

2035

TURNPIKE ENCUMBRANCE ESTIMATE—DUTY OF AUDITOR
OF STATE TO ISSUE WARRANTS ON STATE TREASURY
FOR EMPLOYES WHO MAKE A STUDY OF PROPOSED
TURNPIKE PROJECT.

SYLLABUS:

It is the duty of the Auditor of State to issue warrants on the state treasury for employes whose principal occupation is making a study of a proposed turnpike project.

Columbus, Ohio, July 14, 1950

Hon. T. J. Kauer, Director, Department of Highways
Columbus, Ohio

Dear Sir:

Your request for my opinion is as follows:

“On June 13, 1950, we submitted voucher No. 34951 to the State Auditor covering the salaries of Mr. “S”, Civil Engineer 8, and Miss “C”, Clerk Stenographer 4, in the sum of \$435.00, for the half-month ended June 15, 1950, for payment. The State Auditor has to date failed to issue warrants on the State Treasury for their compensation. The voucher was charged to Turnpike Encumbrance Estimate S-12225, Legislative Code G-32T, which Encumbrance the Supreme Court held in Case No. 32007 State, ex rel. v. Defenbacher, 153 O. S. 270 that it is the ministerial duty of the Director of Finance to approve as required by Section 2288-2 G. C.

“Attached hereto is a copy of letter written to the Auditor of State under date of June 28, 1950, which sets forth the duties performed by Mr. S., also copy of voucher referred to above.

“An official opinion is hereby requested as to whether it is the ministerial duty of the Auditor of State to draw warrants on the State Treasury covering vouchers that are legally chargeable to the Turnpike Encumbrance S-12225. If your opinion in the foregoing request is in the affirmative, then it is hereby requested that you take the steps necessary to have warrants drawn on the State Treasury.

“Since the voucher in question represents compensation due personnel, I would appreciate a prompt decision because there will be other employes of the department in the very near future

who will have time chargeable to the Turnpike Encumbrance, and prompt payment is essential in order that my duties may be performed under the law."

In your letter to the Auditor of State, a copy of which is attached to your request, you point out that you are an ex-officio member of the Ohio Turnpike Commission, and among your duties under Section 1205, paragraph (j) of the General Code, you are required to approve any location of a turnpike project. You further point out that you are Secretary and Treasurer of the Turnpike Commission. The remainder of your letter describes Mr. S.'s duties since his employment. You state in conclusion:

"In conclusion it may be stated that since June 1, Mr. S.'s duties consist of gathering information and directing matters pertaining to the study required to be made by me under the provisions of said Section 1220 and all of his duties are aiding me in performing my duties which are imposed upon me by the said turnpike law."

In addition to the copy of your letter which you attach you have submitted a copy of the depositions of C. P. S. and J. S. taken on the 10th day of July, 1950, in Room G-10, State Office Building, Columbus, Ohio, before G. Lawrence Regan, a Notary Public for the county of Franklin, State of Ohio, relative to the duties performed by Mr. S. and Miss C. Present at the taking of these depositions were an Attorney Examiner of the State Auditor's Office and an Attorney Examiner of the State Highway Department. You were also present at a conference in my office, when the problem under consideration was discussed.

The first question presented by your request is whether an expenditure may be made for the study of any turnpike project as contemplated by Section 1220, General Code. This question was the subject of an opinion of the Supreme Court of Ohio in the case of State, ex rel. Kauer, Director of the Department of Highways v. Defenbacher, Director of the Department of Finance, et al., 153 O. S. 268, No. 32007, decided March 22, 1950. That case was an action in mandamus brought by you as Director of Highways, to compel the Director of Finance to issue a certificate of encumbrance for certain monies for the study of a turnpike project and for authority to use engineering and other forces in effecting such study. The writ was also sought to compel the Auditor of State to receive and recognize such certificate of encumbrance. There

were other questions involved in this case, but a majority of the Supreme Court granted the writ in so far as the certificate of encumbrance was concerned.

Thus, in paragraphs number 2 and 4 of the syllabus, the court said as follows:

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

“4. Where general statutes authorize such director to make other additions and betterments so that the money appropriated to his department for additions and betterments is insufficient to enable him to provide all those which general statutes authorize him to provide, the director, in the absence of any statutory provision to the contrary, has an administrative discretion to determine which additions and betterments he will provide with the money available.”

At page 275 of the opinion the court said:

“In our opinion, therefore, Amended House Bill No. 654 has made a specific appropriation of money which is available for study of a turnpike project, as contemplated by Section 1220, General Code.”

And on page 276, the court said:

“On this question, our conclusion is that there has been a specific appropriation under which money may be drawn from the treasury by the Director of Highways for the purpose of making the study of a turnpike project, as provided for in Section 1220, General Code; and that money so appropriated is in the highway improvement fund.”

The next question to be considered is whether Mr. S. and Miss C. are engaged in the study of a turnpike project as defined by Section 1220, General Code. If they are, it is the duty of the Auditor to pay them, since the writ of mandamus issued by the court in the Defenbacher case was directed to the Auditor as well as the Director of Finance.

You state in your letter to the Auditor that Mr. S.'s duties consist of gathering information, and directing matters pertaining to turnpike studies.

Mr. S. stated on page 9, of the depositions referred to above:

“A. Mine is a liaison function. I am the direct representa-

tive of the Director of Highways in the control of those engineering studies, reports of progress going through my hands for review for recommendation to the Director for his approval. It is my job to insure that the studies are actually performed under that contract. As a part of that function, I visited Baltimore last — on June 28, 1950, for the purpose of ascertaining for the Director's benefit that the studies were, in fact, progressing in accordance with progress schedule Mr. G.'s company had submitted. That is one phase. Then there are a lot more phases, if you want it.

"Q. I want you to tell me which one you have done.

"A. A great amount of information is available and has been available in the Highway Department to assist the consulting firms in these studies; traffic information, location studies, previously made by the Highway Departments; scheduled programs for improvement from Highway funds of the State Highway System in northern Ohio; design experience, design criteria, construction cost experience; and all other technical engineering information which goes into a complete engineering analysis of the highway problem. The coordination of that information and material is my responsibility. Then insuring that information getting to the consultant is accurate, further, is my responsibility. Acting for the Director of Highways. That is a full-time job. I find myself fully occupied and I am putting in ten to twelve hours a week more than the regulations of the Department call for in the way of working hours."

It seems obvious to me that Mr. S. is engaged in the study of a turnpike project, and as such it is the duty of the Auditor to reimburse him.

Miss C. stated in her deposition that she was Mr. S.'s secretary. Mr. S. at page 3 of his deposition, said that she has been assigned to assist him.

It would seem obvious, also, that Miss C. is engaged in a study of a turnpike project. As a result of a conference in my office, wherein you went into further detail regarding the duties of Mr. S. and Miss C. I would reach the same opinion.

It seems that one of the Auditor's objections is that Mr. S. represents you at times in your capacity as Secretary and Treasurer of the Turnpike Commission. From Mr. S.'s deposition and information you have given me, whatever duties Mr. S. performs in this capacity are very minor compared with his general duties. It was never contemplated that you were

to carry out these duties personally, and the use of Mr. S.'s services in this connection in no way interferes with his general duties.

Therefore, in view of all the data submitted and the information before me, it is my opinion that it is the duty of the Auditor of State to issue warrants on the state treasury for these employes whose principal occupation is making a study of a proposed turnpike project.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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DISCHARGE—"OTHER THAN HONORABLE"—MILITARY OR NAVAL SERVICE OF UNITED STATES—DOES NOT ENTITLE A VETERAN'S CHILD TO ADMISSION TO OHIO SOLDIERS' AND SAILORS' ORPHANS' HOME—SECTION 1932 G. C.

SYLLABUS:

A discharge indicating service "other than honorable" does not entitle a veteran's child to admission to the Ohio Soldiers' and Sailors' Orphans' Home under the provisions of Section 1932 of the General Code.

Columbus, Ohio, July 14, 1950

Mr. Floyd R. Hartpence, Superintendent
Ohio Soldiers' and Sailors' Orphans' Home
Xenia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"During World War II it became the practice of the government to issue several different types of discharges to veterans. Some are honorable, some are marked 'other than honorable' and some are dishonorable.

"Under Section 1932 of the General Code, admission to the Home is based upon honorable service in the military or naval forces during any war. We desire an opinion upon this question: