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1. BRIDGE COMMISSION, STATE — SUBJECT TO APPLICABLE LAW OR REGULATION, UNITED STATES OF AMERICA, SECRETARY OF WAR OR PUBLIC UTILITIES COMMISSION OF OHIO — AUTHORIZED AND EMPOWERED TO FIX TOLLS, STATE OWNED BRIDGES — SCOPE SECTION 1084-13 GENERAL CODE — FUND, BOND ISSUE AND INTEREST, MAINTENANCE, REPAIR, OPERATION — SCHEDULE, TOLLS, MAY DIFFERENTIATE BETWEEN SINGLE FARE RATE, TICKETS PURCHASED IN LARGER AMOUNTS.
2. WAR — SABOTAGE — GUARDS MAY BE EMPLOYED TO PROTECT BRIDGES AND TRAVELING PUBLIC — FUNDS TO PAY COSTS, UNIFORMS, BADGES, ARMS, AMMUNITION AND CONSTRUCT SHELTERS.
3. GUARDS, DULY APPOINTED AS DEPUTY SHERIFFS MAY CARRY CONCEALED WEAPONS — SECTIONS 12819, 2830 GENERAL CODE.
4. STATUS, GUARDS EMPLOYED TO PROTECT BRIDGES LYING WITHIN STATE OF WEST VIRGINIA.

SYLLABUS:

1. Subject to any applicable law or regulation of the United States of America, including regulations of the Secretary of War, or the Public Utilities Commission of Ohio, the State Bridge Commission of Ohio is authorized and empowered to fix the tolls to be charged on state-owned bridges, subject to the provisions of Section 1084-13, General Code, requiring a fund sufficient to pay any issue of bonds and the interest thereon covering such bridge or bridges and an additional fund to pay the cost of maintaining, repairing and operating any such bridge or bridges, and schedules fixing such tolls may differentiate between a single fare rate purchased at one time and tickets purchased in larger amounts.

2. In view of the fact that this country is now at war and of the increased possibility of sabotage to the bridges operated by the State Bridge Commission, the commission is authorized and empowered, and may legally expend bridge funds to employ such number of guards as it deems necessary to protect the bridges under its control and the traveling public thereon; to provide uniforms and badges for such guards; to supply arms and ammunition for use by such guards, and to construct shelters upon the bridge property for the guards so employed.

3. Under the law of Ohio, including Section 12819, General Code, guards employed by the State Bridge Commission to protect the bridges operated by such commission and the traveling public on such bridges may not lawfully carry concealed weapons on or about their person, unless duly appointed as deputy sheriffs, as provided in Section 2830 and cognate sections of the General Code. If in case of such appointments official bonds be required, the premiums on such bonds may lawfully be paid by the commission from bridge funds.

4. Under the law of West Virginia, including Sections 6043 to 6055, inclusive, of the Code of West Virginia of 1937, it is unlawful for a person to carry about his person a revolver or other pistol, or a machine gun, sub-machine gun, or what is commonly known as a high powered rifle, or other dangerous weapon of like kind or character, without a state license, which may only be obtained by persons who shall have been a bona fide resident of West Virginia for at least one year and of his county for sixty days prior to the making of application for such state license, unless such person come within one of the exceptions contained in the above named sections of the West Virginia Code, which do not include guards residing in the state of Ohio who might be employed by the State Bridge Commission of Ohio, to protect those parts of the bridges operated by such commission lying within the state of West Virginia. As to just what weapons are included in the sections of the West Virginia Code, is a question to be determined by the courts and law officers of West Virginia, and in the absence of a determination by such authorities this office will refrain from expressing its opinion.

Columbus, Ohio, February 9, 1942.

State Bridge Commission of Ohio,
Columbus, Ohio.

Gentlemen:

I have your request for my opinion which reads:

"The State Bridge Commission of Ohio has prepared a new schedule of tolls to become effective January 1, 1942, on the Steubenville-Weirton Bridge. This schedule provides for a graduated discount from the single fare rate for the purchase at one time to tickets in large amounts. The rate of discount is as follows: The two separate forms of discount, 9 1/11% and 16 2/3%, are allowed on purchase of truck coupons. The 9 1/11% discount is allowed on purchases of \$110.00 through \$599.00. Purchases of \$600.00 and more are allowed 16 2/3% discount.

Under this discount feature, it is possible for purchasers of a large bloc of tickets to dispose of these tickets at their face value and thus enjoy a profit representing the difference between the discount allowed for the purchase of a large bloc of tickets and their face value.

Under this discount feature the Steubenville Automobile Club may purchase say \$600.00 worth of tickets at a discount of 16 2/3% and pass on this discount to its members. A truckers' association retail merchants' group, or any organization or individual may do the same. The practice is followed by practically all bridges.

We request your opinion as to whether or not the State Bridge Commission of Ohio can legally promulgate the proposed toll schedule for the Steubenville-Weirton Bridge which allows the sale of tickets at a discount calculated upon the amount of tickets sold at one time.

By reason of the fact that this country is now at war and of the increased possibility of sabotage to the bridges operated by the State Bridge Commission which are located on strategic military highways, the Commission is of the opinion that guards should be employed to protect these bridges against damage by sabotage.

We therefore request that you advise us as to whether the State Bridge Commission may legally expend its funds to employ guards to protect the bridges which it operates from possible sabotage, to provide uniforms and badges for such guards, to purchase arms and ammunition for use by such guards, to pay the premiums upon bonds furnished to allow such guards to carry arms, and to construct shelters upon the bridge property for such guards."

I. Section 1084-13, General Code, is pertinent to your first question. This section 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 to 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. * * *”

This section was considered in Opinion No. 2711, Opinions, Attorney General, 1938, Vol. II, p. 1373, and Opinion No. 849, Id., 1939, Vol. II, p. 1131.

The second branch of the syllabus of Opinion No. 2711, *supra*, reads as follows:

“The Public Utilities Commission, by virtue of the provisions of Section 1084-13 of the General Code, has jurisdiction over the bridge tariffs charged by the State Bridge Commission.”

In Opinion No. 849, above cited, it was held as stated in the fourth branch of the syllabus:

“It is not a crime, nor is it unlawful, to resell tickets or coupons entitling the holder thereof to cross the Fort Steuben Bridge, which tickets are sold at a discount in accordance with the toll schedule in effect at such bridge.”

At page 1140 of the opinion it was said as follows:

“I know of no statute making it a crime or making it un-

lawful to resell toll tickets or coupons over any of the bridges operated by the state bridge commission. It is noted that you state that the toll schedule in effect at the Fort Steuben bridge is such that coupons may be purchased at a discount and sold at a profit. If this practice is objectionable to the bridge commission, it probably could be overcome at least to some extent by making proper adjustments in its schedule and certain changes in character of its tickets or coupons."

I am, of course, cognizant of the fact that the Sandusky Bay Bridge lies entirely within the state of Ohio, and being an intra-state bridge any tariffs fixing tolls therefor adopted by your commission would be subject to any applicable regulation of the state public utilities commission. The other three bridges operated by your commission, each crossing the Ohio River between Ohio and West Virginia, are interstate bridges and are not under the jurisdiction of the state public utilities commission. Since, however, all four bridges are over navigable waters, they are subject to all applicable Federal laws and regulations, including those of the Secretary of War, who under Section 494, Title 33, United States Code, Annotated, is authorized to prescribe the reasonable rates of toll for transit over such bridges. When and if new schedules of tolls for the four state-owned bridges shall have been adopted by the state bridge commission, such schedules should be filed with the state public utilities commission and the Secretary of War, as the character of the bridge demands.

II. Coming to your second question, it is my opinion that in view of the stringencies of the times your commission may employ such guards as it deems necessary to preserve the bridges under your control and protect the traveling public. Under the law, including Sections 1084-8, 1084-12 and 1084-13, General Code, the bridge commission is not only authorized and empowered to acquire toll bridges by purchase or condemnation, but by the express language of these statutes it is made the duty of the commission to improve, *maintain, operate*, repair and *insure* such bridges as may be acquired until such time as they become "toll free."

Moreover, by the express and explicit provisions of Section 1084-6, General Code, the commission is granted "power and authority to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers * * *, and 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 such commission shall direct.”

A like question was presented and answered in Opinion No. 3188, Opinions, Attorney General, 1940, Vol. II, p. 1149, wherein it was held as stated in the eighth branch of the syllabus:

“Under the Housing Authority Law (Secs. 1078-29 to 1078-60, C.C., inc.), a metropolitan housing authority may lawfully expend public funds under its control for the following purposes: * * *

(3) Employing a detective agency to guard property owned, leased or managed by such authority.

(4) Purchasing uniforms for guards or employes serving in and about such property. * * *”

After pointing out at page 1163 of the opinion that with “reference to the character, powers, authority and duties of the Bridge Commission, and a metropolitan housing authority, the analogy is complete,” I said as follows at pages 1166 and 1167, in so far as the employment of a detective agency to guard a housing authority’s property and purchasing uniforms for employes and guards are concerned:

“(4)H. Question (4)H must be answered in the affirmative. It goes without saying that it is as important to guard and preserve property once it has been constructed as it is to construct the property in the first instance. Certainly employing a detective agency is an appropriate method toward accomplishing a lawful end, and whether a metropolitan housing authority determines to have its property guarded by a detective agency or by the direct employment of guards is a matter within the discretion of such authority.

(4)I. As to the question of purchasing uniforms for employes and guards, I have no hesitancy in answering this question in the affirmative. The customary and beneficent results of uniforming employes of the character about whom you inquire is generally recognized as to both public and private property.

In Opinion No. 3501, Opinions, Attorney General, Vol. III, 1938, p. 2432, it was held that:

“The state bridge commission has authority to expend its funds for the purchase of uniforms for attendants. Opinion No. 2711 reversed in part.”

The same conclusion was reached by me in Opinion No. 849, Opinions, Attorney General, 1939, Vol. II, p.1121. As above pointed out, the bridge commission and a metropolitan

housing authority are public bodies of like nature, and the two opinions just cited, therefore, are directly in point.”

I am of the opinion that the reasoning and principles set forth in the excerpts from Opinion No. 3188, above quoted, apply with even greater cogency, in these times of war, to employing guards to protect state bridges, all of which are located on strategic military highways, and if bridge funds may be used to purchase uniforms for guards so employed, they may certainly be used to provide suitable badges, which are in fact a part of the uniform. *A fortiori* arms and ammunition may be furnished by the expenditure of such funds and shelters constructed upon the bridge property for use by such guards. Manifestly, it would be a vain and idle thing to employ a guard, furnish him with a suitable uniform and badge so that all may know of his authority, and then send him unarmed and defenseless to prevent damage to bridge property and the traveling public by armed saboteurs, who have but too frequently demonstrated their thoroughness and utter savagery in accomplishing their purpose. As to providing shelters, like reasons govern. Proper shelters, properly placed, would make for efficiency. Indeed, in certain kinds of weather in this climate shelters, where guards may obtain respite and relief from the rigors of continuous exposure, are clearly essential.

When it comes to the question of using bridge funds to pay premiums upon bonds furnished to allow bridge guards to carry arms, the problem is much more complicated. As above pointed out, only one of the four state bridges lies entirely within Ohio, the three bridges over the Ohio River being for the most part in the state of West Virginia. This is true because Virginia in ceding the territory which became a part of Ohio and other states, conveyed to the Congress “all her right to the territory ‘situate, lying, and being, *to the north-west* of the river Ohio.’” See *Handly’s Lessee v. Anthony*, 5 Wheat. 374, 5 L.Ed. 113 (1820), and *Booth and others v. Sheppard, Admr., etc.*, 8 O.S. 244 (1858). We are therefore concerned with the law of both Ohio and West Virginia.

Section 12819 of the General Code provides as follows:

“Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than

six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act (G.C. §12819) shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided by sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed when on duty. Provided, further, that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the authority of said sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the state of Ohio, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond."

Of the sections of the General Code named in Section 12819, Section 2833 prescribes the general powers and duties of county sheriffs and provides inter alia that in "the execution of the duties required of him by law, the sheriff may call to his aid such person or persons or power of the county as may be necessary." Section 4373 authorizes appointment by the mayor of a city of additional patrolmen and officers for temporary service in "case of riot or other like emergency." Section 10070 has to do with agents of humane societies. Section 10108 makes provision for "day and night watchman of their grounds," by the cemetery officers named in such section. And Section 12857 relates to persons appointed "by a sheriff, coroner, constable or other ministerial officer to assist in apprehending and conveying a criminal or one charged with crime." Obviously guards of the kind concerned in your inquiry do not come within any of the exceptions above outlined.

Nor do they come within the provisions of Section 9150, General Code, authorizing the Governor to appoint policemen for banks, building and loan associations and railroads of the kinds designated in such section.

Your attention is invited, however, to Sections 2830 and 2831, General Code, which provide in part as follows:

Section 2830: "The sheriff may appoint in writing one or more deputies. If such appointment is approved by a judge of the court of common pleas of the subdivision in which the county of the sheriff is situated, such approval at the time it is made, shall be indorsed on such writing by the judge. Thereupon such writing and indorsement shall be filed by the sheriff

with the clerk of his county, who shall duly enter it upon the journal of such court. * * *”

Section 2831: “The sheriff shall be responsible for neglect of duty or misconduct in office of each of his deputies.”

While proper action under these sections would solve your problem in so far as the Sandusky Bay Bridge is concerned and as to those parts of the others lying in Ohio, provided the proper sheriffs saw fit to act thereunder, there is still left those parts of the bridges within the state of West Virginia.

The sections of the West Virginia Code of 1937, relating to dangerous weapons, are Sections 6043 to 6055, inclusive (Ch. 61, Art. 7, Secs. 1 to 13).

Section 6043 provides in part as follows:

“If any person, without a state license therefor, carry about his person any revolver or other pistol, dirk, bowie knife, slung shot, razor, billy, metallic or other false knuckle, or other dangerous weapon of like kind or character, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not less than six nor more than twelve months for the first offense; but upon conviction of the same person for the second offense in this state (W. Va.), he shall be guilty of a felony, and, upon conviction, be confined in the penitentiary not less than one nor more than five years, and, in either case, be fined not less than fifty nor more than two hundred dollars, in the discretion of the court; * * *”

Section 6044 prescribes the procedure for obtaining the state license mentioned in the first sentence of Section 6043, *supra*, and requires inter alia a ten day published notice in a newspaper “*in the county in which he resides,*” application to the circuit court of *his* county for such state license, and a hearing by such circuit court. The second paragraph of this section expressly requires that the applicant shall show in his application in writing, which must be verified,

“(b) that the applicant has been a bona fide resident of this state (W. Va.) for at least one year next prior to the date of such application, and of the county sixty days next prior thereto.”

Section 6045 provides in substance that the sections under consideration shall not apply to any person who “in good faith and not having

felonious purposes" carries a weapon of the kind mentioned in Section 6043 on his own premises; to bona fide members of the national guard of West Virginia; to reserve officers of the United States army under certain circumstances and certain other persons, none of which would include guards of the kind you wish to employ.

Section 6046 excepts certain employes of express companies upon the giving of a continuing bond in the penalty of \$30,000, and railroad police officers of West Virginia or any other state upon the employing railroad executing a continuing bond in the penalty of \$10,000.

Section 6047 excepts sheriffs, their regularly appointed fulltime deputies, who have been duly confirmed by the county court, "and all constables in their respective counties and districts and all regularly appointed police officers of their respective cities, towns or villages," and certain other officials of the state of West Virginia. These excepted officers are required to give a bond in the penalty of not less than \$3,500.00.

Section 6050 provides in part as follows:

"It shall be unlawful for any person to carry, transport, or have in his possession, any machine gun, sub-machine gun, or what is commonly known as a high powered rifle, *or any gun of similar kind or character*, or any ammunition therefor, except on his own premises or premises leased to him for a fixed term, until such person shall have first obtained a permit from the superintendent of the department of public safety of this state, and approved by the governor, or until a license therefor shall have been obtained from the circuit court as in the case of pistols, * * * ; Provided, that nothing herein contained shall prevent the use of rifles by bona fide rifle club members who are freeholders or tenants for a fixed term in this state, at their usual or customary place of practice, or licensed hunters in the actual handling of game animals. No such permit shall be granted by said superintendent except in cases of riot, public danger, and emergency, until such applicant shall have filed his written application with said superintendent, in accordance with the rules and regulations that may be from time to time prescribed by said department of public safety relative thereto, * * * and such application shall contain the same provisions as are required to be shown under the provisions of section two (§6044) of this article, by applicants for pistol license, and shall be duly verified by such applicant, and at least one other reputable citizen of this state. * * *"

(Emphasis mine.)

From the context of the above section and the direction that an

application for a license to carry a gun of the kind prescribed "shall contain the same provisions as are required to be shown under the provisions" of section 6044, supra, it seems clear that only residents of West Virginia may obtain the license provided for in Section 6050, supra, and I find nothing in the West Virginia Code authorizing non-residents to obtain a state license to carry the kind of weapons enumerated in both Section 6044 and Section 6050. Nor do I find provision excepting officers of other states except as contained in Section 6046, above summarized.

From the above resume of the statutes of Ohio which pertain only to the carrying of *concealed* weapons on or about the person, and the statutes of West Virginia which make it a crime, except in certain instances, to carry certain types of dangerous weapons about the person without a state license, which may only be obtained by residents of West Virginia, the difficulty of placing armed guards on the three state-owned Ohio River bridges is apparent. The character of the laws of the two states is entirely different, and I know of no way in which residents of this state, employed as guards by the Ohio Bridge Commission, may carry any kinds of weapons named in Sections 6044 and 6050, supra, on those parts of the three bridges in question without violating the statutes of West Virginia.

In this connection it may be added that there is no very satisfactory guide as to just what weapons are without the law of the sections under consideration.

In Opinion No. 258, Reports and Opinions of the Attorney General of West Virginia, 1921-1922, p. 257, the question of the right of a railroad police officer, duly commissioned by the state of Ohio, to "carry weapons in and out of the state of West Virginia without a license therefor," in view of the fact that the Ohio commission carried with it the right to carry deadly weapons in Ohio, was considered. In passing upon Section 6044, supra (then Sec. 7, Ch. 148 of the Code), the Attorney General said:

" * * * I beg to advise that our law does not prohibit the carrying of all classes of deadly weapons without a state license therefor. * * * This statute would not prohibit you from carrying a rifle or shot gun in this state without a license but would prohibit you from carrying weapons of the kind mentioned and all others of like kind or character. The fact that you may

have a license to carry a revolver in the state of Ohio, would not authorize you to carry such weapon in West Virginia without first having obtained a license so to do."

This opinion was rendered, however, on June 28, 1921, and before the enactment of Section 6050, supra, which was passed at an extra session of the West Virginia Legislature in 1925, and how the provisions of Section 6050, above set forth in part, might affect the instant question, is rendered somewhat uncertain by the language of the West Virginia Supreme Court of Appeals in the case of Village of Barboursville ex rel. Bates v. Taylor, et al., 115 W. Va. 4, 174 S.E. 485., 92 A.L.R. 1093 (1934), in which the court held as stated in the first branch of the syllabus:

"Where a statute prohibits carrying about the person 'any revolver or other pistol, dirk, bowie knife, slung shot, razor, billy metallic or other false knuckles, or other dangerous or deadly weapon of like kind or character,' an article planned or made for a weapon, not named in the statute, is a dangerous weapon within the statutory meaning if in its intended or readily adapted use it is *likely* to produce death or serious bodily injury. If it be of that nature, it is of like kind or character to those enumerated in the statute."

At pages 7 and 8 of the opinion, the court said:

"Is a 'fountain pen tear gas gun', such as is here described, a dangerous or deadly weapon within the meaning of our statute regulating the carrying of such weapon? Obviously, in the use for which it was intended it is not deadly. Is it inherently dangerous? * * *

In approaching such problem there are fundamental principles for judicial guidance. The statute against carrying dangerous or deadly weapons is intended to proscribe the carrying about the person of such instruments as are dangerous per se — inherently, intrinsically, characteristically. There are two classes: (1) articles intended as weapons, such as revolvers, billies, dirks, and metallic knuckles; and (2) articles the preliminary use of which is not as weapons but which are readily adaptable to that use, as for example, razors (named in the statute) and butcher knives (not named). The article specified in the statute is denominated inherently dangerous, *eo nomine*. An article not specified in the statute, but planned and made for a weapon, is dangerous or deadly within the statutory meaning if in its intentment or readily adaptable use it is likely to produce death or serious bodily injury. If it be of that nature, it is of like kind and character to the weapons enumerated in the statute. The mere possession of a dangerous or deadly

weapon about one's person, without a license therefor is an offense. An article made and intended for a weapon is not to be classed as inherently dangerous or deadly because it is capable of producing serious injury or death, but the classification is to be based on a consideration of whether in the use for which it was intended or to which it is readily adaptable, it is *likely* to produce death or serious bodily injury. (Citing cases.)"

Just what weapons are guns of similar kind and character to a machine gun, sub-machine gun, or "what is commonly known as a high powered rifle" is obviously a question for the courts and the proper law officers of the state of West Virginia; and in the absence of some authoritative determination by such courts or law officers, this office cannot properly answer or attempt to answer such question.

With reference to the payment of bond premiums of those lawfully appointed deputy sheriffs to act as guards on the state owned bridges, or on such parts thereof as are within the state of Ohio, your attention is directed to Section 2981, General Code, which provides inter alia that a county officer "may require such of his employes as he deems proper to give bond to the state in an amount to be fixed by such officer * * *, conditioned for the faithful performance of their official duties," and to Section 9573-1, General Code, which permits "the premium of any duly licensed surety company on the bond of any public officer, deputy or employe" of the state or the political subdivisions thereof to be paid from public funds.

It is my opinion that Section 9573-1, supra, has no application to the State Bridge Commission of Ohio for the reason that, while created by the State through legislative enactment, it is not the state or a political subdivision thereof. And while I held in Opinion No. 4274, addressed on October 4, 1941, to the Prosecuting Attorney of Geauga County, that the premium on a bond, permitting "a deputy sheriff to go armed, may not be paid from public funds by the board of county commissioners," it is obvious that such opinion has nothing to do with the use by your commission of "bridge funds" for the purpose of paying premiums of the kind about which you inquire. The reasoning above set forth fully justifies such expenditures whether such payments be for any of the purposes hereinbefore discussed or for the purpose of paying premiums on bonds of the kind here involved. In any event, the payments of such bond premiums from the funds under the control of your commission may

be upheld upon the theory that such payments are part of the compensation of the guards, if upon no other.

For your information I might add, in so far as the Ohio statutes are concerned, that it is generally held as stated in 68 C.J. 35, that:

“Within the purport of statutes directed against the carrying of concealed weapons, ‘conceal’ has its common, ordinary and well understood signification, meaning to hide, secrete, screen, or cover. Concealment does not necessarily presuppose complete invisibility. Conversely, *the fact that a weapon is not concealed does not necessarily mean that it is completely visible*, for ordinarily a weapon carried in the hand is not unlawfully concealed, and yet whenever a weapon is carried on the person, some part of the weapon is unavoidably hidden from view.”
(Emphasis mine.)

In passing I deem it proper to invite your attention to the report of The Council of State Governments, issued in January, 1942, and entitled “Suggested State War Legislation.” In paragraph 4, page 9, of this report, it was said among other things that:

“It was the consensus of the Committee that the War Department or some other branch of the Federal Government should designate the properties in each state which should be afforded protection by State Guards or other state forces. In addition, it was suggested that liaison be established between the Corps Area Commanders, or other appropriate Army representatives, and the Governors, in order to avoid any failure to obtain complete protection, or possible overlapping between the Army and state organizations.”

In view of the foregoing, and in specific answer to your question, it is my opinion that:

1. Subject to any applicable law or regulation of the United States of America, including regulations of the Secretary of War, or the Public Utilities Commission of Ohio, the State Bridge Commission of Ohio is authorized and empowered to fix the tolls to be charged on state-owned bridges, subject to the provisions of Section 1084-13, General Code, requiring a fund sufficient to pay any issue of bonds and the interest thereon covering such bridge or bridges and an additional fund to pay the cost of maintaining, repairing and operating any such bridge or bridges, and schedules fixing such tolls may differentiate between a single fare rate purchased at one time and tickets purchased in larger amounts.

2. In view of the fact that this country is now at war and of the increased possibility of sabotage to the bridges operated by the State Bridge Commission, the commission is authorized and empowered, and may legally expend bridge funds to employ such number of guards as it deems necessary to protect the bridges under its control and the traveling public thereon; to provide uniforms and badges for such guards; to supply arms and ammunition for use by such guards, and to construct shelters upon the bridge property for the guards so employed.

3. Under the law of Ohio, including Section 12819, General Code, guards employed by the State Bridge Commission to protect the bridges operated by such commission and the traveling public on such bridges may not lawfully carry concealed weapons on or about their person, unless duly appointed as deputy sheriffs, as provided in Section 2830 and cognate sections of the General Code. If in case of such appointments official bonds be required, the premiums on such bonds may lawfully be paid by the commission from bridge funds.

4. Under the law of West Virginia, including Sections 6043 to 6055, inclusive, of the Code of West Virginia of 1937, it is unlawful for a person to carry about his person a revolver or other pistol, or a machine gun, sub-machine gun, or what is commonly known as a high powered rifle, *or other dangerous weapon of like kind or character*, without a state license, which may only be obtained by persons who shall have been a bona fide resident of West Virginia for at least one year and of his county for sixty days prior to the making of application for such state license, unless such person come within one of the exceptions contained in the above named sections of the West Virginia Code, which do not include guards residing in the state of Ohio who might be employed by the State Bridge Commission of Ohio, to protect those parts of the bridges operated by such commission lying within the state of West Virginia. As to just what weapons are included in the sections of the West Virginia Code is a question to be determined by the courts and law officers of West Virginia, and in the absence of a determination by such authorities this office will refrain from expressing its opinion.

Respectfully,

THOMAS J. HERBERT
Attorney General.