

OPINION NO. 2005-021**Syllabus:**

Because of the statutory powers granted to the Ohio Turnpike Commission pursuant to R.C. Chapter 5537, the Ohio Turnpike Commission is not required to comply with Ohio's licensed vendor program, established pursuant to R.C. 3304.28 to R.C. 3304.35, in the provision of vending operations at service plazas on the Ohio Turnpike. Therefore, the Ohio Turnpike Commission is not required to permit the Bureau of Services for the Visually Impaired to determine whether to provide vending services operated by licensed vendors at newly reconstructed Ohio Turnpike service plazas before the Ohio Turnpike Commission may contract with private vendors for the provision of those services.

To: Gary C. Suhadolnik, Executive Director, Ohio Turnpike Commission, Berea, Ohio

By: Jim Petro, Attorney General, May 24, 2005

We have received your request for an opinion concerning the authority and responsibilities of the Ohio Turnpike Commission in the provision of vending services at its service plazas. You have asked whether state law requires the Ohio Turnpike Commission to grant the Bureau of Services for the Visually Impaired the

opportunity to determine whether to provide food and vending services operated by licensed vendors at newly reconstructed Ohio Turnpike service plazas before the Ohio Turnpike Commission may contract to receive those services from private vendors.

For the reasons below, we conclude that, because of the statutory powers granted to the Ohio Turnpike Commission pursuant to R.C. Chapter 5537, the Ohio Turnpike Commission is not required to comply with Ohio's licensed vendor program, established pursuant to R.C. 3304.28 to R.C. 3304.35, in the provision of vending operations at service plazas on the Ohio Turnpike. Therefore, the Ohio Turnpike Commission is not required to permit the Bureau of Services for the Visually Impaired to determine whether to provide vending services operated by licensed vendors at newly reconstructed Ohio Turnpike service plazas before the Ohio Turnpike Commission may contract with private vendors for the provision of those services.

Background

You have explained that, since the opening of the Ohio Turnpike in 1955, the Ohio Turnpike Commission has contracted with private vendors for the operation of food and vending services at the service plazas. The Commission awards these contracts pursuant to a bidding procedure established by R.C. 5537.13 and uses revenues generated by the service plaza operations in accordance with guidelines established by its governing statutes and the Trust Agreement with its bondholders. *See, e.g.*, R.C. 5537.08-.15. Revenue bonds issued by the Commission are not obligations of the State of Ohio and are not backed by the full faith and credit of the State of Ohio. R.C. 5537.11. Hence, the receipt of revenues is essential for the payment of the bonds and the effective operation of the Ohio Turnpike Commission.

Recently, the Commission pledged revenues generated from the operation of its service plazas toward its debt service requirements in an effort to increase its debt coverage ratio as further security to bondholders as a result of concerns raised by credit rating agencies. The pledge was made in advance of the recent implementation of the toll reduction for commercial vehicles, and played a significant role in the maintenance of an "AA" credit rating.

You have described a situation in which two service plazas have been newly reconstructed and are scheduled to open this spring. The Commission issued a request for proposals with respect to vending services at these locations and, among the responses, received a proposal from the Business Enterprise Program of the Bureau of Services for the Visually Impaired. The Bureau has proposed that a licensed vendor operate vending services at these locations. The licensed vendor would keep all revenues generated from the vending operations, less expenses paid back to the Business Enterprise Program.

In proposing to continue providing vending services through contracts with private vendors, the Commission has estimated that it would receive revenues in excess of \$160,000. Vending operations at the Commission's ten newly renovated

service plazas totaled \$729,897 in 2004, thus providing significant resources for the operation of the Commission's statutory functions. You are asking whether the Commission is required to participate in Ohio's licensed vendor program, which would not provide the Ohio Turnpike Commission with the substantial amounts of revenue anticipated from private vendors.

***Authority of Bureau of Services for the Visually Impaired
with regard to vending facilities***

An understanding of your question begins with a review of the status and powers of the Bureau of Services for the Visually Impaired. The Bureau of Services for the Visually Impaired is established by statute as one of the administrative subdivisions of Ohio's Rehabilitation Services Commission. R.C. 3304.15; 5 Ohio Admin. Code 3304-1-01; *see also Coleman v. Rehab. Servs. Comm'n*, 8 Ohio App. 3d 132, 133, 456 N.E.2d 506 (Franklin County 1982) (because the Bureau of Services for the Visually Impaired was created by statute, its powers and duties are limited by statute). Among the functions of the Bureau is the task of serving as the state licensing agency under the Randolph-Sheppard Vending Stand Act, 89 Stat. 20-8 (1974), 20 U.S.C.A. § 107, as amended. R.C. 3304.34-.35; *see* 20 U.S.C.A. §§ 107a, 107b (West Group 2000); *New Hampshire v. Ramsey*, 366 F.3d 1, 5-6 (1st Cir. 2004); 2002 Op. Att'y Gen. No. 2002-037.

The Randolph-Sheppard program was established by the federal government to provide employment for blind persons and to increase their economic opportunities and self-sufficiency. The program achieves these objectives by licensing blind persons to operate vending facilities on federal property and granting licensed vendors priority in the operation of these facilities. 20 U.S.C.A. § 107 (West Group 2000). The program also requires that certain percentages of the proceeds generated by vending machines operating on federal property be paid to or for the benefit of blind vendors, even if the vending machines are not operated by blind vendors. 20 U.S.C.A. § 107d-3 (West Group 2000); 34 C.F.R. § 395.32 (2004); *see Comm. of Blind Vendors v. District of Columbia*, 28 F.3d 130, 131 (D.C. Cir. 1994); *Tennessee Dep't of Human Servs. v. United States Dep't of Educ.*, 979 F.2d 1162, 1163-64 (6th Cir. 1992).

As the state licensing agency under the Randolph-Sheppard program, the Bureau of Services for the Visually Impaired is responsible for licensing blind individuals to operate vending facilities and for working with federal agencies to select sites for vending facilities. The Bureau supplies equipment and initial stock for the facilities. It also provides for the organization and operation of the Ohio Vendors Representative Committee. R.C. 3304.34; 20 U.S.C.A. §§ 107a, 107b, 107b-1 (West Group 2000); 34 C.F.R. §§ 395.7, 395.14, 395.30, 395.31 (2004); *see Comm. of Blind Vendors v. District of Columbia*, 28 F.3d at 131.

In addition to serving as the state licensing agency under the Randolph-Sheppard program, the Bureau of Services for the Visually Impaired is responsible for implementing Ohio's program for the operation of vending facilities by blind persons on state property, established pursuant to R.C. 3304.29 to R.C. 3304.35. The Bureau's Business Enterprise Program encompasses both the Randolph-

Sheppard program and Ohio's licensed vendor program. 5 Ohio Admin. Code 3304:1-21-01(L).

Ohio's licensed vendor program grants the Bureau of Services for the Visually Impaired the opportunity to establish suitable vending facilities on governmental property. "Suitable vending facilities" are defined to include "automatic vending machines, cafeterias, snack bars, cart service shelters, counters, and other appropriate auxiliary food service equipment" determined to be necessary for the automatic or manual dispensing of foods, beverages, and similar commodities "for sale by persons, no fewer than one-half of whom are blind, under the supervision of a licensed blind vendor or an employee of the commission." R.C. 3304.28(A); see R.C. 3304.30. Prior to the renovation, acquisition, lease, or rental of governmental property, the person in charge of the property must consult with the Director of the Bureau of Services for the Visually Impaired to determine if sufficient numbers of persons will be using the property to support a suitable vending facility operated by a blind licensee. R.C. 3304.30. If the Director determines that the property would be a satisfactory site for a suitable vending facility, the property must be supplied with appropriate electrical outlets, plumbing fixtures, and other requirements for the installation and operation of a suitable vending facility. The Bureau is required to supply equipment and initial stock for each suitable vending facility, and to provide for the operation of the vending facility by a blind licensee. *Id.*; see also 2002 Op. Att'y Gen. No. 2002-037 at 2-237 (if the Director determines that particular property would be a satisfactory site, the Bureau has a mandatory duty to establish a suitable vending facility).

For purposes of Ohio's licensed vendor program, "[g]overnmental property" is defined as follows:

"Governmental property" means any real property, building, or facility owned, leased, or rented by the state or any board, commission, department, division, or other unit or agency thereof, but does not include any institution under the management of the department of rehabilitation and correction pursuant to section 5120.05 of the Revised Code, or under the management of the department of youth services created pursuant to section 5139.01 of the Revised Code.

R.C. 3304.28(C) (emphasis added). Thus, governmental property includes real property owned by the state or an agency or commission of the state, but excludes certain state institutions. Further, state statutes provide that, with respect to property of state or state-affiliated colleges and universities, the decision to establish a suitable vending facility must be made jointly by the Director and the authorities of the college or university. R.C. 3304.30; see 2002 Op. Att'y Gen. No. 2002-037. No specific mention is made of the Ohio Turnpike Commission or its facilities.

The Revised Code expressly prohibits a private contract or concession to operate a vending facility on governmental property unless the Bureau has determined that the facility is not a satisfactory site for a suitable vending facility

operated by a blind licensee. R.C. 3304.33.¹ An administrative hearing procedure is provided to resolve disputes concerning the establishment of suitable facilities or the failure to comply with applicable statutory provisions. R.C. 3304.32; *see also* 20 U.S.C.A. § 107b(6) (West Group 2000); 34 C.F.R. § 395.13 (2002).²

¹ With regard to the priority given to blind vendors, federal law states that, “[i]n authorizing the operation of vending facilities on Federal property, priority shall be given to blind persons licensed by a State agency.” 20 U.S.C.A. § 107(b) (West Group 2000); *accord* 34 C.F.R. § 395.30(a) (2004) (“[b]lind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property”); *United States v. Mississippi Vocational Rehab. for Blind*, 812 F. Supp. 85 (S.D. Miss. 1992) (finding that state licensing agency has priority and entitlement to a permit for the operation by a blind licensee of vending machines on federal property). The provisions of the Randolph-Sheppard Vending Stand Act differ from those of Ohio’s statutes in various respects. For example, federal law grants a more limited priority for the operation of cafeterias than for the placement of vending machines, whereas the Ohio law includes all types of food and vending services under the same provisions. *See* 20 U.S.C.A. § 107d-3(e) (West Group 2000) (providing a priority for the operation of cafeterias on federal property only when it is determined on an individual basis that “such operation can be provided at a reasonable cost with food of a high quality comparable to that currently provided to employees, whether by contract or otherwise”); 34 C.F.R. §§ 395.33, 395.34 (2004); *see also New Hampshire v. Ramsey*, 366 F.3d 1, 29 (1st Cir. 2004). The Randolph-Sheppard program provides for income or commissions from vending machines on federal property that are not operated by a blind vendor, but no analogous state provisions grant the Bureau of Services for the Visually Impaired income or commissions from facilities not operated under its program. *See* 20 U.S.C.A. §§ 107d-3, 107e(8) (West Group 2000); 34 C.F.R. §§ 395.8, 395.32 (2004).

² The administrative hearing procedure is as follows:

If a dispute concerning the establishment of a suitable vending facility arises or if the bureau of services for the visually impaired determines that a department, agency, or governmental unit in control of governmental property has not complied with sections 3304.29 to 3304.34 of the Revised Code, an administrative hearing shall be held. The hearing shall be conducted by a board, which shall consist of one person designated by the director of the bureau who shall serve as chairman, one person designated by the head of the agency, department, or unit adversely affected, and a third person selected by mutual agreement of the two parties. If a third person cannot be mutually agreed on by the two parties, such person shall be designated by the governor. The board’s adjudication of the dispute shall be conducted in accordance with Chapter 119. of the Revised Code, and any order issued by the board shall be binding on both parties. An order issued by a board constituted

Nature and powers of the Ohio Turnpike Commission

To determine the extent to which the Ohio's licensed vendor program applies to the Ohio Turnpike Commission, it is necessary to consider the nature and powers of the Commission. The Ohio Turnpike Commission is created by R.C. 5537.02 and defined as "a body both corporate and politic, constituting an instrumentality of the state." R.C. 5537.02(A);³ *see also* 1996 Op. Att'y Gen. No. 96-064 (syllabus) (the Ohio Turnpike Commission "is a state agency, as that term is defined at R.C. 121.41(D) and R.C. 1.60"). As a statutory body, the Ohio Turnpike Commission "possesses only such authority and powers as are conferred on it by enactments of the General Assembly." *Ellis v. Ohio Tpk. Comm'n*, 162 Ohio St. 86, 120 N.E.2d 719 (1954) (syllabus, paragraph 1). The Commission is empowered to construct, maintain, repair, police, and operate the turnpike system, and to establish rules for the use of any turnpike project. R.C. 5537.04(A)(5).

The Ohio Turnpike Commission has express authority to acquire property for the turnpike system by various means, including the authority to appropriate real property. R.C. 5537.06(A). By statute, "[t]itle to real property held in fee shall be held in the name of the state for the use of the commission," and "[t]itle to personal property, and interests less than fee in real property shall be held in the name of the commission." R.C. 5537.06(A). Further, R.C. 5537.06(D) requires any instrument by which real property is acquired to "identify the agency of the state that has the use and benefit of the real property" as specified in R.C. 5301.012, which defines "agency" to mean "every organized body, office, or agency established by the laws of the state for the exercise of any function of state government."

The General Assembly has described the construction, operation, and maintenance of the Ohio turnpike system as "essential governmental functions of the state." R.C. 5537.02(A); *accord* R.C. 5537.20; *see also* 1955 Op. Att'y Gen. No. 5110, p.182 at 184 ("[a] reading of the turnpike act can leave no doubt that, despite the use of the device of revenue bonds issued by the commission for financing purposes, a turnpike project is undertaken and operated under state authority, and its property is state property"). Further, subject to limited exceptions, the property and activities of the Ohio Turnpike Commission are exempt from state and local taxation or assessments. R.C. 5537.20.

Because the Ohio Turnpike Commission is a state entity performing essential governmental functions of the state and its property is held in its name or in

under this section may be appealed in accordance with the procedure specified in section 119.12 of the Revised Code.

R.C. 3304.32 (emphasis added).

³ The language "constituting an instrumentality of the state" took effect in 1991 by means of a bill that included among its purposes "to clarify and modernize the Ohio Turnpike Act." 1989-1990 Ohio Laws, Part I, 287, 292 (Sub. S.B. 7, eff. Apr. 12, 1991) (title). It appears that the insertion of this language was intended to codify the generally accepted understanding that the Ohio Turnpike Commission was a state instrumentality, rather than to make a change in the nature of the Commission.

the name of the state, it is apparent that the real property on which turnpike projects are established is “[g]overnmental property,” as that term is defined in R.C. 3304.28(C) (quoted above) to include real property owned, leased, or rented by the state or any commission or other agency of the state. Further, the service plazas in question have been newly reconstructed and, therefore, clearly come within the provisions of R.C. 3304.30 requiring consultation with the Director of the Bureau of Services for the Visually Impaired on the question whether governmental property will support a suitable vending facility, since that requirement applies to “[e]very person in charge of governmental property to be substantially renovated or who is responsible for the acquisition, lease, or rental of such property.” Therefore, absent some exception, the statutes require the person who is in charge of the service plazas or is responsible for leasing them to consult with the Director of the Bureau of Services for the Visually Impaired to determine whether the service plazas will support suitable vending facilities.⁴

With regard to the obligation of the Ohio Turnpike Commission to comply with provisions of state law governing state agencies, R.C. 5537.02(A) states: “The commission is subject to all provisions of law generally applicable to state agencies which do not conflict with this chapter.”⁵ Hence, because Ohio’s licensed vendor program applies generally to state agencies, the statutes and rules creating that program apply to the Ohio Turnpike Commission unless they conflict with the provisions of R.C. Chapter 5537.

To answer your question, therefore, it is necessary to determine whether there are any conflicts between the provisions of R.C. Chapter 5537 and Ohio’s licensed vendor program, or any other provisions or principles of law that relieve the Ohio Turnpike Commission from the obligation of complying with Ohio’s licensed vendor program.

Authority of Ohio Turnpike Commission with regard to the operation of service plazas and the issuance of revenue bonds

As noted in your request, the Ohio Turnpike Commission has clear statutory authority to provide for the operation of food and vending services at its ser-

⁴ R.C. 3304.33 provides that nothing in R.C. 3304.29 to R.C. 3304.34 “shall be construed to impair any valid contract existing prior to August 19, 1976, or to preclude the renegotiation of such contract on the same terms and with the same parties.” The instant situation involves a competitive bidding process under R.C. 5537.13 and does not come within this provision.

⁵ This sentence of R.C. 5537.02 was enacted in 1977-1978 Ohio Laws, Part I, 487, 675 (Am. Sub. S.B. 221, eff. Nov. 23, 1977), as part of a bill including among the purposes stated in the title, at 489-90: “to require that the Ohio Turnpike Commission [and certain other bodies] submit a budget of anticipated expenses associated with their operations, maintenance, and debt retirement, to clarify that these agencies are subject to all provisions of law generally applicable to state agencies.” Thus, its purpose was to include the Ohio Turnpike Commission within the operation of those provisions and other general provisions of state law, absent conflicts.

vice plazas, and may enter into contracts to carry out this function. In this regard, R.C. 5537.13 states:

(A) Subject to section 5537.26 of the Revised Code, the *Ohio turnpike commission may fix, revise, charge, and collect tolls for each turnpike project, and contract in the manner provided by this section with any person* desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, electric light, or power lines, *service facilities*, or for any other purpose, and *fix the terms, conditions, rents, and rates of charge for such use . . .*

(B) Contracts for the operation of service facilities shall be made in writing. *Such contracts, except contracts with state agencies or other governmental agencies, shall be made with the bidder whose bid is determined by the commission to be the best bid received . . .* The commission may reject any and all bids . . .

. . .

(E) *Revenues derived from each turnpike project in connection with which any bonds are outstanding shall be first applied to pay the cost of maintenance, improvement, repair, and operation and to provide any reserves therefor that are provided for in the bond proceedings authorizing the issuance of those outstanding bonds, and otherwise as provided by the commission, and the balance of the pledged revenues shall be set aside, at such regular intervals as are provided in the bond proceedings, in a bond service fund, which is hereby pledged to and charged with the payment of the bond service charges on any such outstanding bonds as provided in the applicable bond proceedings. The pledge shall be valid and binding from the time the pledge is made; the revenues and the pledged revenues thereafter received by the commission immediately shall be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the commission, whether or not those parties have notice thereof . . .* The use and disposition of moneys to the credit of a bond service fund shall be subject to the applicable bond proceedings . . . (Emphasis added.)

See also R.C. 5537.04(A)(10) (the Ohio Turnpike Commission is authorized to “[m]ake and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under [R.C. Chapter 5537]”); R.C. 5537.04(B) (“[t]he commission may do all acts necessary or proper to carry out the powers expressly granted in this chapter”). Revenues from contracts for the operation of service facilities are used to pay the costs of maintenance, improvement, repair, and operation of turnpike projects and also for the financing of revenue bonds. R.C. 5537.13(E).

R.C. 5537.13(A) thus authorizes the Ohio Turnpike Commission to contract

with any person for the use of turnpike property for the establishment of service facilities and to fix the terms, conditions, rents, and rates of charges by contract. Further, R.C. 5537.13(B) establishes a competitive bidding procedure for the selection of service providers. Neither of these provisions conflicts directly with Ohio's licensed vendor program. Division (B) clearly excepts "contracts with state agencies or other governmental agencies" from the bidding procedures, and thus would permit unbid contracts with the Bureau of Services for the Visually Impaired.⁶ Division (A) would also permit contracts with the Bureau and, as the capacity to contract is discretionary, would permit arrangements with the Bureau to be made before other contracts are considered.

Hence, the authority of the Ohio Turnpike Commission to contract for the operation of service facilities does not, in itself, conflict with the operation of Ohio's licensed vendor program. When viewed together with the financing and revenue bond operations of the Ohio Turnpike Commission, however, it appears that a conflict does exist between the operation of Ohio's licensed vendor program and the exercise of the statutory responsibilities of the Ohio Turnpike Commission.

Although the Ohio Turnpike Commission is recognized as an agency or instrumentality of the state, it has some characteristics of a private entity and has been granted a great deal of financial independence. *See, e.g.*, 1996 Op. Att'y Gen. No. 96-064 at 2-259 ("the General Assembly has given the OTC a greater degree of autonomy and financial independence than the typical state agency"). The Ohio Turnpike Commission is not entitled to sovereign immunity and has no authority to incur indebtedness or liability on behalf of the state. *See* R.C. 5537.02(A); R.C. 5537.04(A)(4); R.C. 5537.11(B); *Harrison Constr. Co. v. Ohio Tpk. Comm'n*, 272 F.2d 337 (6th Cir. 1959); *Hoffmeyer v. Ohio Tpk. Comm'n*, 12 Ohio Op. 2d 436, 166 N.E.2d 543 (C.P. Cuyahoga County 1960). In some contexts, the Ohio Turnpike Commission has been described as an autonomous entity. *Harrison Constr. Co. v. Ohio Tpk. Comm'n*, 272 F.2d at 341; *Hoffmeyer v. Ohio Tpk. Comm'n*, 12 Ohio Op. 2d at 439; *see also* 1996 Op. Att'y Gen. No. 96-064 at 2-259 (describing characteristics of the Ohio Turnpike Commission that create "financial independence from the state"); 1974 Op. Att'y Gen. No. 74-029 at 2-135 ("the legislature intended to create an autonomous entity with its own financial structure and operation"); 1965 Op. Att'y Gen. No. 65-145 at 2-327 (overruled in part on other grounds by 1974 Op. Att'y Gen. No. 74-085) (the Ohio Turnpike Commission "has characteristics of a dual or hybrid existence in that it shows traits both of a private corporation and an organ of the State of Ohio . . . [A]lthough the Ohio Turnpike is an arm of the State of Ohio insofar as it is statutory in origin and created for a public purpose, in its operation and financial structure it is an autonomous entity severed from the State of Ohio").

A defining characteristic of the Ohio Turnpike Commission is its ability to fund the construction and operation of turnpike projects by means of the issuance of revenue bonds. Since its inception, the Ohio Turnpike Commission has been

⁶ The provision excepting government contracts from the bidding procedure was enacted in 1989-1990 Ohio Laws, Part I, 287, 307 (Sub. S.B. 7, eff. Apr. 12, 1991).

empowered to provide for the construction of turnpike projects, to finance the costs of that construction by the issuance of revenues bonds payable solely from tolls and other revenues, and to enter into trust agreements for the security of the bonds. See R.C. 5537.03; R.C. 5537.04(A)(6); R.C. 5537.08; R.C. 5537.12; R.C. 5537.13; 1949-1950 Ohio Laws 232 (Am. S.B. 7, eff. Sept. 1, 1949); *State ex rel. Allen v. Ferguson*, 155 Ohio St. 26, 97 N.E.2d 660 (1951). Bonds issued by the Ohio Turnpike Commission “do not constitute a debt, or a pledge of the faith and credit” of the State of Ohio. R.C. 5537.11(A). Rather, the bonds are funded by the Ohio Turnpike Commission through revenues from its operations, including tolls and revenues from service plazas. See R.C. 5507.01(E); R.C. 5537.03; R.C. 5537.11(A) (“[b]ond service charges on outstanding bonds are payable solely from the pledged revenues pledged for their payment as authorized by this chapter and as provided in the bond proceedings”); *cf.* R.C. 5537.11(B) (“[a]ll expenses incurred in carrying out this chapter shall be payable solely from revenues provided under this chapter and from state taxes”).⁷

Among the revenues that may be pledged to finance bonds are “[s]ervice revenues,” consisting of revenues derived from the ownership, leasing, licensing, or operation of service facilities. R.C. 5537.01(P); *see also* R.C. 5537.01(E), (M), and (N). “Service facilities” include “service stations, restaurants, and other facilities for food service, roadside parks and rest areas, parking, camping, tenting, rest, and sleeping facilities, hotels or motels, and all similar and other facilities providing services to the traveling public in connection with the use of a turnpike project.” R.C. 5537.01(O). Thus, revenues from food and vending services are included among service revenues that may be pledged for bond financing.

General language appearing in R.C. 5537.10 supports the unique nature of the Ohio Turnpike Commission and its funding mechanisms. This provision states:

This chapter provides an additional and alternative method for doing the things and taking the actions authorized by this chapter. This chapter shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers existing on or after September 1, 1949. The issuance of bonds under this chapter need not comply with any other law applicable to the issuance of bonds.

R.C. 5537.10 (emphasis added). This provision, with slightly different wording, was initially enacted as part of the legislation creating the Ohio Turnpike Commission in 1949. See 1949-1950 Ohio Laws 232, 245 (Am. S.B. 7, eff. Sept. 1, 1949). It specifies that the Ohio Turnpike Commission’s power to finance turnpike projects through the issuance of revenue bonds payable solely from tolls and other revenues is independent of other provisions of state law, and that the funding method set forth in R.C. Chapter 5537 is supplemental and additional to other methods set forth in the Revised Code, providing a permissible alternative approach.

⁷ Bondholders and trustees under the bond proceedings are permitted to protect and enforce their rights, and may compel the performance of statutory duties and enjoin unlawful activities. R.C. 5537.08(I).

The general language describing “an additional and alternative method for doing the things and taking the actions” authorized by R.C. Chapter 5537 recognizes the procedures authorized by Chapter 5537 as additional and alternative funding methods. R.C. 5537.10. This statute thus authorizes the Ohio Turnpike Commission to carry out its statutory financing powers without following methods set forth elsewhere in the Revised Code, unless particular provisions are expressly made applicable. *Id.*; *see also, e.g.*, R.C. 5537.05(D) (“[t]he commission is subject to Chapters 1515. [Ohio soil and water conservation commission], 6131. [single county ditches], 6133. [joint county ditches], 6135. [interstate county ditches], and 6137. [ditch maintenance fund] of the Revised Code and shall pay any assessments levied under those chapters for an improvement or maintenance of an improvement on land under the control or ownership of the commission”); R.C. 5537.06(A) (“[i]n any proceedings for appropriation under this section, the procedure to be followed shall be in accordance with the procedure provided in sections 163.01 to 163.22 of the Revised Code, including division (B) of section 163.06 of the Revised Code notwithstanding the limitation in that division of its applicability to roads open to the public without charge”); R.C. 5537.08(F) (“[s]ections 9.98 to 9.983 of the Revised Code [provisions for certain costs, fees, and expenses relating to bond financing] apply to the bonds”).

Because the operation of service plazas for the purpose of securing moneys to fund the process of financing turnpike projects through the issuance of revenue bonds is integral to the operation of the Ohio Turnpike Commission, it appears that R.C. 5537.02(A), R.C. 5537.10, and related provisions of R.C. Chapter 5537 may reasonably be construed to relieve the Ohio Turnpike Commission from the obligation of complying with Ohio’s licensed vendor program. *See* 1996 Op. Att’y Gen. No. 96-064 at 2-260 (“to the extent that provisions of law generally applicable to state agencies are in conflict with the financial independence of the OTC, they do not apply”); 1992 Op. Att’y Gen. No. 92-056 at 2-227 n.4 (“[a]lthough the Bureau of Services for the Visually Impaired and its Director have comprehensive authority with respect to vending facilities pursuant to R.C. 3304.28-.34, the statutes do not manifest an intention of the General Assembly to divest other state agencies of the authority to provide food services where such services are a logical function of the agency”). This construction of R.C. Chapter 5537 serves the apparent intent of the General Assembly to enable the Ohio Turnpike Commission to finance turnpike operations with revenue bonds and, accordingly, is consistent with R.C. 5537.23, which states: “This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.” *See Ellis v. Ohio Tpk. Comm’n*, 162 Ohio St. at 93 (the liberal construction mandated by R.C. 5537.23 “pertains to the establishment of turnpikes and their facilities”).

The conclusion that the Ohio Turnpike Commission has authority to make decisions regarding the food services offered to travelers on the Ohio Turnpike without granting the Bureau of Services for the Visually Impaired an initial right to decide whether to provide vending services permits the Commission to ensure that the services provided at the service plazas fit the needs of the customers, and also to ensure that the revenues received by the Ohio Turnpike Commission enable it to

meet its expenses and obligations to the bondholders. The provision of food and vending services at service plazas is not merely incidental to the operation of the turnpike, so that it may readily be made subject to a determination by the Director of the Bureau of Services for the Visually Impaired as to whether sufficient numbers of persons will be using the property to support a suitable vending facility operated by a licensed vendor. Rather, the provision of food and vending services along the turnpike is an integral part of the function of the Ohio Turnpike Commission.

The authority to make determinations regarding the provision of food and vending services is, by statute, entrusted to the Ohio Turnpike Commission, along with authority over other financial operations necessary to the funding of turnpike projects through the issuance of revenue bonds. *See generally In re Application for Exemption of Real Property from Taxation*, 167 Ohio St. 273, 276, 147 N.E.2d 857 (1958) (“[t]he service plazas, where food and drink are supplied and where gasoline, oil and other necessary motoring needs are furnished, are concomitants of the turnpike operation, and the fact that such facilities are rented out to private corporations who may profit from their operation is incidental and does not change the controlling fact that the project is owned by the public and is devoted essentially to an exclusive public use”); *Coleman v. Rehab. Servs. Comm’n*, 8 Ohio App. 3d at 133 (the purpose of Ohio’s blind vendor legislation “is to do what is necessary and proper to encourage the visually impaired to operate suitable vending facilities rather than, in effect, establish government-operated vending facilities”); *Sun Oil Co. v. Ohio Tpk. Comm’n*, 71 Ohio L. Abs. 465, 479, 131 N.E.2d 864 (C.P. Franklin County 1955) (discussing the authority of the Ohio Turnpike Commission to select gas stations, restaurants, and other services to satisfy “the apparent customer demands of the majority of motorists”). The application of Ohio’s licensed vendor program to the provision of vending services at service plazas would deny the Ohio Turnpike Commission the authority to make decisions that are vital to the performance of its statutory functions and its fiscal operations, thereby conflicting with the performance of the Commission’s duties under R.C. Chapter 5537.

You have indicated that the Ohio Turnpike Commission has pledged service revenues toward its debt service retirement, anticipating that substantial amounts of revenues would be received from private vendors supplying vending services at the service plazas. There is concern that the service revenues would be reduced if the newly reconstructed service plazas were operated, instead, by the Bureau of Services for the Visually Impaired. It is evident that this concern cannot change provisions of law, and that the Ohio Turnpike Commission can lawfully pledge only those service revenues that it can lawfully receive. However, your representation that the Ohio Turnpike Commission pledged the service revenues with the understanding and anticipation that it had control over the process of contracting for those revenues, independent of the operation of the Bureau of Services for the Visually Impaired, is consistent with the fact that the Ohio Turnpike Commis-

sion has, for many years, operated its service plazas without the participation of the Bureau.⁸

As discussed above, the Ohio Turnpike Commission's position that its statutes provide it with a great degree of financial independence is supported by

⁸ Our review of materials submitted for our consideration indicates that the Ohio Turnpike Commission has been operating service plazas since 1955 without complying with Ohio's licensed vendor program or consulting with the Bureau of Services for the Visually Impaired regarding the possible operation of a suitable vending facility by a licensed vendor. This failure to participate in Ohio's licensed vendor program may be explained, to some extent, by circumstances of history. When the service plazas were instituted in 1955, Ohio's current licensed vendor program did not yet exist. *See, e.g., In re Application for Exemption of Real Property from Taxation*, 167 Ohio St. 273, 275, 147 N.E.2d 857 (1958) (there were 16 service-plaza buildings along the turnpike, and certain lands and buildings were rented to private for-profit corporations for restaurant purposes). The Rehabilitation Services Commission was not created until 1970. *See* 1969-1970 Ohio Laws, Book III, 2762 (Am. H.B. 929, eff. Sept. 9, 1970). At that time, the Rehabilitation Services Commission was given general authority to license vending facilities on state property and other public property, but no rights of first refusal. *Id.* at 2768 (R.C. 3304.16).

The current system of providing blind vendors with preferences for vending operations on state property was enacted in 1976. *See* 1975-1976 Ohio Laws, Part I, 189 (Am. S.B. 86, eff. Aug. 19, 1976). It contained essentially the same definition of "[g]overnmental property" that currently appears in R.C. 3304.28(C), expressly excluding institutions under the management of the Department of Rehabilitation and Correction and the Ohio Youth Commission (now the Department of Youth Services), but not mentioning the Ohio Turnpike Commission. Further, the 1976 legislation enacted R.C. 3304.33 (still in effect), providing that "[n]o private contract or concession to operate a vending facility on governmental property shall be granted unless the bureau of services for the blind [now the bureau of services for the visually impaired] has determined that such facility is not a satisfactory site for a suitable vending facility operated by a blind licensee." The fact that the Ohio Turnpike Commission did not immediately begin to comply with the blind vendor preferences may be submitted as evidence that the General Assembly did not intend to include the Ohio Turnpike Commission within that program but, rather, anticipated that the Commission would make its own determinations regarding the food and vending services offered to persons using the Ohio Turnpike. It should be noted, however, that because the Ohio Turnpike Commission's service plazas were then in operation, it is possible that they were covered for some period of time by the language of R.C. 3304.33 (enacted in 1976 and currently in effect in essentially the same terms) providing that nothing in R.C. 3304.29 to R.C. 3304.34 "shall be construed to impair any valid contract" existing prior to August 19, 1976 (the effective date of the legislation) "or to preclude the renegotiation of such contract on the same terms and with the same parties." *See* note 4, *supra*.

court cases and Attorney General opinions, and may reasonably extend to the conclusion that the Ohio Turnpike Commission is independent of the requirements of Ohio's licensed vendor program. *See, e.g., Harrison Constr. Co. v. Ohio Tpk. Comm'n; Hoffmeyer v. Ohio Tpk. Comm'n*; 1996 Op. Att'y Gen. No. 96-064 at 2-259; 1974 Op. Att'y Gen. No. 74-029 at 2-134 to 2-135; 1965 Op. Att'y Gen. No. 65-145 at 2-327 (overruled in part on other grounds by 1974 Op. Att'y Gen. No. 74-085). Further, amendments that took effect in 1991 confirmed and expanded the Ohio Turnpike Commission's authority to acquire and pledge service revenues for various funding purposes, again without any suggestion that the substantial amounts received from food service operations might be subject to Ohio's licensed vendor program and unavailable to the Ohio Turnpike Commission. *See* 1989-1990 Ohio Laws, Part I, 287 (Sub. S.B. 7, eff. Apr. 12, 1991); *accord* 118-SB7 LSC Analysis at 5 ("the bill allows the Commission to pledge net revenues, to the extent permitted with respect to bonds, to secure payments the Commission makes under any lease, lease-purchase agreement, or lease with option to purchase"). It does not appear that the General Assembly at any time contemplated that the funding of Ohio Turnpike Commission operations through service revenues should be restricted by the priorities given to blind vendors under Ohio's licensed vendor program. We conclude, accordingly, that the provisions of R.C. Chapter 5537 operate to relieve the Ohio Turnpike Commission from the obligation of complying with Ohio's licensed vendor program in the provision of vending operations at service plazas on the Ohio Turnpike.⁹

⁹ The conclusion that, because of state statutory provisions, the Ohio Turnpike Commission is not required to comply with Ohio's licensed vendor program in the provision of vending operations at service plazas on the Ohio Turnpike does not relieve the Commission from complying with applicable provisions of federal law. In addition to the Randolph-Sheppard Vending Stand Act, *see* note 1, *supra*, provisions governing the operations of blind vendors appear in federal statutes providing for aid for highways. *See* 23 U.S.C.A. § 111(b) (West Group 2002); *see also New Hampshire v. Ramsey*, 366 F.3d 1, 7-8 (1st Cir. 2004). 23 U.S.C.A. § 111(b) was enacted by the Surface Transportation Assistance Act of 1982 (STA Act), Pub. L. 97-424, which provides for increased construction and safety on the interstate and national highway systems. 23 U.S.C.A. §§ 101, 103 (West Group 2002); *see* R.C. 5537.26(E) (the Ohio Turnpike "carries the interstate highway designations" of I-76, I-80, and I-89); *New Hampshire v. Ramsey*, 366 F.3d at 7. The STA Act requires that, to receive federal highway funds, a state must enter into an agreement with the Secretary of Transportation, and that agreement must comply with the terms and conditions set forth in Title 23, including provisions establishing a priority system for vending machines operated by blind vendors. 23 U.S.C.A. §§ 106, 110, 111 (West Group 2002); 23 C.F.R. § 630.112(a). Section 111(b) allows limited use of vending machines along the interstate highway system and states, in part: "In permitting the placement of vending machines, the State shall give priority to vending machines which are operated through the State licensing agency" designated pursuant to the Randolph-Sheppard Act. 23 U.S.C.A. § 111(b) (West

Conclusion

Pursuant to R.C. Chapter 5537, the Ohio Turnpike Commission has authority to issue revenue bonds to pay for turnpike projects and to finance the bonds through revenues, including revenues from service facilities. To require the Ohio Turnpike Commission to comply with Ohio's licensed vendor program and permit the Bureau of Services for the Visually Impaired to determine whether to provide food services and vending operations at newly reconstructed service plazas on the Ohio Turnpike would conflict with the Commission's statutory functions and prevent it from carrying out its statutory duties. Therefore, the Ohio Turnpike Commission is not required to grant the Bureau of Services for the Visually Impaired the opportunity to determine whether to provide vending services at Ohio Turnpike service plazas through its licensees before the Commission may contract to receive those services from one or more private vendors.

Accordingly, it is my opinion, and you are advised that, because of the statutory powers granted to the Ohio Turnpike Commission pursuant to R.C. Chapter 5537, the Ohio Turnpike Commission is not required to comply with Ohio's licensed vendor program, established pursuant to R.C. 3304.28 to R.C. 3304.35, in the provision of vending operations at service plazas on the Ohio Turnpike. Therefore, the Ohio Turnpike Commission is not required to permit the Bureau of Services for the Visually Impaired to determine whether to provide vending services operated by licensed vendors at newly reconstructed Ohio Turnpike service plazas before the Ohio Turnpike Commission may contract with private vendors for the provision of those services.

Group 2002); see *New Hampshire v. United States Dep't of Educ.*, 2003 DNH 54, 2003 U.S. Dist. LEXIS 5189 at *68 (D. N.H. 2003) (concluding that STA Act vending machine requirements apply to all interstate highways, including turnpikes, and stating that "the fact that a rest area is located on a toll road does not render § 111(b) inapplicable, so long as that toll road is also part of the interstate system"), *affirmed in part and vacated in part on other grounds*, *New Hampshire v. Ramsey*, 366 F.3d 1 (1st Cir. 2004). Thus, there may be an argument that the vending machine requirements of the STA Act apply to the Ohio Turnpike Commission. See generally 5 Ohio Admin. Code 3304:1-21-04(A)(3) (state rule addressing the operation of the blind vendor program at highway safety rest areas states: "[o]perators operating vending facilities at safety rest areas in accordance with the bureau-grantor agreement between BSVI and the Ohio department of transportation shall be present at the safety rest areas for only the time needed to service, clean and maintain the automatic vending machines located there and are prohibited from engaging in any form of personal salesmanship at the facility").