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CIVIL SERVICE—EMPLOYES—BRIDGE COMMISSIONS, CREATED UNDER SECTIONS 1084-2 TO 1084-17 G. C.—NOT EMPLOYES OF STATE, COUNTIES, CITIES OR CITY SCHOOL DISTRICTS—NOT SUBJECT TO CIVIL SERVICE LAWS.

**SYLLABUS:**

*Employes of the bridge commissions created under Sections 1084-2 to 1084-17, General Code, are not employes of the state, counties, cities or city school districts and, therefore, are not subject to the civil service laws of the State of Ohio.*

COLUMBUS, OHIO, February 21, 1939.

*Civil Service Commission of Ohio State Office Building, Columbus, Ohio.*

GENTLEMEN: Your request for an opinion dated January 25, 1939, reads as follows:

“The State Civil Service Commission has been informed that throughout the State of Ohio certain toll bridges are owned and operated by the State under building commissions who are permitted to pay the salaries of their employes from rotary funds established directly from the toll funds and prior to the deposit of such monies in the State Treasury, and such salary payments are made to employes without the approval of the Auditor of State.

We desire to respectfully request your official opinion upon the question of whether the employes of such bridge commissions are in the classified or unclassified service in accordance with the provisions of the Civil Service Laws of Ohio.”

The subject of your inquiry is covered in Ohio General Code Sections 1084-2 to 1084-17. The length of the sections makes it expedient that the pertinent parts be summarized here rather than set out in their full text.

Section 1084-2 of the General Code defines the meaning of terms and words used in the act and under Section 1084-3 it is provided that the Bridge Commission of Ohio be created and that it may sue and be sued and in that name, enter into contracts and have a common seal. The commissioners are appointed by the Governor for a fixed term and shall take office after executing a bond in the sum of Ten Thousand Dollars (\$10,000), to be approved by the Governor and filed with the Auditor of State.

Under Sections 1084-4 and 1084-5 it is provided in like manner that after the passage of a resolution expressing the necessity therefor, county commissioners or the legislative authority of a city may appoint three persons who shall be the bridge commission of such sub-division and who, in like manner, shall file bond before entering upon their duties.

Under Section 1084-6 it is provided that any commission formed as above set out shall organize and make rules for its own government and appoint a secretary-treasurer and such commission shall have authority to employ engineering, architectural and construction experts and inspectors and attorneys and “such other employes as may be necessary in its judgment and fix their compensation, all of whom shall do such work as the commission may direct”. Provision is also made for the payment of salaries to commissioners “to be paid solely from the funds provided under authority of this act”.

Section 1084-8 provides that the commissions may acquire bridges upon such terms and at such prices as may be considered to be reasonable and can be agreed upon and to acquire title in the name of the county, city or state.

Section 1084-9 empowers the commissions—state, county or city—to acquire, by condemnation or purchase, bridges, land, rights and ease-

ments and provides the procedure or method of such condemnation proceedings by which compensation or damages is awarded. It is then provided that neither the State of Ohio nor any of the members of the commissions shall be liable for any judgment so fixed, nor shall the same persons be liable for any damages occasioned by a commission's failure to accept such property. Under the above section the Auditor of the State of Ohio shall examine the books of the State Bridge Commission at least once a year.

Section 1084-10 provides that such bridge commissions shall issue bonds, after passing a resolution providing for same, payable solely from the fund provided for payment herein. Bonds of the State Bridge Commission are to be signed by the Governor and attested by the Secretary of State and shall bear the signature of the Commission. Bonds issued by commissions of cities or counties shall be executed as such commissions shall provide. All such bonds shall bear on their face a statement that the state, city or county shall not be obligated on said bonds except from the revenue of the bridges. Such bonds are further made exempt from state and municipal taxation and may be issued beyond debt limitations imposed by law. The bonds may be sold on such conditions at private sale as the commissions may determine and the bonds need not be offered to officers in charge of sinking funds. The above section then concludes as follows:

“The proceeds of such funds shall be used solely for the payment of the cost of the bridges and shall be checked out by the chairman of the commission and the secretary-treasurer thereof and under such restrictions, if any, as such commission may provide.”

The next succeeding section, Section 1084-11, after providing for the use of such money received from bond sales for the payment of the cost of bridges, creates a lien on such fund until it is so applied.

Section 1084-12 provides that the commissions may, in their discretion, provide for a trust indenture securing said bonds and further provides:

“Except as in this act otherwise provided, such commission may provide by resolution or by such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the bridge or bridges to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.”

Section 1084-13 makes provision for the fixing and collection of tolls in such sum as will provide for the payment of bonds, interest, main-

tenance and operation of the bridge, subject to any applicable law of the United States or regulations of the Public Utility Commission of the State of Ohio, and that after first applying the proceeds to operation, maintenance and repair, the proceeds of the tolls shall be set aside each month in a sinking fund which shall provide for the retirement of the bonds.

Section 1084-14 provides that after retirement of bonds, tolls shall cease except to pay for maintenance and operation and so long as other means than tolls be provided for such costs, then the tolls shall cease and such bridge shall be free.

When any such bridge is connected at each end with roads under the state highway system it shall be, under Section 1084-15, added to the state highway system and the same section enables bond holders to enforce rights, arising out of their bonds and trust indenture, by suit and to compel performance with the act.

Under Section 1084-16 it is provided that the act is supplementary and alternative to other means provided for the doing of the same thing provided in the preceding sections.

It is apparent from an examination of the act, and especially under Sections 1084-1 and 1084-16, that the cities, counties and the state may themselves acquire bridges in the manner provided in Section 1084-1, and that the method of acquiring bridges by means of a commission is entirely alternative to the means provided in Section 1084-1 and that the purpose of the act creating bridge commissions was to create an entity separate and apart from the regular political subdivisions of the State to acquire bridges without encumbering or using county, city or state funds or credit. That such commissions are a legal entity separate in existence from the creating power can not be escaped in view of certain definite provisions of the act. The strongest of these, among others, is that the commissions and employes are paid not from public funds but from bridge revenues and that the commissions are empowered to employ attorneys, architects and such other employes as they may deem necessary and fix their compensation and duties; that the commissions collect, control, deposit and disburse their own funds in a manner other than is provided for the state and its political sub-divisions; that the commissions may sue and be sued in their own names and carry on their businesses, generally speaking, in their own manner, not subject to the limitations of general laws governing the state and its sub-divisions and not subject to the supervision of the public officers of the state, cities or counties.

Inasmuch as such commissions have legal beings separate from that of the cities, counties or state, it must follow that they are not departments or arms of the state, city or county governments and their employes are not employes of the state, counties or cities.

Section 486-1, General Code, provides in part as follows:

“The term ‘Civil service’ includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof.”

Opinions of previous attorneys general have held that, using the words of Section 486-1 which creates the civil service, the term “civil service” includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts and that this specifies what offices and employments are included in the civil service and is exclusive of all others. Under such opinions it has been held that the employes of district tuberculosis hospitals, park commissions, village school districts and county library districts are not subject to civil service because they are districts not co-extensive with the county or city. See Opinions of the Attorney General: 1918, Vol. II, page 1594; 1919, Vol. I, page 217; 1927, Vol. II, page 1006. In the opinion rendered in 1919 at page 221 the following statement is found:

“From the foregoing observations it follows that since the officers of the park district are neither county nor state officers, but constitute a distinct agency in the administration of the functions of a special sub-division of the state for particular purposes, I conclude that they are not to be considered as in the service of the state or the counties, cities or city school districts thereof, and, therefore, are not subject to the provisions of the civil service laws.”

Opinion No. 1645 of Opinions of the Attorney General for 1918, referred to above, involved employes of a district tuberculosis hospital. The opinion followed the last quoted opinion and as a further reason for holding such employes not subject to civil service laws, cited the fact that the control and management of the hospital was in the hands of a distinct set of officers who are not county officers, saying at page 1596:

“\* \* \* if the term ‘state’ were meant to include all officers  
\* \* \* within the state, irrespective of the nature of the offices  
\* \* \* there would have been no necessity of adding ‘counties,  
cities and city school districts thereof’.”

Following the reasoning of the above opinions and the facts stated herein, it is my conclusion that the bridge commissions created under Sections 1084-2 to 1084-17, General Code, are political entities separate and distinct from the state, counties, cities and city school districts and as such their employes are not employes of the state, counties, cities or city school districts.

I must, therefore, answer your question specifically as follows: Employees of the bridge commissions created under Sections 1084-2 to 1084-17, General Code, are not employes of the State, counties, cities or city school districts and, therefore, are not subject to the civil service laws of the State of Ohio.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*