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BRIDGE COMMISSION, STATE OF OHIO; CONTRIBUTIONS TO PUBLIC EMPLOYEES RETIREMENT SYSTEM, PAYMENT OF . . . ;§145.47 R.C.—EMPLOYER, §145.01 (D) R.C., FOR MAINTENANCE AND OPERATION OF SANDUSKY BAY BRIDGE; CONTROL SURRENDERED TO DIRECTOR OF HIGHWAYS, §5593.15 R.C.; FUNDS PAID TO TREASURER OF STATE.

SYLLABUS:

1. The State Bridge Commission of Ohio, though an employer within the purview of the Public Employees Retirement System as defined in Section 145.01(D), Revised Code, is no longer the employer with respect to the maintenance and operation of the Sandusky Bay Bridge.

2. The State Bridge Commission of Ohio having, pursuant to the provisions of Section 5593.15, Revised Code, surrendered the control and operation of the Sandusky Bay Bridge to the Director of Highways and having paid to the Treasurer of State, all funds in its hands arising from the operation of such bridge, is without authority to pay to the Public Employees Retirement System the contributions required by Section 145.47, Revised Code.

Columbus, Ohio, November 10, 1958

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“I am in receipt of a letter from the State Bridge Commission of Ohio advising me that the Public Employees Retirement System of Ohio is requesting the State Bridge Commission to make certain contributions covering back payments for employees who have heretofore served the State Bridge Commission. A copy of Mr. Shultz’s letter is attached hereto.

“According to this letter the several employees, who now wish to pay into the Retirement System, were employed in the one instance from April 15, 1942 to August 8, 1957, and in the other from March 23, 1942 to February 29, 1943. The particular bridge on which these employees serves was the Sandusky Bay Bridge, which became toll free August 30, 1946, and the title to same reverted back to the State Highway Department.

“There are several questions which present themselves in connection with such contributions and upon which an opinion is respectfully requested:—

- “1. Is the ‘State Bridge Commission of Ohio’ an employer within the meaning of Sub-section D, Section 145.01 of the Revised Code.
- “2. If you hold that the Bridge Commission is such an employer, may the Bridge Commission lawfully expend funds to make such contributions to the Retirement System, or shall the State Highway Department make such contributions, in view of the fact that the title to

the bridge has now been vested in the State Department of Highways?"

Accompanying your letter is a communication from the Secretary of the State Bridge Commission stating that the Commission has no funds out of which the obligation devolving upon the employer under the provisions of the Public Employees Retirement Law could be met.

I understand that the employees who would be the beneficiaries of the payment demanded by the Retirement System, were employed in the operation of the Sandusky Bay Bridge, which was freed from tolls on August 30, 1946.

Sections 1084-2 to 1084-16, General Code, Sections 5593.01 to 5593.19, Revised Code, provided for the appointment of the State Bridge Commission, and gave it authority to acquire by purchase or condemnation, any toll bridges over rivers and navigable waters which are within, or form a boundary of the State of Ohio; Section 1084-10, General Code, now, Section 5593.10, Revised Code, gave the Commission authority to issue revenue bonds "for the purpose of paying the cost of any one or more bridges," requiring such bonds to be payable out of the revenues derived from the operation of such bridges.

Section 5593.13, Revised Code, reads in part as follows :

"Tolls shall be fixed, charged, and collected for transit over a bridge as authorized by section 5593.08 of the Revised Code and shall be so fixed and adjusted, in respect to the aggregate of tolls from the bridge for which a single issue of bonds is issued, as to provide a fund sufficient to pay such issue of bonds and the interest thereon and to provide an additional fund to pay the cost of maintaining, repairing, and operating such bridge, subject to any applicable law or regulation of the United States or of the public utilities commission of this state. The tolls from the bridge for which a single issue of bonds is issued, except such part as is necessary to pay the cost of maintaining, repairing, and operating during any period in which such cost is not otherwise provided for, during which period the tolls may be reduced accordingly, shall be set aside each month in a sinking fund which is pledged to and charged with the payment of :

"(A) The interest upon such bonds as interest falls due ;

"(B) The necessary fiscal agency charges for paying bonds and interest ;

"(C) The payment of such bonds."

Section 5503.14, Revised Code, reads as follows:

“When the particular bonds issued for any bridge and the interest thereon have been paid, or a sufficient amount has been provided for their payment and continues to be held for that purpose, *tolls for the use of such bridge shall cease except for the cost of maintaining, repairing, and operating* such bridge or for the repayment of any valid obligation due the state incurred by the state bridge commission in retiring its bonds. Thereafter and as long as the cost of maintaining, repairing, and operating such bridge is provided for through means other than tolls, no tolls shall be charged for transit over such bridge and such bridge shall be free.” (Emphasis added)

Section 5593.15, Revised Code, reads in part as follows:

“Any bridge constructed or acquired under authority of sections 5593.01 to 5593.19, inclusive of the Revised Code, and connected at each end with a highway which is a part of the state highway system *shall be added to the state highway system* by the director of highways, and section 5511.01 of the Revised Code shall not apply to such bridge. *Such bridge and its approaches shall thereafter be maintained* in good physical condition as a *state highway* or a bridge or culvert thereon.

“The director shall maintain and keep in repair any bridge, together with its approaches, constructed or acquired under sections 5593.01 to 5593.19, inclusive, of the Revised Code, which is located wholly or partly outside the state, whenever the bonds issued for such bridge have been paid or a sufficient amount for their payment has been collected; such cost of maintenance and repair shall be expended from the department of highways maintenance and repair fund.” (Emphasis added)

The first paragraph of this section applies only to what is known as the Sandusky Bay Bridge, because it is the only bridge acquired by the Commission which lies wholly within the State of Ohio and therefore, is the only one which could form a part of the State Highway System.

In Opinion No. 1740, Opinions of the Attorney General for 1947, p. 170, my predecessor had under consideration the fact that the Sandusky Bay Bridge had been fully paid for and the entire issue of bonds retired, and that there was in the hands of the commission a certain balance arising from the tolls collected thereon; and the question submitted was what should be done with this balance. It was held as shown by the first paragraph of the Syllabus:

“1. When a bridge acquired and operated by the State

Bridge Commission of Ohio under the provisions of Sections 1084-1 to 1084-17, General Code, becomes toll free, all of the outstanding bonds issued for its acquisition having been paid and all expenses in connection with the commission's operation having been paid, any surplus from tolls collected on such bridge should be paid into the treasury of the state."

I am informed that following the issuance of that opinion, such balance was paid to the Treasurer of State. Also, under the provisions of Section 5593.15, *supra*, the operation and maintenance of the bridge devolved upon the state highway department. There would therefore be no fund in the hands of the commission at the present time arising from the operation of the Sandusky Bay bridge.

However, during the existence of the Commission, there have been certain general expenses not applicable to any one bridge, but which had to be met. Under the provisions of Section 5593.06, Revised Code, the Commission is authorized to appoint a secretary-treasurer and employ engineering, architectural and construction experts, inspectors, attorneys and such other employees as are necessary. In the same section, it is provided that the members of the Commission should receive a salary of \$2000.00 *per annum* and their necessary expenses incurred in the discharge of their duties. It is further provided that "all salaries and compensation shall be paid solely from funds provided under the authority of such sections." No appropriations were made by the legislature.

No specific authority is given in the law for the creation of a general operating fund out of which these expenses could be paid, but I am informed that the Commission established such fund by drawing on the several funds created by the revenue from each of the bridges, a ratable share based on the cost of each.

At the present time, the commission had under its control the Steubenville-Weirton and the Portsmouth bridges, and this general operating fund is created by an equal assignment on the funds arising from and belonging to those two bridges.

The question then arises whether or not this general operating fund could be drawn upon to pay the amount required by the Public Employees Retirement System.

Of the two former employees of the Bridge Commission, one was employed in the operation of the Sandusky Bay bridge from April 15, 1942

to August 8, 1947, and the other was so employed from March 13, 1942 to February 29, 1943. At the time of such employment the statutes, Section 486-32 *et seq.*, General Code, now Section 145.01 *et seq.*, Revised Code under which the Retirement System was organized, did not include the Bridge Commission as an employer or its employees as entitled to membership in the system. By an amendment of that section which became effective June 29, 1955, the definition of "employer" contained in Section 145.01, *supra*, was broadened so as to include as employers, all commissions created by action of the General Assembly, and all employes of such commissions became members of the retirement system, and entitled to its benefits.

In order that employees who had not originally been within the purview of the Retirement System might have the advantage of their prior public service, it is provided in Section 145.29, Revised Code:

"The service of all members prior to January 1, 1935, shall be included as prior service providing the member meets the qualifications of section 145.30 of the Revised Code.

"* * *

"Credit for service *between January 1, 1935, and the date he became a member* may be secured by any "public employee" as defined in division (A) of section 145.01 of the Revised Code for service rendered an "employer" as defined in division (A) of section 145.01 of the Revised Code *provided such* public employee pays into the employees' savings *an amount equal to the amount he would have paid if he had been continuously a member of the public employees retirement system since January 1, 1935, or since his date of employment*, plus interest at the rate of three per cent per annum, compounded annually subject to such rules and regulations relative to the amount and manner of payment as may be adopted by the board." (Emphasis added)

Section 145.47, Revised Code, fixes the amount which each public employee who is currently a member of the system must contribute from his salary to the Employees' Savings Fund, and requires the head of each department to deduct the same from the compensation of each member on every pay roll. The next following Section, 145.48, Revised Code, provides for the "normal contribution" which the employer must add to that of the current employee.

Said Section 145.47, Revised Code, concludes with this language:

"In addition there shall be added to the employer billing next

succeeding *an amount equal to any additional payments made to the public employees retirement system by employee members of the respective employer which payment represents the amount, with interest, paid by such members to receive contributing service credit for service prior to the date of initial contribution to the system.*" * * * (Emphasis added)

The words "in addition" and the words following as used in that setting, are somewhat confusing. It appears that the provision above quoted for the additional payment by the employer for prior service, should normally be a part of said Section 145.48, Revised Code, which, as a matter of fact it was until it was placed where it is now found. In my opinion, there is no doubt but that the words "in addition," *etc.*, refer to the supplementary prior service payment required of the employer, matching the deferred payment made by the employee, pursuant to Section 145.29, *supra*.

Coming back then to the question who, if anyone, is qualified and required at the present time to make the employer's contribution demanded by the Retirement System as a supplement to the contributions made or to be made by the former employees of the Bridge Commission, it appears to be clear that the Bridge Commission is wholly without means to make such contribution unless it should draw on its current general expense fund which is made up entirely of contributions from the two bridges still under its control. This it certainly could not do, because it would thereby be imposing a burden on the funds arising from tolls charged and collected on those two bridges to meet an indebtedness properly belonging to the Sandusky Bay Bridge, and that additional burden would be cast upon the persons now using the two bridges still in the hands of the Commission, which in my opinion would be unjustifiable.

Although the State Highway Department has now the control and is entitled to whatever revenue may arise from the operation of the Sandusky Bay Bridge, it could in no sense be considered as a present or former employer of the two employes in question.

This leaves only the Treasurer of State who has received the balance of the funds belonging to the Sandusky Bay Bridge. In my opinion, the State alone could be said to have a moral, if not a legal, obligation to meet these employer contributions, if the employees in question are to receive the full benefit to which they are entitled. Payment of this obligation, however well recognized, can of course only be accomplished by an appropriation by the General Assembly.

Accordingly, in specific answer to the questions which you have submitted, it is my opinion and you are advised :

1. The State Bridge Commission of Ohio, though an employer within the purview of the Public Employees Retirement System, as defined in Section 145.01 (D), Revised Code, is no longer the employer with respect to the maintenance and operation of the Sandusky Bay Bridge.

2. The State Bridge Commission of Ohio having, pursuant to the provisions of Section 593.15, Revised Code, surrendered the control and operation of the Sandusky Bay Bridge to the Director of Highways and having paid to the Treasurer of State, all funds in its hands arising from the operation of such bridge, is without authority to pay to the Public Employees Retirement System the contributions required by Section 145.47, Revised Code.

Respectfully,

WILLIAM SAXBE
Attorney General