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1. OHIO TURNPIKE COMMISSION — EMPLOYMENT BY — PUBLIC EMPLOYMENT WITHIN SECTION 731.02 RC — MEMBER OF CITY COUNCIL FORBIDDEN TO HOLD SUCH EMPLOYMENT.

SYLLABUS:

Employment by the Ohio turnpike commission is “public employment” within the meaning of Section 731.02, Revised Code, under which a member of a city council is forbidden to “hold any other public office or employment.”

Columbus, Ohio, June 7, 1956

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

Your request for my opinion reads as follows :

“The question has been presented by one of our Examiners as to whether or not a toll collector employed by the Ohio Turnpike Commission is, by virtue of that employment, prohibited from occupying the position of Councilman of a city.

“Section 731.02, R. C., prohibits a City Councilman from holding any other public office or employment.

“I would like to have your opinion as to whether or not the employment of a City Councilman as a toll collector on the Ohio Turnpike constitutes holding other public office or employment under Section 731.02, R. C.”

To the extent here pertinent, Section 731.02, Revised Code, provides :

“* * * Each member of the legislative authority shall be an elector of the city, shall not hold any other public office or employment, except that of notary public or member of the state militia, and shall not be interested in any contract with the city. * * *”

A somewhat related question was under study in my opinion No. 5110, dated April 26, 1955, the syllabus in which reads :

“A board of county commissioners is without authority to impose a building inspection or to exact an inspection fee under county regulations for the inspection of buildings constructed by the Ohio Turnpike Commission and owned by the State of Ohio.”

In the course of that opinion I said :

“The Ohio Turnpike Commission is a body corporate and governmental agency of the State of Ohio, established under Section 5537.02, Revised Code, which provides :

“There is hereby created a commission to be known as the “Ohio turnpike commission.” Such commission is a body both corporate and politic in this state, and the exercise by it of the powers conferred by sections 5537.01 to 5537.23, inclusive, of the Revised Code, in the construction, operation, and maintenance of turnpike projects shall be held to be essential govern-

mental functions of the state, but the commission shall not be immune from liability by reason thereof.'

"Section 5537.04, Revised Code, authorizes and empowers the commission to 'construct, maintain, repair, police, and operate turnpike projects, and establish rules and regulations for the use of any such turnpike projects; * * *. Acquire, in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper * * * public or private lands, including public parks, playgrounds, or reservations, or parts thereof or rights therein, * * *.'

"Section 5537.01 (B), Revised Code, defines the words 'project' or 'turnpike project' as 'including all bridges, tunnels, overpasses, underpasses, inter-changes, entrance plazas, approaches, tollhouses, *service stations* and administration, storage, and other buildings and facilities which the commission deems necessary for the operation of the project. * * *'

"The question here is whether the county, as a political subdivision of the state, may exact a fee under county regulations for the inspection of buildings constructed by the state in connection with the operation of a turnpike project. In answering that question, I base my conclusions first upon my opinion that a turnpike project is a state project. 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. * * **"
(Emphasis added.)

In my opinion No. 3245, Opinions of the Attorney General for 1953, p. 605, I said:

"In State ex rel. Kauer v. Defenbacher, 153 Ohio St., 268, the syllabus reads in part:

"'2. Money expended for the study of 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 section 5a of Article XII of the Constitution.'

"In State ex rel. Turnpike Commission v. Allen, 158 Ohio St., 168, the court held the turnpike act to be a constitutionally valid legislative enactment, and in the opinion by Chief Justice Weygant the 6th paragraph of the syllabus in the Defenbacher case, supra, was quoted in full, and referring to that paragraph, and to numerous other related conclusions stated by the court in earlier cases, the writer said (p. 173):

“It would extend this opinion unnecessarily to repeat the reasoning on which the foregoing conclusions were based. It is sufficient to state that a majority of the court adheres to those pronouncements.’

“It is to be noted that the court in each of these cases was concerned with the expenditure of state funds for the *study* of a turnpike project, but it is quite clear that the court’s conclusion was that the ‘expense of such study was to be included within the costs for construction * * * of *public highways* * * *.’”
(Emphasis added.)

It is to be seen that (1) the turnpike commission is a state agency created by statute, (2) its property is state property and (3) it is engaged in the construction and operation of “public highways.” All of these circumstances, of course, strongly suggest that the turnpike commission employees are “public employees” within the ordinary and usual meaning of that term.

It would seem, however, that whatever doubt may remain on this point was definitely resolved by the amendment of Section 145.01, Revised Code, effective June 29, 1955. This section now reads in part:

“As used in sections 145.01 to 145.57, inclusive, of the Revised Code:

“(A) ‘Public employee’ means any person holding an office not elective, under the state or any county, municipal corporation, park district, conservancy district, sanitary district, health district, township, metropolitan housing authority, state retirement board, public library, union cemetery, joint hospital, institutional commissary, state university rotary fund, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division, or employed and paid in whole or in part by the state or any of the authorities named in this division in any capacity not covered by section 3307.01 or 3309.01 of the Revised Code.”

This provision is a clear legislative recognition of the classification of turnpike employees as public employees for the purpose of membership in the public employees retirement system, and although the definition thus provided is technically applicable only for such purpose, it is evidence of the legislative concept that the mere fact that such individuals are employed by an agency which is financed by use of the “revenue bond—turnpike toll” device, is not sufficient to exclude them from the category of public employees as this term is usually and ordinarily understood.

For these reasons, in specific answer to your inquiry, it is my opinion that employment by the Ohio turnpike commission is "public employment" within the meaning of Section 731.02, Revised Code, under which a member of a city council is forbidden to "hold any other public office or employment."

Respectfully,

C. WILLIAM O'NEILL
Attorney General