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1. SANDUSKY BAY BRIDGE—UPON PAYMENT OF BONDS OR WHEN SUFFICIENT AMOUNT PROVIDED FOR PAYMENT—FREE TO PUBLIC—PART OF STATE HIGHWAY SYSTEM—DUTY TO MAINTAIN AND REPAIR—DEVOLVES UPON STATE HIGHWAY DIRECTOR.
2. POMEROY-MASON BRIDGE—GREATER PORTION IN WEST VIRGINIA—UPON PAYMENT OF BONDS WILL NOT BECOME PART OF STATE HIGHWAY SYSTEM—DUTY, STATE BRIDGE COMMISSION OF OHIO TO CHARGE AND COLLECT TOLL TO COVER COST OF MAINTENANCE, REPAIR AND OPERATION.

SYLLABUS:

1. The Sandusky Bay Bridge, having been acquired pursuant to the provisions of Section 1084-1 et seq. of the General Code, will upon payment of the bonds issued therefor, or when a sufficient amount shall have been provided for their payment, be free to the public, and such bridge will become a part of the state highway system and the duty of maintaining and repairing such bridge will devolve upon the state highway director.

2. The Pomeroy-Mason bridge, the greater portion of which is located in the State of West Virginia, is not, and will not on payment of the bonds issued for its acquisition, become a part of the state highway system, and no other provision having been made for its maintenance and repair, it will be the duty of the State Bridge Commission of Ohio to charge and collect a sufficient toll for passage over such bridge, to cover the cost of maintaining, repairing and operating the same.

Columbus, Ohio, July 22, 1946

State Bridge Commission of Ohio
Columbus, Ohio

Gentlemen:

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

“The State Bridge Commission operates and maintains four bridges, namely:

Sandusky Bay Bridge, passing over Sandusky Bay, extending from Erie County to Ottawa County. This bridge is wholly within the State of Ohio and is connected at each end with State Route 2 which passes over the bridge.

Pomeroy-Mason Bridge, crossing the Ohio River from Pomeroy to Mason, W. Va. The greater portion of this bridge is located in the State of West Virginia and is connected at the Ohio end with U. S. Route 33 which passes over the bridge into the State of West Virginia.

Steubenville-Weirton Bridge, crossing the Ohio River from Steubenville, Ohio, to Weirton in the State of West Virginia. The greater portion of this bridge is located in the State of West Virginia and is connected at the Ohio end with U. S. Route 22 which crosses the bridge into the State of West Virginia.

East Liverpool-Chester Bridge, crossing the Ohio River from East Liverpool to Chester in the State of West Virginia. The greater portion of this bridge is in the State of West Virginia and is connected at the Ohio end by U. S. Route 30 which crosses the bridge into the State of West Virginia.

These bridges were acquired by purchase, as provided for in Section 1084-8 of the General Code, title thereto being taken in the name of the State. Bridge revenue bonds of the State were issued for the purpose of paying the cost of acquiring these bridges, as authorized in Section 1084-10 of the General Code. Tolls have been charged and collected under authority of Section 1084-13 of the General Code.

The bonds issued for the purchase of Sandusky Bay Bridge will be paid off this coming October and it is probable that the bonds issued for the purchase of the Pomeroy-Mason Bridge will be retired within the year of 1946.

We direct your attention to Section 1084-14 and Section 1084-15 of the General Code, as follows:

'Sec. 1084-14. When the particular bonds issued for any bridge or bridges and the interest thereon shall have been paid or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, tolls for the use of such bridge or bridges shall cease except for the cost of maintaining, repairing and operating such bridge or bridges. Thereafter and as long as the cost of maintaining, repairing and operating such bridge or bridges shall be provided for through means other than tolls, no tolls shall be charged for transit thereon and such bridge or bridges shall be free.'

'Sec. 1084-15. Any bridge acquired under authority of this act 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 1189 of the General Code shall not apply and such bridge and approaches shall thereafter be maintained in good physical condition as a state highway or a bridge or culvert thereon.'

QUESTIONS PROPOUNDED:

1. Is Sandusky Bay Bridge such a bridge as shall be added to the state highway system as soon as the bonds issued for the payment thereof have been paid?

2. If said bridge thus becomes a part of the state highway system does the cost of maintaining, repairing and operating the bridge become a duty or function of the director of highways and is the State Bridge Commission of Ohio divested of any and all duty and authority in connection with this bridge whatsoever?

3. Does the Pomeroy-Mason Bridge become a part of the state highway system when the bonds issued for payment thereof have been paid and is the director of highways thereafter charged with the maintenance thereof?

4. If the Pomeroy-Mason Bridge does not then become a part of the state highway system and to be maintained by the director of highways, does the duty and authority of maintaining, repairing and operating said bridge remain with the State Bridge Commission of Ohio?

5. If the duty and authority of maintaining, repairing and operating the Pomeroy-Mason Bridge remains and continues in the State Bridge Commission of Ohio after the bonds issued for the purchase thereof have been paid, shall tolls be charged and collected to provide a fund to pay the cost of such maintenance, repairs and operation, and shall such tolls be charged for transit over said bridge as long as other means have not been provided to pay for its maintenance?

6. Is there any provision or authority whereby funds or means other than through the collection of tolls, can be obtained or provided for maintaining said bridge so as to free the same?

7. If and when means, other than tolls, shall be provided for the cost of maintaining and repairing the Pomeroy-Mason Bridge, does the State Bridge Commission still have the duty of maintaining the same?

8. The questions propounded in reference to the Pomeroy-Mason Bridge may be considered as applicable to the Steubenville-Weirton Bridge and the East Liverpool-Chester Bridge."

1. Your question as to the status of the Sandusky Bay bridge appears to me to be quite clearly answered by reference to the two sections of the statute which you quote. This bridge is located wholly within the State of Ohio and is connected at each end with state route 2 which passes over the bridge. The bonds issued for the purchase of that bridge are

to be paid off in October of this year. Therefore, by the express provisions of Section 1084-15, General Code, that bridge and its approaches shall thereafter "be maintained in good physical condition as a state highway or bridge or culvert thereon."

2. This brings into operation the provisions of Section 1084-14, General Code. The bonds issued for the acquisition of that bridge having been paid and the cost of the maintaining, repairing and operating such bridge having been thrown upon the state highway system, there would be no occasion or excuse for any further tolls and the bridge would thereupon become free to the public and the state bridge commission of Ohio would be divested of any and all duty and authority in connection with that bridge.

The reference in Section 1084-15, General Code, to Section 1189 of the General Code does not in any way affect the conclusion above indicated. Said Section 1189, General Code, now repealed, merely provided a method by which the state highway director was authorized to designate additional state highways and add them to the state highway system or make changes in existing highways comprising the state highway system, the procedure being by giving notice of such proposed changes, giving to the new highway an appropriate name, and making a map showing the change. What the general assembly evidently meant by the allusion to Section 1189 was that a bridge such as was described in Section 1084-15 was made a state highway by the act itself, and that no action need be taken by the director to that end.

By the provisions of Section 1178, et seq., of the General Code, as embodied in the new highway act passed by the 96th General Assembly, the director of highways is given full authority and charged with full responsibility for the construction, maintenance and repair of the entire state highway system *including bridges* thereon. The pertinent portion of Section 1178 reads as follows:

"The functions of the department of highways shall be to establish state highways on existing roads, streets and new locations and to construct, reconstruct, widen, resurface, *maintain and repair* the state system of highways and *the bridges* and culverts thereon, * * *." (Emphasis supplied.)

The section further contains this definition :

“The word ‘road’ or ‘highway’ when used in this act shall be deemed to *include bridges*, viaducts, grade separations, appurtenances and approaches on or to such road or highway.”

(Emphasis supplied.)

Accordingly, I have no hesitancy in determining that upon the payment of the bonds issued for the acquisition of the Sandusky Bay bridge the responsibility for its maintenance and repair will devolve upon the director of highways and your commission will be relieved of all further authority and responsibility in respect thereof.

3. The third question, which relates to the Pomeroy-Mason Bridge, involves the consideration and application of somewhat different principles. This bridge, according to your statement, is located principally in the State of West Virginia, and is not connected at each end with a highway which is a part of the state highway system. It could not therefore fall within the description contained in Section 1084-15, General Code, and therefore could not by the terms of that section be added to the state highway system or come under the control of the director of highways unless there be a specific provision of statute to that effect. The provisions of said Section 1084-15 seem definitely to exclude it from that result.

Accordingly, the payment of the bonds issued for the acquisition of this bridge would not have the effect of entirely freeing the bridge of tolls as contemplated by Section 1084-14, General Code, unless we can find that the cost of maintaining, repairing and operating the bridge has been provided for through means other than tolls.

By the terms of Section 1178, General Code, which I have quoted in part, the functions of the department of highways are limited to the state system of highways and there is nothing in the statutes relating to the state system of highways or the powers of the director that suggests any intention to confer any power or impose any duty on the director beyond the territorial limits of the state. That his authority is limited to roads in the state is further indicated by Section 1178-2, General Code, which provides that he “shall have general supervision of all roads comprising the state highway system.”

Section 1178-20, General Code, defines the state highway system as follows:

“The state highways heretofore established by law shall, after the taking effect of this act, continue to be known as state highways and the system of state highways heretofore established by law shall, after the taking effect of this act, continue to be known as the state highway system.”

Furthermore, except for the powers committed to your commission, there is nothing in the law so far as I am able to discover that purports to give to any officer, board or commission the authority to maintain or keep in repair any highway or bridge which the state might acquire located outside of the boundaries of the state. The ownership by the state of a bridge located in part or in whole in another state would appear to be rather anomalous and to call for some provision of law which apparently the general assembly has not seen fit to enact providing for its permanent maintenance and repair.

The background and reason for this state of the law is, I believe, to be found in the fact that the “Bridge Law” (Sections 1084-1 to 1084-17) as originally enacted related only to bridges wholly within the state. It was enacted on May 16, 1935. On May 23, 1935 the general assembly adopted a joint resolution reciting the desirability of abolishing the toll bridges over the Ohio River, and at a special session the same general assembly on January 23, 1936 amended Section 1084-1 so as to extend the power of the commission to the acquisition of bridges over any rivers “which form the boundary of the state,” but it made no provision for the maintenance of any out-of-state bridge which might be acquired.

Accordingly, it is my opinion that until provision is made by law adding the Pomeroy-Mason bridge to the state highway system, it does not become a part of such system and its repair and maintenance does not fall within the authority or duty of the director of highways.

Section 1084-13, General Code, expressly requires your commission to levy tolls not only for payment of the bonds issued for the purchase of the bridge but also “to provide an additional fund to pay the cost of maintaining, repairing and operating such bridge.” It follows that until the general assembly provides other funds for the purpose, it will remain the duty of the State Bridge Commission of Ohio, after the payment of

the bonds issued for the purchase of that bridge, to continue to charge and collect such tolls as may be necessary to provide a fund for the maintenance, repair and operation of the bridge.

The above discussion and conclusions, I believe, sufficiently cover the remainder of the questions propounded by you.

Respectfully,

HUGH S. JENKINS
Attorney General