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1. BRIDGE—ACQUIRED AND OPERATED BY STATE BRIDGE COMMISSION OF OHIO—BECOMES TOLL FREE—WHEN ALL OUTSTANDING BONDS HAVE BEEN PAID AND ALL OPERATIVE EXPENSES, ANY SURPLUS FROM TOLLS COLLECTED ON BRIDGE SHOULD BE PAID INTO STATE TREASURY.
2. SANDUSKY BAY BRIDGE—POMEROY-MASON BRIDGE—ANY REMAINING FUNDS MAY NOT BE APPLIED TO RE-PAY LOAN MADE BY EMERGENCY BOARD TO MEET PAYMENTS ON BONDS OF EAST LIVERPOOL—CHESTER BRIDGE—APPROPRIATION PROVIDED BY HOUSE BILL. 484, 96 GENERAL ASSEMBLY.

3. COMMISSION NOT LIABLE TO PAY AND WITHOUT AUTHORITY TO PAY ANY BILLS PRESENTED BY STATE HIGHWAY DEPARTMENT FOR REPAIRS ON ANY BRIDGES ACQUIRED PURSUANT TO SECTION 1084-1 ET SEQ., G. C.

## SYLLABUS:

1. When a bridge acquired and operated by the State Bridge Commission of Ohio under the provisions of Sections 1084-1 to 1084-17, General Code, becomes toll free, all of the outstanding bonds issued for its acquisition having been paid and all expenses in connection with the Commission's operation having been paid, any surplus from tolls collected on such bridge should be paid into the treasury of the state.

2. A balance remaining in the funds of the Sandusky Bay bridge and the Pomeroy-Mason bridge may not be applied by the Commission in repayment of a loan made by the Emergency Board to meet payments on the bonds of the East Liverpool-Chester bridge pursuant to the appropriation contained in House Bill No. 484 of the 96th General Assembly.

3. The State Bridge Commission of Ohio is not liable for the payment of, and is without authority to pay, any bills rendered by the state highway department for repairs on any of the bridges acquired pursuant to Section 1084-1 et seq. of the General Code .

Columbus, Ohio, April 2, 1947

State Bridge Commission of Ohio, 3140 A. I. U. Citadel  
Columbus, Ohio

Gentlemen:

I have before me your communication in which you request my opinion as to the disposition of funds arising from tolls on the Sandusky Bay bridge and the Pomeroy-Mason bridge, remaining as a surplus after the bonds issued for the purchase of said bridges have been fully paid. Your communication reads in part as follows:

"1. When a bridge, acquired and operated by the State Bridge Commission of Ohio under the provisions of Sections 1084-1 to 1084-17, General Code, becomes toll free; all of the outstanding bridge revenue bonds have been paid, and all expenses and indebtedness in connection with the Commission's operation of the bridge have been paid, what disposition should be made by the Bridge Commission of the balances in the various funds of the bridge that has been made toll free?

2. May the balances thus remaining in the various funds of the Sandusky Bay Bridge and the Pomeroy-Mason Bridge,

both toll free, be used to repay to the State Emergency Board the loan of \$50,000.00 made to the Bridge Commission in September 1945 for debt service in meeting serial bonds and interest as provided in House Bill 484, 96th General Assembly?

3. Is the State Bridge Commission liable for the payment of invoices rendered to it by the State Highway Department in 1946 for maintenance and repair of the roadways over the Commission's bridges by the State Highway Department?

In explanation of the first question, the following information is furnished. In estimating the requirements before a bridge may be made toll free, the Bridge Commission last year made allowance in full for the item in its balance sheet under liabilities designated as 'Coupons Outstanding.' This represented the total of the cash value of tickets purchased by bridge patrons and not used by them. Conceivably, these tickets might be turned in for redemption at their cash value for redemption.

Ticket redemptions at the Sandusky Bay Bridge, following its freeing last August 30, have been approximately 50% of the liability. Ticket redemptions following the freeing of the Pomeroy-Mason Bridge on October 31, 1946 have been approximately 10% of the liability.

These balances and allowances made for other contingencies have resulted in a surplus slightly in excess of \$50,000.00 in the various funds of the Sandusky Bay Bridge and the Pomeroy-Mason Bridge.

It was the desire of the State Bridge Commission last fall to repay to the State Emergency Board the loan of \$50,000.00 granted in September 1945 under authority of House Bill 484, 96th General Assembly. This sum was used for debt service of the East Liverpool-Chester Bridge and the plan was to repay this loan out of the funds of the East Liverpool-Chester Bridge. Your informal opinion No. 145, dated December 13, 1946, held that the loan cannot be repaid from East Liverpool-Chester Bridge funds until the bonds issued for the purchase of the bridge have been fully repaid.

The \$50,000.00 by the Emergency Board loaned to the Bridge Commission was loaned to the Bridge Commission and not to any particular bridge. It was understood that the East Liverpool-Chester Bridge was to benefit, but no particular bridge is named in House Bill 484. The question now arises: May the surplus in the Sandusky Bay Bridge and Pomeroy-Mason Bridge funds be used by the Commission to repay the \$50,000.00 loan.

In regard to the third question, the Department of Highways had never billed the Bridge Commission for maintenance and

repair of the highways over the bridges. When the preceding director of highways learned that there would be substantial balances in the funds of the Sandusky Bay Bridge and the Pomeroy-Mason Bridge, he caused invoices to be submitted for as far back as 1936. It was generally understood that the purpose was to preempt these balances.

Regardless of the motive, the Bridge Commission would like to know whether these invoices presented by the Department of Highways should now be paid before any disposition is made of the surplus standing to the credit of the Sandusky Bay Bridge and the Pomeroy-Mason Bridge.

For whatever bearing it may have on these questions, a copy of the Sandusky Bay Bridge trust indenture accompanies this letter. We have only one copy of the Pomeroy-Mason Bridge trust indenture, but the language is almost identical with the language of the Sandusky Bay Bridge trust indenture."

Sections 1084-1 to 1084-17, General Code, govern the organization of your commission and define its powers. Pursuant to that authority, your commission has purchased a number of bridges, including what is called the Sandusky Bay bridge, located wholly within the State of Ohio, and among others, the Pomeroy-Mason bridge and the East Liverpool-Chester bridge, both crossing the Ohio river, and located mainly within the State of West Virginia. Pursuant to the provisions of Section 1084-10 separate bond issues have been issued for the purchase of each of the above named bridges, in each case payable only from the revenues to be received from tolls levied by your commission for passage over these bridges. Under the provisions of Section 1084-12 trust indentures have been executed securing these several bond issues. Section 1084-13 provides in part as follows:

"Tolls shall be fixed, charged and collected for transit over such bridge or bridges and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges for which a single issue of bonds is issued, as to provide a fund sufficient to pay such issue of bonds and the interest thereon and to provide an additional fund to pay the cost of maintaining, repairing and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America or the public utility commission of the State of Ohio now in force or hereafter to be enacted or made. *The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof as may be necessary to pay such cost of maintaining, repairing, and operating during any period in which*

*such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be set aside each month in a sinking fund which is hereby pledged to and charged with the payment of (a) the interest upon such bonds as such interest shall fall due and (b) the necessary fiscal agency charges for paying bonds and interest and (c) the payment of such bonds, such sinking fund to be a fund for all such bonds without distinction or priority of one over another \* \* \* "*

(Emphasis added.)

Section 1084-14 reads as follows:

*"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 thereover and such bridge or bridges shall be free."*

(Emphasis added.)

Your letter states that the surplus arising from the tolls of the Sandusky Bay bridge and the Pomeroy-Mason bridge is slightly in excess of \$50,000.00. I am informed by your secretary that of this surplus, about \$45,000.00 arises from the tolls from the Sandusky Bay bridge and the balance of approximately \$5,000.00 from the tolls of the Pomeroy-Mason bridge. I am also informed that when these bridges were declared free and the collection of tolls was discontinued there were outstanding as to each bridge a considerable number of coupons representing prepaid tolls, and that in each case your commission advertised that it would redeem such coupons and notified the holders to apply for redemption within thirty days, and that the thirty day period in each case has long since expired. No absolute limit, however, on the right of redemption was fixed or stated in such advertisements.

The 96th General Assembly in the enactment of its biennial appropriation act, being House Bill No. 484, appropriated to the emergency board the sum of \$650,000.00, with the following statement:

*"Of the above amount appropriated to the Emergency Board there may be made available to the State Bridge Commission of Ohio not to exceed \$150,000.00 for the years 1945-1946 for debt service and no other purpose. Upon certification to the Emer-*

gency Board by the Chairman and Secretary-Treasurer of the State Bridge Commission of Ohio of the necessity for funds for debt service in meeting serial bonds and interest on any of the Commission's Bridges, the Emergency Board may allocate such portion of the sum herein named, as may be required by the State Bridge Commission of Ohio. Any such allocation of funds to the State Bridge Commission of Ohio by the Emergency Board shall be considered a loan and shall be repaid to the Emergency Board by the State Bridge Commission of Ohio. Any funds received from the State Bridge Commission as repayment of such loan, or loans, shall be credited to the foregoing appropriation if repaid during the current biennium, if repaid subsequent to the current biennium then such repayment shall be credited to the General Revenue Fund."

Pursuant to the authority given to the Emergency Board by the act just quoted, that Board in compliance with the request of your Commission for a loan or advance of money immediately required to meet certain bonds about to become due on the East Liverpool-Chester bridge, did advance to your Commission the sum of \$50,000.00 which according to the terms of the appropriation act was to be regarded as a loan. In the appropriation act it was stated that any such loan should be repaid to the Emergency Board by the State Bridge Commission, but no provision was made as to the funds from which the loan might be repaid. The statutes relating to these bridges and the use of the tolls collected therefrom do not seem to contemplate the possibility of a loan being secured at any time from any other source than by the issuance of bonds, or of a temporary loan being obtained to meet the payment of bonds that may mature before the tolls have amounted to a sufficient sum to meet the payment.

Under the provisions of Section 1084-13 supra, the tolls from any bridge for which a single issue of bonds is issued are to be applied to the maintenance, repair and operation of that bridge and the balance is to be paid into a single fund which is pledged for the payment of the interest and principle on the bonds for that bridge. Under the provisions of Section 1084-14 supra, it is made clear that when the bonds issued for a particular bridge have been paid then the tolls for the use of the bridge, except for the subsequent cost of maintenance, repair and operation, are to cease and it is further stated that when other means are provided for these maintenance costs then no tolls whatsoever shall be charged and such bridge shall be free.

If we apply the above provisions strictly, it would appear that the East Liverpool-Chester bridge may become free by the full payment of its bonds without the tolls from that bridge having actually paid the entire cost that normally should be chargeable to it. Unless the collection of tolls shall be continued as to that bridge after these bonds have actually been paid off with the aid of the \$50,000 loan, then the patrons of that bridge would seem to have gained an undue advantage. We are faced with something of a dilemma because those bonds will have been partly paid from moneys not derived from tolls on the bridge, and the law appears to forbid the collection of any tolls for any purpose except for maintenance, etc., after the bonds have been paid no matter by what means. In this connection, it may be noted that by an amendment to Section 1084-15b of the General Code, passed at the special session of the 96th General Assembly provision was made that the duty of maintenance and repair of all of these bridges even though located wholly or partly outside the State of Ohio, shall fall upon the state highway department.

You refer in your letter to an informal opinion of this office rendered December 30, 1946, holding that the loan above mentioned can not be paid from the East Liverpool-Chester bridge funds until the bonds issued for the purchase of the bridge have been fully repaid. I have no hesitancy in adhering to that opinion, but it appears to me that a reasonable interpretation of the entire law relative to these bridge bonds and their disposition, and to the tolls which are to be levied for their payment, would lead to the conclusion that the General Assembly intended each bridge to be fully paid for by its own tolls and not otherwise. And it would follow that when the payment of the bonds of any bridge has been met in part by moneys advanced by the state in anticipation of the collection of tolls, such money should be repaid out of tolls which should continue to be levied until a sufficient amount has been realized. This would do no more than to put the burden of the cost of this bridge where it was obviously intended by law to rest.

Certainly it would be highly unfair to use money collected from tolls on certain of the bridges to pay the bonds on another bridge and thus release its patrons prematurely from their just burden.

This discussion leads me to the conclusion which I have reached, that the surplus which has arisen from the tolls of the Sandusky Bay bridge

and the Pomeroy-Mason bridge should not be used to repay the loan from the Emergency Board which was made for the benefit of the East Liverpool-Chester bridge.

Coming then, to the question of the payment of invoices rendered by the state highway department in 1946, for maintenance and repair of the several bridges which have been acquired by your commission, I note the copies of invoices which you have submitted, which were received from the state highway department in 1946, and which represent labor and material furnished by the state highway department from 1936 to 1945, in repair of several of the bridges and roadways over the same, as follows:

Fort Steuben bridge .....	\$ 1,154.26
East Liverpool-Chester bridge .....	819.06
Sandusky Bay bridge .....	69,968.53

Information is lacking as to the circumstances under which the practice was begun whereby the state highway department furnished the labor and materials for these repairs.

From the standpoint of the law the Sandusky Bay bridge presents a different situation from that of all the other bridges which the Commission has acquired, since it is located wholly within the state and was at the time it was purchased connected at each end with a highway which was a part of the state highway system, whereas the other bridges were located partly or wholly outside of the state and therefore could not be any part of the state highway system. Section 1084-15 of the bridge commission law reads in part as follows:

“Any bridge acquired under authority of Sections 1084-1 to 1084-17 inclusive of the General Code 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 1178-20 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.*”  
(Emphasis added.)

This provision was probably aimed at the Sandusky Bay bridge, whose purchase was contemplated when the act was passed. It will be noted that the duty placed upon the director of highways to add such bridge to the state highway system and thereafter to maintain it as a state highway was not predicated or conditioned upon the payment of the bonds and the



freeing of the bridge but by its plain terms these duties were cast upon the director of highways as soon as the bridge was *acquired* under the authority of the act. The reference to Section 1189 of the General Code, has no important bearing since that section since repealed, merely provided for a certain mode of procedure when the director of highways should see fit to add to the state highway system roads that were not already a part thereof, which procedure included among other things the publication of notice of his intention and an opportunity for hearing in case of objections.

Accordingly, whatever repairs were made by the department of highways on the Sandusky Bay bridge were made merely in conformance with the duty cast upon that department by the statute above quoted, and consequently there could be no basis for an attempt of the highway department to reimburse itself out of the surplus of tolls collected thereon. Neither do I consider that your Commission would have any authority to use funds which have come into its hands, to reimburse the highway department for its expenditures or any part thereof.

The above conclusion may appear to be inconsistent with an opinion which I rendered on July 22, 1946, being opinion No. 1095, wherein it was held that upon payment of the bonds for the Sandusky Bay bridge, that bridge should be free to the public and such bridge should become a part of the state highway system, and the duty of maintaining and repairing the same should devolve upon the state highway director. That opinion was in answer to a question of your Commission which appears to have arisen over a doubt whether you should continue to levy tolls on that bridge and the Pomeroy-Mason bridge for the cost of maintenance and repair after the time when the bonds should have been paid or provided for. My answer rested upon the theory that when bonds for the Sandusky Bay bridge had been paid there was no longer any occasion for the levy of tolls for maintenance because the duty of maintenance was devolved upon the state highway department. This was in contrast with the situation as to the Pomeroy-Mason bridge as to which at that time no provision had been made by law for its maintenance after payment of the bonds. No consideration was given in that connection as to the question whether the duty of the highway department might have arisen at an earlier time. To the extent that that opinion might appear to be out of harmony with the opinion now expressed, it may be considered as modified.

As to the bridges located partly or wholly outside of the state, the highway department had neither duty nor power to make repairs on them. Nor do I believe it had any authority to accept a contract to make such repairs. The duties of the department are confined to the improvement and repair of highways within and belonging to the state or its subdivisions. Section 1178 et seq., General Code. At its special session the 96th General Assembly saw fit by an act effective August 28, 1946, to broaden the area of the operations of the state highway department, by amending Section 1084-15 supra, by inserting therein the following:

"It shall be the duty of the state highway director to maintain and keep in repair any bridge together with its approaches acquired under the provisions of Sections 1084-1 to 1084-17 inclusive of the General Code which is located wholly or partly outside the State of Ohio, *whenever the bonds issued therefor have been paid or a sufficient amount for their payment has been collected*; such cost of maintenance and repair shall be expended from the department of state highway maintenance and repair fund."  
(Emphasis added.)

That the bridges purchased pursuant to the act in question, are acquired by and for the state is shown by the first sentence of Section 1084-1, General Code, which reads:

"*The State of Ohio and any county and city in the state is hereby authorized to acquire \* \* \* bridges*" etc.  
(Emphasis added.)

The Commission for the State, whose appointment is by the governor, is merely the agent of the state in making the purchase and in operating the bridge until it has paid for itself. When that purpose has been accomplished, plainly the powers and duties of the Commission have ended so far as that bridge is concerned. Accordingly, any surplus money in the hands or under the control of the Commission arising from the operation of that bridge, after payment of any obligations arising out of its maintenance and operation, belongs to the state, and should be paid to the treasurer of state.

I note the copy of the indenture of the Sandusky Bay bridge which you submitted with your letter; also the copy of the communication from the attorneys for the Commerce Guardian Bank of Toledo, which is trustee for the bondholders of the Sandusky Bay bridge as well as the

Pomeroy-Mason bridge. So far as the trustee is concerned, I do not see that it has any concern or responsibility as to the disposition of these surpluses in view of the fact that the bonds for which it is trustee have been fully met and paid. It is my opinion that these funds now on deposit with such trustee bank should be paid on your order in accordance with the views herein expressed.

Specifically answering the question submitted, it is my opinion :

1. When a bridge acquired and operated by the State Bridge Commission of Ohio, under the provisions of Sections 1084-1 to 1084-17, General Code, becomes toll free, all of the outstanding bonds issued for its acquisition having been paid and all expenses in connection with the Commission's operation having been paid, any surplus from tolls collected on such bridge should be paid into the treasury of the state.

2. A balance remaining in the funds of the Sandusky Bay bridge and the Pomeroy-Mason bridge may not be applied by the Commission in repayment of a loan made by the Emergency Board to meet payments on the bonds of the East Liverpool-Chester bridge pursuant to the appropriation contained in House Bill No. 484 of the 96th General Assembly.

3. The State Bridge Commission of Ohio is not liable for the payment of, and is without authority to pay, any bills rendered by the state highway department for repairs on any of the bridges acquired pursuant to Section 1084-1 et seq., of the General Code.

Respectfully,

HUGH S. JENKINS,  
Attorney General.