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TURNPIKE COMMISSION—EXEMPTED FROM PAYMENT OF ASSESSMENTS FOR BENEFITS THAT ACCRUE FROM IMPROVEMENTS OF SINGLE COUNTY DITCH—§§5537.20, 6131.15, R.C.

**SYLLABUS :**

1. Section 5537.20, Revised Code, which specifically exempts the Ohio Turnpike Commission from required payment of taxes or assessments, constitutes an exception to the provisions of Section 6131.15, Revised Code, which is a general statute providing for the assessment of benefits that may accrue from the improvement of a single county ditch.

2. Under the provisions of Section 5537.20, Revised Code, the Ohio Turnpike Commission cannot be assessed for benefits that may accrue from the improvement of a single county ditch.

Columbus, Ohio, July 13, 1959

Hon. William H. Weaver, Prosecuting Attorney  
Williams County, Bryan, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion reading as follows:

“Where a single county ditch petition is filed with the Board of County Commissioners in accordance with Chapter 6131 of the Revised Code of Ohio, can the Ohio Turnpike Commission be assessed for any benefits that may accrue from the improvement of said county ditch?”

Section 6131.01, sub-paragraph (A), Revised Code, reads in part as follows:

“\* \* \* ‘Owner’ also includes any public corporation and the director of any department, office, or institution of the state, \* \* \*”

Section 6131.01, sub-paragraph (E), Revised Code, reads in part as follows:

“‘Public corporation’ or ‘political subdivision’ means counties, townships, municipal corporations, school districts, park districts, turnpikes, \* \* \*”

Section 6131.15, Revised Code, provides in part:

“\* \* \* the county engineer shall appraise the benefits accruing to public corporations and any department, office, or institution of the State of Ohio. \* \* \* He shall prepare a schedule of assessments containing the name and address of each public corporation and each department, office, or institution of the state of Ohio so benefited, the amount of the appraised assessment and an explanation of the benefits upon which the assessment is based. \* \* \*”

The overall intent of the General Assembly in passing the “Ohio Turnpike Act”, by which it created the Ohio Turnpike Commission, is found in Section 5537.23, Revised Code, which provides:

“Sections 5537.01 to 5537.23, inclusive, of the Revised Code being necessary for the welfare of the state and its inhabitants shall be liberally construed to effect the purposes thereof.”

In connection with the creation of turnpike projects in this state, the General Assembly further adopted the broadly worded and comprehensive statute represented by Section 5537.20, Revised Code, which provides:

“The exercise of the powers granted by Sections 5537.01 to 5537.23, inclusive, of the Revised Code, will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of turnpike projects by the commission will constitute the performance of essential governmental functions, the commission shall not be required to pay any taxes or assessments upon any turnpike project, or upon any property acquired or used by the commission under sections 5537.01 to 5537.23, inclusive, of the Revised Code, or upon the income therefrom, and the bonds issued under such sections, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the state.”

Authority was given to the commission as to the issuance of turnpike revenue bonds in Section 5537.08, Revised Code, which in part provides:

“The commission is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the state for the purpose of paying any part of the cost of any one or more turnpike projects. \* \* \*”

You have called my attention to the changes which were made in Section 6131.01, sub paragraphs (A) and (E), Revised Code, which became effective September 23, 1957, and which were enacted after the passage of the “Ohio Turnpike Act.”

In my opinion the subsequent changes in Section 6131.01, Revised Code, a general statute in its application, have had no effect whatsoever on Section 5537.20, Revised Code.

The “Ohio Turnpike Act,” an unofficial appellation conferred upon the act of the General Assembly by which it created the Ohio Turnpike Commission, is a special statute whose primary and predominant objective is found in Section 5537.03, Revised Code, which provides:

“In order to remove the present handicaps and hazards on the congested highways in this state, to facilitate vehicular traffic throughout the state, to promote the agricultural and industrial development of the state, and to provide for the general welfare by the construction of modern express highways embodying

safety devices including center divisions, ample shoulder widths, longsight distances, multiple lanes in each direction, and grade separations at intersections with other highways and railroads, the commission is hereby authorized and empowered to construct, maintain, repair, and operate turnpike projects at such locations as are approved by the governor, and in accordance with such alignment and design standards as are approved by the director of highways, and issue turnpike revenue bonds of this state, payable solely from revenues, to pay the cost of such projects."

The long accepted practice has been that special legislation takes precedence over general legislation.

The Supreme Court of Ohio in the case of *Acme Engineering Co., v. Jones*, 150 Ohio St., 423, in the first paragraph of the syllabus stated:

"1. A special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subjects as well as the specific subject matter which might otherwise be included under the general provision."

In 166 Ohio St., 191, page 196, *Fisher Brothers Co., v. Bowers, Tax Commissioner*, Stewart, J. had this to say:

"We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter."

In 37 Ohio Jurisprudence, page 408, Section 149, we find this statement:

"\* \* \* It is, however, equally true that the policy against implied repeals has peculiar and special force when the conflicting provisions, which are thought to work a repeal, are contained in a special act and a later general act. The special statute, in many cases, remains wholly uneffected by the later general act. Indeed, the presumption is that the special is intended to remain in force as an exception to the general act. In order to work a repeal by implication, the inconsistency between the general and special provisions must be manifest and irreconcilable. Moreover, it has been laid down as an established rule in the construction of statutes that a subsequent statute, treating a subject in general terms, and not expressly contradicting the provisions of the prior act, shall not be considered as intended to affect more particular

and positive provisions of the prior act unless it is absolutely necessary to do so in order to give its words any meaning or unless such intention is clearly manifested—that is, unless the repugnancy is so glaring and irreconcilable as to indicate the legislative intention to repeal.”

The language of Section 5537.20, Revised Code, is plain and free from doubt, and effect must be given to its clear import which is: the *turnpike commission* shall not be required to pay any *taxes* or *assessments* upon any turnpike project.

Aside from the specific language of Section 5537.20, Revised Code, and the special and general application of the statutes involved, a grave question of constitutionality may arise by the permitting of assessments.

Revenue bonds were issued by the turnpike commission prior to the changes which were made in Section 6131.01, Revised Code.

To imply that the changes, which were made in this section, by implication, repealed Section 5537.20, *supra*, might raise the question of impairment of contract in violation of Article II, Section 28, of the Ohio Constitution, which provides :

“The general assembly shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this state.”

And also the first sub clause of Article I, Section 10, of the United States Constitution provides :

“No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.”

In 10 Ohio Jurisprudence, Section 623, page 673, we find this statement :

“It is a fundamental rule of law that the constitutional prohibition of the enactment of legislation impairing the obligation of contracts applies to contracts to which a state is a party.

“The rule protecting contractual obligations and vested rights applies to the state or subdivision thereof when a party to a contract, and a county is entitled to the protection of its constitutional rights under a contract.

“The state cannot affect the obligations of a contract to which it is a party, further or otherwise than in the case of a contract between other parties. The legislature has power to contract within the scope of the authority conferred by the state Constitution. And it is like any other contract made by competent authority binding upon the parties. Neither the people nor their representatives by any act of theirs afterward, can impair its obligation. When the contract is made, the federal Constitution acts upon it and declares that it shall not be impaired, and makes it the duty of the judiciary to carry it into execution.”

In view of the above, it follows that Section 5537.20, Revised Code, provides an exception to the provisions of Section 6131.15, Revised Code, as relating to assessment of the Ohio Turnpike Commission for benefits.

Accordingly, it is my opinion and you are advised:

1. Section 5537.20, Revised Code, which specifically exempts the Ohio Turnpike Commission from required payment of taxes or assessments, constitutes an exception to the provisions of Section 6131.15, Revised Code, which is a general statute providing for the assessment of benefits that may accrue from the improvement of a single county ditch.
2. Under the provisions of Section 5537.20, Revised Code, the Ohio Turnpike Commission cannot be assessed for benefits that may accrue from the improvement of a single county ditch.

Respectfully,  
MARK McELROY  
Attorney General