

## OPINION NO. 74-037

## Syllabus:

There is a legal and binding obligation on the Transportation Research Board of Ohio to reimburse the Department of Transportation for expenditures made by the latter for the benefit of the former or its predecessor, since the General Assembly has already appropriated and reappropriated funds for that purpose.

To: Roger Dreyer, Chairman, Transportation Research Board of Ohio, East Liberty, Ohio

By: William J. Brown, Attorney General, May 7, 1974

I have before me a reformulation of a prior request for an opinion from this office concerning invoices submitted by the Ohio Department of Transportation to the Transportation Research Board of Ohio. Your present letter reads in pertinent part as follows:

"The Transportation Research Board of Ohio is in receipt of three separate invoices from the Ohio Department of Transportation totalling \$446,003.48, copies of which I am enclosing herein.

"As you can see from the invoices they are for ' \* \* \* reimbursement of costs \* \* \* ' on various construction contracts let in connection with the development of the Transportation Research Center of Ohio which contracts were entered into on October 6, 1971; December 15, 1970; December 15, 1970; October 8, 1971 and July 20, 1972, respectively.

\* \* \* \* \*

"The question is whether there is a legal and binding obligation by the Transportation Research Board of Ohio to the Highway Department in light of the constitutional and statutory restrictions on transfers of funds from one state entity to another and in particular whether this is a matter that must be determined by the Ohio General Assembly pursuant to its appropriation powers."

It appears from the attachments to this latest letter that your question concerns primarily the nature of the accounts against which the contract expenditures should originally have been charged. You have suggested that, because the appropriation for the 1969-71 biennium was made to the Department of Highways, and not the Ohio Highway Transportation Research Board, there was no obligation imposed on the Director of Highways to expend the funds as he did, and consequently no legal obligation inured to the TRBO, as successor to the O.H.T.R.B., to reimburse the Department of Transportation which had in the meantime succeeded to the functions of the Department of Highways.

The funds in question were originally appropriated by Am. S.B. No. 428 and Am. S.B. No. 429, eff. Aug. 18, 1969. Am. S.B. No. 428 reads in part:

"Section 1. Out of any moneys in the state treasury to the credit of the highway obligations construction fund created by section 5528.41 of the Revised Code and not otherwise appropriated, the sums set forth in this section may be expended for the purpose of paying the cost of the construction, reconstruction, or other improvements of highways, including those on the state highway system and urban extensions thereof, those within or leading to public parks or recreational areas, and those within or leading to municipal corporations; provided that not to exceed thirty million dollars may be expended for the purpose of paying the costs of acquiring land for, constructing, equipping and operating the Ohio highway transportation research center created by section 5507.01 of the Revised Code.

(Emphasis added.)

Am. S.B. No. 429 set out the appropriation as follows:

"Section 2. There are hereby appropriated out of any moneys in the state treasury to the credit of the highway obligations construction fund created by section 5528.41 of the Revised Code and not otherwise appropriated, the sums set forth in this section which may be expended in accordance with Section 21 of Article VIII of the Ohio Constitution and section 5528.41 of the Revised Code.

	<u>1970 F.Y.</u>	<u>1971 F.Y.</u>
* * *	* * *	* * *
770-705 Highway Research Center	\$15,000,000	15,000,000

The obvious import of these Acts was that expenditures for the development of the Transportation Research Center were to be paid from the Highway Research Center account, line item No. 770-705. You state that the invoices in question are for reimbursement of costs on various construction contracts let in connection with the development of the Transportation Research Center, and that the expenditures should have been paid from funds specifically appropriated for that purpose but were erroneously paid from funds appropriated for another use.

On this point R.C. 115.45 states:

"All service rendered and property transferred from one institution, department, improvement, or public service industry to another shall be paid for at its full value. No institution, department, improvement, or public service industry shall receive financial benefit from an appropriation made or fund created for the support of another. When an appropriation account is closed, any unexpended balance shall revert to the fund from which the appropriation was made.

(Emphasis added.)

There was, therefore, a legal obligation to use funds appropriated in line item 770-705 to reimburse the account erroneously charged.

The moneys appropriated in Am. S.B. No. 428 and Am. S.B. 429 were reappropriated by H.B. 475, eff. Dec. 20, 1971, for the biennium ending June 30, 1973. During this biennium, Am. S.B. No. 508, eff. Oct. 19, 1972, was enacted to provide for creation of the Transportation Research Board of Ohio to succeed to the duties of the Ohio Highway Transportation Research Board. Section 3(C) of that Act provided in part that:

"All appropriations or reappropriations, heretofore made for the purposes of the performance of the duties succeeded to by the transportation research board of Ohio pursuant to this act or segregated therefor pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby made available for use and expenditure for the transportation research board of Ohio for performing the same duties for which originally appropriated or reappropriated."

As a result of Am. S.B. No. 508, these moneys were transferred from the Highway Obligations Fund, 41-705, to the newly created Transportation Research Fund, 42-705.

Am. Sub. H.B. No. 86, eff. June 29, 1973, reappropriated these funds for the current biennium, and makes no qualification of the appropriation with respect to their use to cover construction costs from an earlier biennium. On this point compare Section 15 of Am. Sub. H.B. No. 86, which reappropriates the capital improvement funds, with Section 2 of that Act, which appropriates funds to the Transportation Research Center for operating expenses, and which specifically limits the expenditure of such funds to the payment of liabilities or deficiencies incurred during the biennium.

Therefore, since R.C. 115.45 prohibits any institution, department, improvement, or public service industry from receiving financial benefit from an appropriation made for the support of another, and since there are still appropriations available for such costs as those incurred for the benefit of the Transportation Research Center, but paid by the Department of Highways from funds appropriated for another purpose, it follows that the Transportation Research Board of Ohio has a legal obligation to reimburse the Highway Obligations Fund for the amount of that payment. Since the funds in question have been appropriated and reappropriated by the General Assembly to meet the costs of construction, equipment and operation of the Transportation Research Center, I see no possible constitutional objection to their use to reimburse expenditures made for that purpose.

In specific answer to your question, it is my opinion and you are so advised that there is a legal and binding obligation on the Transportation Research Board of Ohio to reimburse the Department of Transportation for expenditures made by the latter for the benefit of the former or its predecessor, since the General Assembly has already appropriated and reappropriated funds for that purpose.