

## OPINION NO. 70-156

**Syllabus:**

1. Section 5507.01 et seq of the Revised Code gives the Ohio Highway Transportation Research Center Board or the Ohio Highway Transportation Research Center the authority to accept loans, consignment, or gifts of personal property.

2. The acceptance of such consignments, loans, or gifts by the Ohio Highway Transportation Research Center Board or the Ohio Highway Transportation Research Center are matters of public interest and may be publicized. No conclusions, however, as to the quality of such property transferred may be drawn except from official reports and bulletins published by the Ohio Highway Transportation Research Center Board and the Ohio Highway Transportation Research Center.

3. It is beyond the authority of the members of the Ohio Highway Transportation Research Center Board and the staff of the Ohio Highway Transportation Research Center to volunteer testimonials or give solicited testimonials concerning the qualities and results of its use of personal property transferred to the Ohio Highway Transportation Research Center Board or the Ohio Highway Transportation Research Center, whether or not such property is submitted for the specific purpose of testing or for other research.

4. It is within the authority of the Ohio Transportation Research Center to agree to relate various recorded performance data to the parties consigning, loaning, or giving such personal property during the Ohio Transportation Research Center's use thereof, provided such data is a part of the factual information incident to the purposes and objectives of the Center, and not a private arrangement for the exclusive benefit of the private individual or corporation.

5. The Ohio Highway Transportation Research Center and the Ohio Highway Transportation Research Center Board are immune from liability by the concept of sovereign immunity which is inherent in the state and may be extended to state agencies and commissions; officers or staff of the Ohio Highway Transportation Research Center or the Ohio Highway Transportation Research Center Board may be personally liable for acts beyond their scope of authority, and for negligent or malicious conduct.

6. The rights and liabilities of parties making gifts of personal property or contracting to transfer personal property to the Ohio Transportation Research Center or the Ohio Highway Transportation Research Center Board are to be determined in relation to the nature of the transaction and the laws which regulate such transfers of property.

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**To: F. P. Neuschwander, Chairman, Ohio Highway Transportation Research Board, Columbus, Ohio**

**By: Paul W. Brown, Attorney General, November 19, 1970**

I have before me your request for my opinion which asks the following questions:

- "1). Does Section 5507.01 et seq of the Revised Code give the Ohio Highway Transportation Research Center Board or the Ohio Highway Transportation Research Center the authority to accept loans, consignments, or gifts of personal property?
- "2) Does the Ohio Highway Transportation Research Center Board or the Ohio Highway Transportation Research Center, or the staff of the Ohio Highway Transportation Research Center by authorization of its Board, have the authority to permit parties making such consignments, loans, or gifts to publicize the Center's acceptance and use thereof?
- "3). Does the Board or the staff of the Ohio Highway Transportation Research Center, under authority granted by its Board, have the authority to volunteer testimonials or give solicited testimonials concerning the qualities and results of its use of such personal property gratuitously furnished to the Board and Center and not submitted for the specific purpose of testing or other research?
- "4). Would the answer to Question No. 3 above be different if the Ohio Highway Transportation Research Center were to agree to record various performance or maintenance data for the parties consigning, loaning, or giving such personal property during the Ohio Highway Transportation Research Center's use thereof.
- "5). What are the liabilities of the Board, its members, and the Center and its staff if such personal property received on consignment, loan, or as a gift should cause injury or damage to any person or property, or should be damaged or destroyed either with or without negligence on the part of the members of the Board or members of said staff?
- "6). What are the obligations, rights, privileges, and liabilities of the parties consigning, loaning, or giving such personal property to the Ohio Highway Transportation Research Board or the Ohio Highway Transportation Research Center?"

Enactments providing for the creation, scope, and authority of the Ohio Highway Transportation Research Center and the Ohio Highway Transportation Research Center Board, are contained in Sections 5507.01 to 5507.05 of the Revised Code.

In prescribing the activities in which the Ohio Highway Transportation Research Center may engage, the General Assembly provides in Section 5507.02, supra, in part as follows:

"The Ohio highway transportation research center's activities shall include:

"(A) Research relating to motor vehicles,

their components and equipment, motor vehicle operators, motor vehicle traffic and operations, and roadway design and construction, including materials and structures;

"(B) Developmental study relating to motor vehicles, their components and equipment, operational controls, and physical roadway elements."

The remaining provisions of Section 5507.02, supra, enabling the Ohio Highway Transportation Research Center to accomplish the purposes and activities stated above, provide as follows:

"The Ohio highway transportation research board may contract with other governmental agencies and offices, and with persons, firms, or corporations, for the conduct of research in automotive, vehicular, and related forms of transportation, and the development of improved highway facilities for vehicular traffic.

"Such contracts shall be for such consideration as the board determines, and, in the case of private persons, firms, or corporations, adequate to cover at least the cost of the work involved.

"The board may receive gifts and grants in support of its activities and facilities. The board may receive and hold in trust a grant or devise of land or a bequest of money or personal property for the general or special use and benefit of the center."

It is evident from the statutory provisions above that the legislature intended not only to grant to the Ohio Highway Transportation Research Center Board the authority to receive gifts, grants and bequests, but it also intended that the Ohio Highway Transportation Research Center Board should have the power to make contracts for consideration "as the board determines."

The right to receive gifts, devises, and bequests is derived from Section 9.20, Revised Code, which provides as follows:

"The state, a county, a township, or a cemetery association or the commissioners or trustees thereof, a municipal corporation or the legislative authority, a board, or other officers thereof, and a benevolent, educational, penal, or reformatory institution, wholly or in part under the control of the state, or the board of directors, trustees, or other officers thereof may receive by gift, devise or bequest moneys, lands, or other properties for their benefit or the benefit of any of these under their charge, and hold and apply the same according to the terms of the gift, devise, or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate and may be subject to any reasonable reservation. This section does not affect the statutory provisions as to devises or bequests for such purposes."

Although the legislature has not expressly granted the

authority to the Ohio Highway Transportation Research Center to accept loans or consignment of personal property, it would be reasonable to conclude that this authority is included by implication in Section 5507.02, supra, to assure the fulfillment of the legislative intent.

While the Ohio Highway Transportation Research Center Board is empowered under Section 5507.02, supra, to make contracts for the conduct of its research and development, and for such consideration "as the board determines", it is imperative to note that such consideration must be reasonable and such agreements must pertain to the specified purposes of the Ohio Highway Transportation Research Center. The acceptance of gifts of property to be used in regard to these specified purposes and the publication of reports or bulletins stating the resultant facts uncovered by such research are matters of public interest and within the scope of the Ohio Highway Transportation Research Center and Ohio Highway Transportation Research Center Board. Presenting testimonials or in any way publicizing the quality of materials received by the Ohio Highway Transportation Research Center or Ohio Highway Transportation Research Center Board is clearly unrelated to the purposes and beyond the authority of the Ohio Highway Transportation Research Center, Ohio Highway Transportation Research Center Board, its officers, staff and employees. As consideration for a loan or other agreement it would be contrary to public policy as an unauthorized expenditure of public funds in support of a private individual or corporation. It is clearly beyond the authority of the Ohio Highway Transportation Research Center Board, its members, staff, or employees to give testimonials or in any way prefer one product over another product apart from its impartial official reports from facts found in its research and development.

In regard to your fourth question I can perceive no objection to an agreement, on the part of the transportation research center, to record various performance or maintenance data for the parties consigning, loaning, or donating personal property for the use of the center provided such data is a part of the factual information incident to the purposes and objectives of the center and not a private arrangement for the exclusive benefit of the private individual or corporation.

Your fifth question calls for my opinion on whether the doctrine of sovereign immunity should extend to the Ohio Highway Transportation Research Center and Ohio Highway Transportation Research Center Board.

The doctrine of sovereign immunity is inherent in the laws of the State of Ohio. Article I, Section 16 of the Ohio Constitution, provides as follows:

"All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

"Suits may be brought against the state, in such courts and in such manner, as may be provided by law. (As amended September 3, 1912)"  
(Emphasis added)

Implicit in the constitutional provision above, "as may be

provided by law:, is an indication the suits may not be instituted against the state except when a particular statute or provision of law expressly provides. This indication embodies the concept of sovereign immunity which has on occasion been extended to state agencies and commissions. As a general rule, however, if a commission created by the state is considered an independent legal entity, it is not clothed with sovereign immunity although such immunity attaches to an agency of the state. The test to determine "entity" is whether or not state funds would be subjected to the payment of a judgment in the event that the commission is found liable. This test, established in the case of Hoffmeyer v. Ohio Turnpike Commission ( C P ) 12 Ohio Ops. 2nd 436, 83 Ohio Law Abs. 391, 166 NE 2d 543 (1960), must be considered in relation to whether or not the political arm of the state will extend protection to the Ohio Highway Transportation Research Center and the Ohio Highway Transportation Research Center Board.

In the Hoffmeyer case, supra, the court relied on expressed legislative intent in the determination and characterization of the Ohio Turnpike Commission as a separate corporate entity rather than as a political arm of the state. In Section 5537.11, Revised Code, the legislature recited:

"All such turnpike revenue bonds shall \* \* \* contain a statement to the effect that the bonds, as both to principle and interest, are not obligations of this state or of any political subdivision thereof." (Emphasis added)

Two responsibilities given to the Ohio Turnpike Commission were: (1) the general statement that it can "sue and be sued in its own name \* \* \*" (Section 5537.04 (D), supra); and more significantly (2) the admonition that although its activities shall be essential governmental functions, "the Commission shall not be immune from liability by reason thereof." (Emphasis added) The two emphasized provisions above indicate the legislature's expressed intent that the cloth of traditional sovereign immunity should not be granted to the Ohio Turnpike Commission. Unlike the statutory language relating to the Ohio Turnpike Commission, Sections 5507.01 to 5507.05, supra, providing for the establishment and activities of the Ohio Highway Transportation Research Center and the Ohio Highway Transportation Research Center Board, contain no disclaimer of state immunity. My attention is drawn to the fact that state bonds have provided abundant, financial support for the operation and maintenance of the Ohio Highway Transportation Research Center and that contributions and grants from private sources serve only to supplement this basis allotment. Therefore, the autonomous quality attributed to the Ohio Turnpike Commission is the Hoffmeyer case, supra, would not be a proper characterization of the Ohio Highway Transportation Research Center. My conclusion is that the Ohio Highway Transportation Research Center and the Ohio Highway Transportation Research Center Board would be extended the protection of sovereign immunity which is inherent in the state.

In regard to the rights and liabilities of parties consigning, loaning, or giving personal property to the Ohio Highway Transportation Research Center or Ohio Highway Transportation Research Center Board, such rights and liabilities will be determined by the nature of the transaction and the ability of the parties to assume such rights and liabilities.. In the case of a gift, for example, the donor who is also a manufacturer or retailer will be liable for expressed or implied warranties which

attach to the property transferred. Where a contract exists for a transfer of property, the parties, acting within their authority, may agree as to their respective rights and liabilities.

Therefore, it is my opinion and you are hereby advised that:

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2. The acceptance of such consignments, loans, or gifts by the Ohio Highway Transportation Research Center Board or the Ohio Highway Transportation Research Center are matters of public interest and may be publicized. No conclusions, however, as to the quality of such property transferred may be drawn except from official reports and bulletins published by the Ohio Highway Transportation Research Center Board and the Ohio Highway Transportation Research Center.
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