions of sympathy to Mrs. Hirschfeld and to Mr. Hirschfeld's family. He said he had written a personal note the day before to Mrs. Hirschfeld and he had also written to the Mayor of Cleveland who was probably Mr. Hirschfeld's closest friend and for whom Mr. Hirschfeld had recently been working. He said he, along with others, over the years had disputed Mr. Hirschfeld but he never doubted his sincerity and integrity and that he would be missed by the Ohio Turnpike Commission.

The Chairman said that the Executive Director; the Deputy Executive Director, James D. Hartshorne; and the Director of Information and Research, Talbot Harding, would attend memorial services for Mr. Hirschfeld as representatives of the Commission. He said the representatives of the Commission similarly had attended services for the late political editor of the Cleveland Press, Richard L. Maher, in 1972 and had offered condolences to his family.

The Chairman reported that business in February had been remarkably good despite the effect on full-scale travel by the exigencies of fuel economics during the month. He said the revenue was estimated at \$2,450,000. He said the amount was only 7.7% less than the revenues for February 1973 when there were no negative factors affecting travel and that the revenue for the month was \$115,000 more than was derived in February of 1972, which had been the highest February prior to 1973.

The Chairman reported that The Wall Street Journal had published on March 4 a gloomy article about turnpike experience and that there had been gloomy reports on television but that in those gloomy reports there was no mention of the Ohio Turnpike. He said the Executive Director's explanation of that to him was "Well, they were trying to write a gloomy article and there is nothing gloomy about our experience so they didn't say anything about us." The Chairman said that there was a 25% drop in passenger traffic in the month of February but that commercial traffic for the month had held up so remarkably well that he believed the commercial traffic was just about even for February in 1974 with that of February 1973. He said Mr. Richley would promptly call to his attention that the projection of increase which the Turnpike would have had for February would have been about 5 to 10% which the Turnpike did not receive. He said for all practical purposes there might have been a 10% net drop in travel for February. He said the projected increase was included in the 25% drop in passenger car traffic.

The Chairman said that the Executive Director; the General Counsel, Francis K. Cole; the Comptroller, William G. Gerber; and the staff lawyer, Daisy G. Collins, were going to court that afternoon on the Texaco matter. He said they had come down together by airplane and were going back to Cleveland the same way. He said the Commission had stated many times that it always cooperated with all agencies of government, including the Federal Energy Office, and that the Commission was not challenging any right of the FEO to make allocations but at the same time the Commission was not waiving the obligation of contract which the oil companies had with the Commission. He said the Commission would rely on the Dartmouth College Case which was the ancient protection against impairment of contract and at the same time the Gold Cases had been informally examined where a national emergency had been recognized as relating to the obligation of contract. The Chairman said that the only thing he had said to the Commission's counsel was that the Commission stood ready to cooperate with the FEO insofar as lawful allocations were required. He said the Commission, however, expected the oil companies to support any allocations which they might make which, in fact, were rationing to the consumer by a relation of what they did to the formula established by the Simon office. He said the Commission would not support an unilateral, arbitrary, predetermined allocation or rationing, by the oil companies but the Commission would work with the oil companies and, insofar as it could under the law, would cooperate. He said the Commission had sent a telegram through its Assistant Secretary-Treasurer at the end of last week calling to the attention of the oil companies that they had ignored for the previous two weekends the agreement reached between the Federal Energy Office and the truck drivers with respect to providing diesel fuel and gasoline to trucks. He said either by the urging of the Commission in its telegram or the order of the FEO, gasoline and diesel oil were available to trucks 24 hours a day over the weekend of March 2 and 3. He said there was no restriction in the dispensation of fuel to truckers over the weekend. The Chairman directed that the telegram sent to the four oil companies operating service stations along the Turnpike be included in the minutes of the meeting. The telegram read as follows:

"THE VOLUNTARY CLOSING OF THE SERVICE STATIONS ON THE OHIO TURNPIKE FOR 27 HOURS EVERY WEEKEND FROM 9 P. M. ON SATURDAY TO MIDNIGHT SUNDAY AS REQUESTED BY THE PRESIDENT ON NOVEMBER 25, 1973, NO LONGER APPLIES TO THE DISPENSATION OF TRUCK FUEL INASMUCH AS THE FEDERAL ENERGY OFFICE HAS SUPERSEDED THAT REQUEST FOR VOLUNTARY CLOSING BY ISSUING MANDATORY PETROLEUM ALLOCATION REGULATIONS APPLYING TO TRUCK FUEL EFFECTIVE FEBRUARY 15, 1974. ACCORDINGLY YOU ARE DIRECTED TO DISPENSE FUEL TO TRUCKS AT YOUR STATIONS ON THE OHIO TURNPIKE AT ALL TIMES IN COMPLIANCE WITH FEDERAL REGULATIONS AND YOUR CONTRACTS WITH THE OHIO TURNPIKE COMMISSION. "

The Chairman reported also that since the last meeting there had been a little tempest about Amended Substitute House Bill 1052 which, as passed in the House of the General Assembly, would have incorporated the Ohio Turnpike speeds within the regulation by the State rather than through the Rules and Regulations for the Control and Regulation of Traffic on the Ohio Turnpike as provided in the Turnpike Act. He said that out of the Commission's depth of cooperation it had prepared an amendment which could have become part of the Bill as far as the Commission was concerned in the Bill. He said the amendment prepared by the Turnpike Commission would have specified that points would not have been charged against drivers for speed violations between 55 and 70 miles an hour on the Turnpike any more than points would have been charged on the State highway system under Amended Substitute House Bill 1052 but then the Senate had concluded, and properly, that drivers on the Turnpike were not subject to points and the whole misunderstanding had arisen because of an ambiguous footnote in the Ohio Revised Code which stated that the drivers on the Ohio Turnpike were subject to points. He said the Senate had been provided with a memorandum from the Legislative Service Commission which set forth that the Turnpike was not subject to points. The Chairman said the footnote in the Code had been based upon the misreading of an opinion of the Attorney General. He said what the Attorney General's opinion said was that when Rules and Regulations of the Ohio Turnpike Commission differed from the provisions of Sections 4511.21 to 4511.24, inclusive, 4513.34, and Chapter 5577. of the Revised Code, the Rules and Regulations prevailed over the Statute, and thus Section 4507.90, the point system of the Revised Code, did not apply to the Turnpike. The Chairman ascertained that all Members had copies of both the Attorney General's opinion and the memorandum from the Legislative Service Commission and directed that both should be included in the minutes of the meeting, as follows:

"R-2541

"MEMORANDUM

"TO: Senator Gray

"FROM: Legislative Service Commission, Fred D. Puckett

"DATE: February 26, 1974

"SUBJECT: Imposition of "Points" for Violations on Ohio Turnpike

"Under Sec. 5537.16 the Ohio Turnpike Commission is authorized to control by its own regulations four categories of violations that would otherwise

be governed by statute. These categories are (1) speed, (2) axle loads, (3) vehicle loads, and (4) vehicle dimensions. For violation of these regulations points are not assessed by the Bureau of Motor Vehicles, as verified by a recent phone call by our staff to a Bureau representative.

"This policy is a direct result of a 1960 Attorney General's Opinion (No. 1658), which unfortunately is usually cited in lawbooks solely for the statement in its syllabus that the Ohio Turnpike is a "highway" for the purposes of the point system. The opinion is the basis for assessing points for all violations on the Turnpike of statutes not superseded by regulations in the four specified categories granted to the control of the Turnpike Commission. The opinion is equally clear that points are not to be assessed for violation of any of the Commission's speed regulations, since this is one of the preempted categories.

"It is, therefore, unnecessary to amend Am. Sub. H. B. 1052 in order to avoid the assessment of points for the special speed regulations adopted by the Turnpike Commission to conform to federal fuel conservation speed limits. It is possible that some forms of amendment designed for this purpose could raise inferences that would make ambiguous a situation that otherwise should remain stable."

"1658

"OHIO TURNPIKE - HIGHWAY WITHIN SCOPE OF POINT
SYSTEM LAW - SECTIONS 4507, 4511.01 TO 4511.78,
4513.01 TO 4513.36, 4511.99, R. C.

"SYLLABUS:

The Ohio Turnpike is a highway within the scope of Section 4507.40, Revised Code, the point system law, and the provisions of that section

apply to motor vehicle violations which occur on said turnpike.

Columbus, Ohio, August 23, 1960

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads in part:

'A question has been raised with reference to the application of points on violations occurring on the Ohio Turnpike. I have been unable to find in the statutes any reference or statement in Section 4507.40 which would permit violations which occur on the Turnpike to be certified to the Registrar of Motor Vehicles for an accumulation of points. This question is rather involved, however, it is very important.'

The first and second paragraphs of Section 4507.40, Revised Code, read:

'Every county court judge, mayor, and clerk of a court of record shall keep a full record of every case in which a person is charged with any violation of sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4513.36, inclusive, of the Revised Code, of the vehicles, streetcars, and trackless trolleys on highways.

'Within ten days after the conviction or forfeiture of bail of a person upon a charge of violating any of such sections or other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways, said county court judge, mayor, or clerk shall prepare and immediately forward to the bureau of motor vehicles an abstract of the court record covering the case in which said person was convicted or forfeited bail, which abstract must be certified by the person required to prepare the same to be true and correct.' (Emphasis added)

"The remainder of the section provides a procedure for charging points for certain motor vehicle violations and for suspension of a driver's license upon the attaining of 12 points within a two-year period. As said point system applies to violations that occur on "highways," the question to be decided is whether the Ohio Turnpike is a highway within the scope of the section.

"Section 4507.40, Revised Code, does not define "highway"; however, Section 4507.01, Revised Code, reads in part:

'As used in sections 4507.01 to 4507.39, inclusive, of the Revised Code, 'motor vehicle,' 'state,' 'owner,' 'operator,' 'chauffeur,' and 'highways' have the same meaning as is given such terms in section 4501.01 of the Revised Code.

"* * *"

(Emphasis added)

Section 4501.01, Revised Code, reads in part:

'As used in Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code, and in the penal laws, except as otherwise provided:

"* * *

' (T) 'Public roads and highways' for vehicles includes all public thoroughfares, bridges and culverts.

"* * *"

(Emphasis added)

And Section 4511.01, Revised Code, which sets forth most of the traffic laws for the operation of motor vehicles, reads in part:

'As used in sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code:

"* * *

' (Z) 'Street or highway' means * * * every way open to the use of the public as a thoroughfare for purposes of vehicular travel.

"* * *"

(Emphasis added)

These sections define highways as public thoroughfares. The common element of these definitions is that the thoroughfares must be public; and, therefore, if the Ohio Turnpike is a public thoroughfare, the point system for motor vehicle violations under Section 4507.40, Revised Code, should apply to violations on it.

In Opinion No. 3245, Opinions of the Attorney General for 1953, page 605, a predecessor ruled:

"* * *

' 2. A turnpike project, operated as a toll road by the Ohio

turnpike commission, as provided in chapter 5537., Revised Code, is a public highway in this state' as that term is employed in Section 4921.02, Revised Code.'

In that opinion, at page 607, 54 American Jurisprudence, Section 2, page 494, was quoted as follows:

' * * * A turnpike or toll road is a public highway, established by public authority for public use, and is to be regarded as a public easement and not as private property, the acceptance by a corporation of a franchise to construct such a road and the operation thereof constituting a dedication of the same as a public highway. * * * Indeed, the only difference between a turnpike and a common highway is that while a turnpike is authorized and laid out by public authority, it is built at the expense of private individuals in the first instance, the cost and construction and maintenance being subsequently reimbursed by a toll levied by public authority for the purpose. ' '

Other authority for calling the Ohio Turnpike a public thoroughfare is found in several Ohio Supreme Court decisions. In State, ex rel. Kauer v. Defenbacher, 153 Ohio St., 268 (1950), in regard to the Ohio Turnpike Act, the Supreme Court held:

"* * *

' 2. Money expended for the study of a turnpike project represents a capital outlay for additions and betterments for highway improvement.

"* * *"

' 6. Money so expended would be 'expended for * * * costs for construction * * * of public highways and bridges and other statutory highway purposes,' within the meaning of 5a of Article XII of the Constitution.

"* * *

' 10. The Ohio turnpike commission is a public organization created for a public purpose.

There have been several other cases holding the Ohio Turnpike to be public, including State, ex rel. Allen v. Ferguson, 155 Ohio St., 26 (1951), and State, ex rel. Ohio Turnpike Commission v. Allen, 158 Ohio St., 168 (1952).

In view of the above, I conclude that the Ohio Turnpike is a highway within the scope of Section 4507.40, Revised Code, and that the provisions of that section apply to motor vehicle violations which occur on said turnpike.

This conclusion is further strengthened by Section 5503.31, Revised Code, which reads:

'The state highway patrol shall have the same authority as is conferred upon it by section 5503.02 of the Revised Code with respect to the enforcement of state laws on other roads and highways and on other state properties, to enforce on all turnpike projects the laws of the state and the bylaws, rules, and regulations of the Ohio turnpike commission. The patrol, the superintendent of the patrol, and all patrolmen shall have the same authority to make arrests on all turnpike projects for violations of state laws and of bylaws, rules, and regulations of the Ohio turnpike commission as is conferred upon them by sections 5503.02 of the Revised Code to make arrests on, and in connection with offenses committed on, other roads and highways and on other state properties.' (Emphasis added)

By making state motor vehicle laws applicable to the Ohio Turnpike, this section indicates that the legislature intended the Ohio Turnpike to be a public highway.

I might note in passing that the point system for motor vehicle violations applies only to violations of Sections 4511.01 to 4511.78, inclusive, 4511.99, and 4513.01 to 4511.36, inclusive, Revised Code, or of any other law or ordinance regulating the operation of vehicles, streetcars, and trackless trolleys on highways. That some of these sections apply on the Ohio Turnpike follows from Section 5503.31, Revised Code, quoted above.

That some of these sections do not apply on the Ohio Turnpike follows from Section 5537.16, Revised Code, reading in part:

'The commission shall have power to adopt such bylaws, rules, and regulations as it may deem advisable for the control and regulation of traffic on any turnpike project, for the protection and preservation of property under its jurisdiction and control, and for the maintenance and preservation of good order within the property under its control. The rules and regulations of the turnpike commission with respect to the speed, axle loads, vehicle loads, and vehicle dimensions of vehicles on turnpike projects shall apply notwithstanding the provisions of sections 4511.21 to 4511.24, inclusive, 4513.34, and Chapter 5577. of the Revised Code. * * *

"* * *"

Under this section, rules and regulations of the Ohio Turnpike Commission that differ from the provisions of Sections 4511.21 to 4511.24, inclusive, 4513.34, and Chapter 5577. of the Revised Code, prevail over the latter; and as these rules and regulations are not listed in Section 4507.40, Revised Code, and are not laws or ordinances, a person who violates them would not have points assessed against him under that section.

Answering your specific question, it is my opinion and you are advised that the Ohio Turnpike is a highway within the scope of Section 4507.40, Revised Code, the point system law, and the provisions of that section apply to motor vehicle violations which occur on said turnpike.

Mark McElroy

Respectfully,

Attorney General"

The Chairman reported also on the need to annul the award of the contract to the S. E. Johnson Company which had been made in February and which the S. E. Johnson Company refused. He said he would also recommend rejection of the joint venture bid which he considered to be against public policy, by the same company, which declined the award in February, and Arthur S. Langenderfer, Inc. who was the next higher bidder on the earlier bid of the contract. He said it was perfectly obvious that the Commission could not tolerate refusal by a contractor, who was a successful bidder on an award, to refuse the contract and then join with another who was the second bidder and offer a bid. He said he would consider that was trying to whipsaw the Commission. He said it was a conflict and he would consider it against public policy to accept it or to tolerate it. He said he hoped the Commission would reject the joint venture bid and he recommended that the Executive Director examine whether or not to postpone the project indefinitely. He said the Executive Director should examine whether it should be so postponed in the face of an inflationary trend which apparently had caused the S. E. Johnson Company to refuse the award and to offer a bid along with the second bidder. He said there was not adequate money projected in the maintenance reserve fund for the increase which the joint venture bid would contemplate even if it were not also against public policy.

The Chairman asked Mr. Harnden what he thought about it. Mr. Harnden replied that he concurred with the Chairman.

The Chairman said that the Commission could not even consider the joint venture bid. He said if it were accepted the Commission would be permitting itself to be whipsawed and it was not going to do that. He said the Commission could either do the work later in 1974 or do it in 1975 or even consider doing it with its own forces.

The Chairman reported also that he, Mr. Richley and the Executive Director, as members of the Commission's review committee, had met with representatives of the Consulting Engineers, the J. E. Greiner Company, with respect to the facilities study and received a progress report concerning the improvements which might be required when the Director of Transportation assumed control of the Ohio Turnpike on the liquidation of its debt. The Chairman said he attended the meeting vice Charles J. Chastang who had been on the review committee but was no longer a Member of the Commission. He said it had been a very good conference and that Mr. Richley recognized that no final conclusion could be reached on that study until there was more definite knowledge of the result of the over-all statewide transportation study being made by the Ohio Department of Transportation. He said the Director of Transportation had suggested that the Executive Director of the Ohio Turnpike Commission and someone from the Greiner Company join the Department of Transportation Statewide Transportation Study Committee for discussions which would be held in the ensuing months and would, in a great measure, have impact upon any study and recommendations which might be made by J. E. Greiner for the Ohio Turnpike Commission.

The Chairman reported also that the new speed limit on the Ohio Turnpike, pursuant to the resolution of February 5, had become effective at 12:01 on Saturday morning, March 2. He said the State's speed limit became effective at approximately the same time.

The Chairman reported also that he had a letter from the Governor advising that the Governor was considering a number of persons for appointment to the position vacated by Mr. Chastang and, that in due course, he expected to make an appointment from those he was then considering or from such others as he might find it appropriate to consider.

The Chairman said the report of the Chairman was accepted as offered. He said the report of the Secretary-Treasurer would be received.

The Assistant Secretary-Treasurer, Mr. Johnson, reported for the Secretary-Treasurer, Mr. Anderson, that since the last meeting the following had been sent to all Members:

1. Traffic and Revenue Report for January 1974.
2. Financial Statements as of January 31, 1974.
3. Detail of Investment Transactions which took place in February 1974.
4. Draft of the minutes of the February 5, 1974 meeting.

The Chairman said the report of the Secretary-Treasurer was accepted as offered. He ascertained there would be no report from the Committee on Budget and Finance. 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 on February 6 the Committee had met with representatives of Gladieux Food Services, Inc. at the request of the concessionaire to discuss the effects of the so-called energy crisis, and particularly the gasless Sundays, on restaurant operations. He said the Gladieux representatives had made a presentation which indicated a possible decline in restaurant food sales of approximately 25% for the year 1974 if the energy crisis continued through the peak summer months. Mr. Teagarden said that at the conclusion of the presentation Virgil A. Gladieux, chairman of the board of the Gladieux Company, submitted a list of possible ways the Commission could help the restaurant operators lessen the impact of declining sales. He said several of the items would require changes in the TR 4 Contract. He said the Committee told the Gladieux representatives that the Commission was opposed to any change in the contract. He said Gladieux Food Services had written a letter to the Executive Director after the meeting that contained the same list of requests and the Executive Director had replied to Gladieux by letter and also told them that the Commission was opposed to any changes in the contract.

Mr. Teagarden said further that the Committee had indicated to Gladieux that it would not oppose reducing Sunday service to a snack bar operation with a limited variety of hot sandwiches provided that the concessionaire posted signs warning patrons of the reduced service and give prior notification to the Executive Director of which restaurants would be affected and also informing him what hours the limited service would be offered. The Chairman asked if Mr. Teagarden planned to let the restaurants discontinue service altogether. Mr. Teagarden said he did not. The Chairman said that there would always be service even if limited service were in effect at certain hours.

Mr. Teagarden reported also that on February 13 the Committee had convened to discuss a request by Gladieux Food Services, Inc. for price relief on coffee, canned soft drinks and counter vended soft drinks served with ice.

He said the Committee had granted the requested price increase on counter vended soft drinks and had rejected the concessionaire's request for 25 cent coffee and 30 cent canned soft drinks on the basis that the prices proposed were not supported by a survey of costs of the items in comparable off-turnpike restaurants. He said Mr. Gladieux and the other Turnpike restaurant concessionaire, the Howard Johnson Company, were both very unhappy with the decision but that the survey indicated that price increases were not justifiable. He said that the Committee's decision did not mean that the Committee would not meet with them and discuss matters that might be presented and give an answer.

The Chairman said that the Commission had relied over the years on Mr. Teagarden and on the recommendations of Mr. Teagarden's Committee and he was sure they had the same validity that they always had had.

Mr. Teagarden said that one of Gladieux's objections was that Oak Openings Plaza and Fallen Timbers Service Plaza restaurants were not a good operation. He said Gladieux had had experience before bidding on the present contract and knew what the situation was. Mr. Teagarden said the Committee was sympathetic with the concessionaires and that the Committee would have to follow the situation month by month. He said the concessionaires wanted the Committee to give them something over a period of a year but the Committee did not know what the situation was going to be on the Turnpike for the next 8 or 10 months; business might be up, it might be down. He said the Committee was going to keep the public in mind and follow the situation closely.

Mr. Teagarden said that the Executive Director had informed him that Gladieux was making a survey among its customers to find out whether they would be willing to pay 25 cents for coffee. The Executive Director said that the survey might be biased because the question posed to the truckers was whether they would be willing to pay 25¢ for coffee with unlimited refills, the so-called bottomless cup, or whether they would prefer to pay 20¢ for a cup. The Executive Director said that the 20¢ cup now served was bottomless so the question was incorrectly posed.

The Chairman said the report of the Committee on Service Plazas was accepted as offered. He ascertained there would be no report from the Committee on Employee Relations. He said the report of the Director of Transportation would be received.

Mr. Richley said he would not have anything to say until the resolutions were reached.

The Chairman said the report of the Committee on Safety would be received.

The chairman of the Committee on Safety, Mr. Johnson, reported that there had been no fatalities during the month of February, and that generally the accident experience was greatly improved.

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 latest progress report on the facility study was in the Members' folders and that the only matter he proposed to discuss was that of the resurfacing contracts.

The Executive Director reported that since the February meeting of the Commission at which an award had been made to the S. E. Johnson Company of Maumee, Ohio for resurfacing between milepost 14.8 and milepost 27.5, that the contractor had written to the Commission and had met with the Executive Director to advise the Commission and the Executive Director that it would refuse to enter into the contract because asphalt prices had risen since it had made the bid and, therefore, they had chosen to refuse to enter into the contract and had thereby forfeited its bid security. He said, after analysis of the situation and examination of the second bid, which had been \$220,000 higher than the low bid, it had been decided after consulting with the Commission Members and especially Mr. Richley and Mr. Anderson, that the best course of action was to readvertise. He said the Commission had readvertised and had received only one bid in response to the second advertisement and that was a joint venture submitted by the two bidders who had bid at the first opportunity and the bid submitted was approximately \$500,000 more than the previous low bid and approximately \$250,000 higher than the original high bid. He said the Commission had not contemplated such high costs in its establishment of the funds in its 1974 budget. He said, in face of the circumstances, he recommended, as did the Consulting Engineer and the Chief Engineer, that the bid be rejected. He said that as a formal matter a resolution had been prepared, annulling the award of the original contract to the S. E. Johnson Company on the basis of the company's refusal to enter into the contract. He said the proposed resolution also called for the retention by the Commission as liquidated damages of the S. E. Johnson Company's certified check for \$10,000 which had been deposited as bid security. He said a second resolution had been prepared to reject the joint venture bid submitted after the readvertisement. He recommended that both resolutions be adopted.

Mr. Richley said that the Executive Director had consulted with him on the matter and they had discussed what ought to be done. He said he was very disturbed about bidders doing such things. He said he recommended to the Commission that the amount of bid security, whether it be certified check or bid bond, be raised from the present \$10,000 or whatever it might be. Mr. Richley said the Commission might examine the new state statute which had approved

not only increased bid bond requirements but also the performance bond requirements and payment bond requirements.

The Executive Director said the bid bond had been set at \$100,000 in the readvertisement of the contract. Mr. Richley said he would recommend that the three bonds mentioned be related to a percentage of the bid. The Chairman asked whether a resolution would be needed to make that change or whether it could be done administratively. The Executive Director said it could be done administratively. Mr. Richley said that new statute provided for and the Department of Transportation required a 100% performance bond, a 100% payment bond, which amounted to 200% and which did not cost the contractor more than 100% in premium. The Chairman said \$10,000 was a meaningless figure, that the Commission received almost no redress. Mr. Richley said a 10% bond would have been \$283,000 and the Commission could then have accepted the next highest bidder and still have made money. He said the Commission would, therefore, hold the S. E. Johnson check and put it to the use of the Commission's budget. Mr. Richley said Langenderfer's bid the first time around was about \$220,000 higher than S. E. Johnson Company's.

Mr. Richley said he wished to raise some other questions. He said the bid bond requirement should be increased substantially. He said the Commission should consider a method of prequalifying contractors, a method that would set a definite procedure by which a contractor would be qualified to bid. He said the history of the contractor and the experience of the Commission with the contractor should be among the considerations when allowing a contractor to bid upon new work. He said he was not sure that it was proper that the Commission should have allowed S. E. Johnson to submit a bid, even though it was a joint venture bid the second time, in view of his non-performance of the bid awarded 30 days before. He said therefore a prequalification procedure should be examined which was based upon performance and history.

The Chairman asked whether Mr. Richley thought the Department of Transportation could have disqualified them. Mr. Richley said the Department of Transportation could have done so and that the Department would probably have filed legal action and legal action would have disqualified them temporarily. Mr. Richley said that the legal action would be based upon the fact that the public would no longer have use of the facility at the time the public thought it should have had use of the facility and therefore there was a loss to someone and that someone was the public. He said that the loss was the difference between the contractor's bid and whatever it would actually cost to do the work less the payment of the bid bond. Mr. Richley asked the Executive Director whether, because the portion of the Turnpike covered by the annulled contract was in an area of the Turnpike where average daily volumes of traffic were not as great as they were on other sections of the Turnpike, a change in the completion date might have been considered in order to allow the job to be

completed in 1974, if, indeed, it needed to be done at all. He said his point was that if the job needed to be done in January, it needed to be done in February or March and completion by August 1st might be just as much in the public interest as waiting until 1975 to do the same work at what would be a much higher cost. He said he would recommend that the July 1 completion date be studied again perhaps because it was an unnecessary burden that the Commission placed upon itself in days of high prices, especially since traffic volumes were lower in the west end of the Turnpike.

The Executive Director said that the date had been changed, that when the contract was readvertised the performance time was made approximately four weeks longer than it had been in the first advertisement. He said the new date had been based upon the Commission's experience at milepost 57.8 in 1973 where bi-directional traffic had been established. He said it had been decided that the Commission could stand bi-directional traffic in that area and it was provided for in the second advertisement.

The Chairman said the work that had been proposed to be done at the west end of the Turnpike was being done in accordance with the Commission's usual motive of keeping the Turnpike up to the highest standard. He said he did not think that the Turnpike was in real trouble at the west end and he did not think the Turnpike would be in real trouble, if any trouble, there for two years but in furtherance of the conduct that the Commission had always manifested in maintaining the Turnpike, it had been going ahead and was intending to complete total resurfacing. The Chairman said the Executive Director, if Mr. Richley agreed, ought to consider not merely whether the job had to be done but that he should have an actuarial expectancy on the area as well.

Mr. Richley said he appreciated what the Chairman was driving at but said he did not have the same feel for actuarial expectancy on the Turnpike that he had on the state highway system where it was based totally and completely on urgent need. He said that with the Department of Transportation, a delay of one year was extremely important. He said ODOT had no time table by which it would like to have all of its interstate highways resurfaced. He said ODOT did not have quite the same concern as the Turnpike Commission. He said that he had said that if the job were necessary in January of 1974 it was just as necessary in July of 1974. The Chairman said that the Turnpike degree of urgency was not the same as the degree of urgency in ODOT. He said the Commission had always considered that its Turnpike offered a luxury type of highway and that the Commission was not entitled to wait until there were chuck holes to resurface or to do whatever might be required. He said ODOT might let resurfacing go until the situation was urgent so he did not consider that the Turnpike Commission was in the same position as the Department of Transportation was with respect to other highway systems.

Mr. Richley asked whether discussion had been held with the General Counsel of the Commission to explore the possibility of legal action against the low bidder or whether the Commission had discarded that possibility. The Executive Director said General Counsel had studied that law and he asked the General Counsel for his answer.

The General Counsel said that the law had been examined and it had been found that inasmuch as the Commission treated the bid security as liquidated damages even though the sum was inadequate, the Commission was without any other recourse. The Chairman said that was why Mr. Richley's suggestion for increasing liquidated damages was a sine quo non for continuing business.

Mr. Richley said he would recommend a percentage bid bond with a fixed minimum. The Executive Director said the recommendation would be given serious examination. The Chairman directed that the Executive Director report at the next meeting if he could finish his examination by that time.

Mr. Richley asked if it were known by the staff prior to the opening of the second bids, that the contractors would engage in a joint venture. The Executive Director said that, so far as his knowledge went, it was not known and that he was fully expecting two bids. He said five contractors had taken out the plans but one of them was The City Asphalt & Paving Company of Youngstown and he had not expected City Asphalt to submit a bid. Mr. Teagarden asked whether the Peirce Construction Company of Toledo did such work. The Executive Director said he did not believe that Peirce did asphalt work. He said that when Peirce did work at milepost 57.8 they used a subcontractor for the small amount of asphalt that was required. He said he did not think asphalt paving was Peirce's customary business. He said the Miller Brothers Company took out plans but did not bid.

Mr. Richley said he would also suggest that when prequalification criteria were established, they should include criteria for prequalifying joint ventures. He said the Department of Transportation required notification ten days prior to bid opening whenever joint ventures were included because joint ventures, under certain conditions, had a way of clouding the issue. He said the Turnpike Commission could ask for bids on the project under consideration for the next 20 years and perhaps not get any bids except joint venture bids. He said the Commission would then have a very untenable situation. He said if it were known ten days in advance that a joint venture would be proposed one had an opportunity to change his proposal or to do anything else he might want to do.

The Chairman asked what possibility there would be of performing the work with the Commission's own forces. The Executive Director said the Commission had done a great deal of work using its own forces at interchanges

and service plazas but he would prefer to examine the proposal before answering. He said at the moment he did not believe the Commission's forces could handle a project the size of the one proposed. Mr. Richley asked if there were any Michigan or Indiana contractors that were within travel distance. The Executive Director said he did not know. The Chairman said Mr. Richley had everything in the record that he wanted. He said Mr. Richley's recommendations were not only to be considered but when they came before the Commission again he would vote for Mr. Richley's recommendations but that many other points ought to be considered. He said the Executive Director ought to re-examine the whole bidding procedure. The Executive Director said he would. He said he had one final comment, that certification of asphalt sources had been required, the bid bond increased and the completion time lengthened on the second readvertisement.

A resolution annulling award of Contract RMP 59-74-1 to S. E. Johnson Company was moved for adoption by Mr. Richley, seconded by Mr. Teagarden, as follows:

RESOLUTION NO. 9-1974

"WHEREAS the Commission duly awarded to the S. E. Johnson Company of Maumee, Ohio a contract for the repair and resurfacing of original Construction Sections C-55, C-56, C-57, C-58 and C-59 between Milepost 14.8 and Milepost 27.5 in Williams and Fulton Counties, Ohio, which contract was designated Contract RMP 59-74-1;

"WHEREAS the aforesaid award was made by Resolution No. 3-1974, at the Commission's meeting on February 5, 1974, following the receipt and opening of bids for said contract on January 29, 1974;

"WHEREAS following said award, the S. E. Johnson Company, by letter dated February 11, 1974, advised the Commission that due to an increase in the price of asphalt, it would not execute contract so awarded, and said company refused to accept said award and to enter into a contract with the Commission or to furnish a performance bond as required by the invitation for bids; and

"WHEREAS the documents whereby bids were solicited for said contract provide that failure by a bidder to whom an award has been made to execute the contract and to file an acceptable contract bond shall be cause for the annulment of the award and retention of the proposal guaranty by the Commission;

"NOW, THEREFORE, BE IT

"RESOLVED that the award of Contract RMP 59-74-1 to the S. E. Johnson Company of Maumee, Ohio, which award was made by Resolution No. 3-1974

on February 5, 1974, be, and the same hereby is, annulled and held for nought; and

"FURTHER RESOLVED that the bid security submitted by the S. E. Johnson Company with its bid on January 29, 1974, be retained by the Commission as liquidated damages for failure or refusal to enter into a contract pursuant to award as provided in the invitation for bids for said contract, and the executive director hereby is instructed to apply said bid security to the use and benefit of the Commission as a part of its funds."

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

Ayes: Richley, Teagarden, Shocknessy.

Nays: None.

The Chairman said the vote was unanimous and declared the resolution adopted. The resolution was identified as No. 9-1974.

A resolution rejecting proposal for Contract RMP 59-74-1 (readvertised) was moved for adoption by Mr. Richley, seconded by Mr. Teagarden, as follows:

RESOLUTION NO. 10-1974

"WHEREAS the Commission previously advertised for bids for a contract for the repair and resurfacing of original Construction Sections C-55, C-56, C-57, C-58 and C-59 between Milepost 14.8 and Milepost 27.5 in Williams and Fulton Counties, Ohio, which contract was designated Contract RMP 59-74-1, for which bids were publicly opened and read on January 29, 1974;

"WHEREAS the successful bidder for said contract, the S. E. Johnson Company of Maumee, Ohio, having refused to enter into the said contract pursuant to award, the Commission again duly advertised according to law for bids for a contract for the repair and resurfacing of said original construction sections between the mileposts aforesaid;

"WHEREAS bids for said contract received pursuant to said second advertisement were publicly opened and read in accordance with the terms thereof on February 28, 1974;

"WHEREAS there was but one bid received pursuant to said advertisement, said bid being that of the S. E. Johnson Company and Arthur S. Langenderfer, Inc., a joint venture, of Maumee, Ohio, in the amount of \$2,893,140.20 for the performance of the contract without using crushed slag in the surface course,

and in the amount of \$2,918,240.20 for the performance of the contract using crushed slag in the surface course;

"WHEREAS said bid is almost \$500,000 greater than the amount previously bid by the S. E. Johnson Company as heretofore mentioned, and is approximately \$250,000 greater than the amount bid by the Arthur S. Langenderfer, Inc. for substantially the same performance pursuant to the invitation for bids which were opened on January 29, 1974 as aforesaid;

"WHEREAS said bid, including the alternate for the use of crushed slag in the surface course, has been analyzed by the Commission's consulting engineer and by its chief engineer, and they have reported thereon with respect to said analysis and they, and also the Commission's executive director, have made their recommendations predicated thereon;

"WHEREAS the Commission, having been fully advised through said reports and recommendations, considers that the prices bid for the performance of the work under said contract appear to be excessive, and that it would not be in the interest of the Commission to award a contract predicated upon said bid with or without the aforesaid alternate pertaining to crushed slag; and

"WHEREAS the Commission is advised by its general counsel that it may legally reject said bid;

"NOW, THEREFORE, BE IT

"RESOLVED that the bid of the S. E. Johnson Company and Arthur S. Langenderfer, Inc., a joint venture, received February 28, 1974 for the performance of Contract RMP 59-74-1 in the amount of \$2,893,140.20, including its alternate bid for the performance of said contract using crushed slag in the surface course in the amount of \$2,918,240.20, being the only bid received pursuant to said invitation for bids, be, and the same hereby is, rejected as being excessive, and the executive director is hereby authorized to notify the bidder, in writing, of said action, and to return to the bidder the bid security furnished by it with said bid."

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

Ayes: Richley, Teagarden, Shocknessy.

Nays: None.

The Chairman said the vote was unanimous and declared the resolution adopted. The resolution was identified as No. 10-1974.

The Chairman said the report of the Executive Director was accepted as offered. He ascertained there would be no reports from the General Counsel, from the Consulting Engineers or from the Director of Information and Research.

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

RESOLUTION NO. 11-1974

"WHEREAS the executive director, deputy executive director, chief engineer, 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 February 5, 1974, 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 February 5, 1974 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, Richley, Shocknessy.

Nays: None.

The Chairman declared the resolution adopted with all Members present voting in the affirmative. The resolution was identified as No. 11-1974.

There being no further business to come before the Commission, a motion was made by Mr. Teagarden, seconded by Mr. Richley, that the meeting adjourn until April 2, 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, Richley, Shocknessy.

Nays: None.

The Chairman declared the meeting adjourned. The time of adjournment was 12:00 noon.

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

Ralph H. Anderson

Ralph H. Anderson, Secretary-Treasurer