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STATE BRIDGE COMMISSION—HAS AUTHORITY TO EXPEND FUNDS FOR ADVERTISING, MAPS—NO AUTHORITY TO BUY UNIFORMS FOR TOLL CLERKS OR PURCHASE DEPUTY SHERIFFS' BADGES—PUBLIC UTILITIES COMMISSION UNDER SECTION 1084-13 G. C. HAS JURISDICTION OVER BRIDGE TARIFFS—SINKING FUNDS MAY BE DEPOSITED IN SAVINGS AND LOAN COMPANIES—REAL ESTATE AND BRIDGES NOT SUBJECT TO OHIO PROPERTY TAXES.

SYLLABUS:

1. *The State Bridge Commission has authority to expend its funds for (a) advertising on billboards or (b) maps, if such maps are used for advertising purposes, but that said Commission does not have authority to expend its funds for (c) uniforms for toll clerk or (d) for the purchase of deputy sheriffs' badges.*

2. *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.*

3. *The determination of the institution wherein State Bridge Commission Sinking Funds are to be deposited is within the power of the State Bridge Commission and if there is nothing in the trust indenture to the contrary, the trustees of any State Bridge Commission Sinking Fund may deposit their funds in savings and loan companies.*

4. *Real estate and bridges owned by the State Bridge Commission are not subject to Ohio property taxes of any kind.*

COLUMBUS, OHIO, July 15, 1938.

Bureau of Inspection and Supervision of Public Offices, State House Annex, Columbus, Ohio.

GENTLEMEN: I am in receipt of your request for my opinion which reads as follows:

“During the audit of the records of the State Bridge Commission, the following questions have been submitted, upon which we respectfully request your opinion.

1. Does the Commission have authority to expend its funds for: (a) Advertising on bill boards; (b) for maps; (c) for uniforms for toll clerks; (d) for deputy sheriffs' badges?

2. Does the Public Utilities Commission have jurisdiction over bridge tariffs?
3. May the trustees of the Bridge Commission Sinking Fund deposit funds in Savings and Loan Companies?
4. Are the real estate and bridges owned by the State Bridge Commission subject to real estate or any other Ohio tax?"

I will answer your questions in the order set forth in your communication.

The powers of the State Bridge Commission are outlined in the following portions of Section 1084-6 of the General Code:

"Upon the appointment and qualification of the members of the State Bridge Commission or of any county or city bridge commission, they shall at once proceed to organize. Each such commission shall make necessary rules and regulations for its own government, shall appoint a secretary-treasurer, and *have 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 under this act*, 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. * * * *All salaries and compensations shall be paid solely from funds provided under the authority of this act*, and no such commission shall proceed to exercise or carry out any authority or power herein given it to bind such commission beyond the extent to which money has been or may be provided under the authority of this act." (Italics the writer's.)

The State Bridge Commission, unlike most of the state departments, boards and commissions, does not pay the funds which it collects into the state treasury. Ordinarily all funds received by state officers, state institutions, departments, boards, commissions, colleges, normal schools or universities receiving state aid are paid into the state treasury pursuant to Section 24 of the General Code. It was said in *State, ex rel. vs. Board of Accountancy*, 129 O. S. 66 at page 68:

"Section 24 is a general statute and applies to every state board not otherwise expressly exempted. * * *"

However, in Section 1084-12 of the General Code, we find the express exemption as to the State Bridge Commission as follows:

"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. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the bridge or bridges affected by such indenture."

It is clear, therefore, that the State Bridge Commission is not dependent on an appropriation by the Legislature and we can not look to any appropriation act to determine the intention of the Legislature but must consider solely the general statutory provisions pertaining to the State Bridge Commission.

From an examination of all the sections pertaining to the State Bridge Commission, namely, Sections 1084-1 to 1084-16 of the General Code, I am convinced that the Legislature intended that the State Bridge Commission should have the power to do all things necessary to operate the bridges under its control efficiently and in a business-like manner. In other words, in operating the bridges upon which tolls are charged, the State Bridge Commission is carrying on a function which has often been carried on by private business enterprises and I am convinced that the Legislature intended that the State Bridge Commission should have the same powers in the operation of such bridges as a private corporation would have if it were performing the same function.

Without getting into the question of what is proprietary and what governmental, I would like to call your attention to the case of *Travelers Insurance Co. vs. Village of Wadsworth*, 109 O. S. 440, which involved the right of a municipally owned light and power plant to contract for liability insurance. The following passage appearing on page 447 is particularly noteworthy:

"* * * With regard to the exercise of proprietary powers the rule is that when exercising those powers the municipality may act as would an individual or private corporation. This is the general rule upon the subject."

I have especially avoided an opinion in regard to whether or not the State Bridge Commission exercises proprietary or governmental functions as that question has never been determined by the courts of this state and it is not necessary to the determination of the in-

stant question. The statement is helpful in that it indicates an attitude of the courts that when a governmental body carries on functions which are similar to functions carried on by private individuals, it is assumed that the enactors of the legislation providing for the carrying on of these functions by a governmental body intended that the said body should be on an equal footing with private individuals carrying on the same functions.

Section 1084-6, *supra*, provides in part that the State Bridge Commission shall have "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 under this act." The ultimate question, therefore, is the determination of what is "necessary or incidental."

In the modern economic world, it is well accepted that advertising is often times an incidental, if not necessary expense. Inasmuch as there are often times several routes to be taken, of which only one includes passage over a toll bridge operated by the State Bridge Commission, it would seem to be good business on the part of the body operating a toll bridge to advise the traveling public of the reason why the route over the toll bridge is preferable. In such case, I see no reason why billboard advertising would not be the proper medium for conveying the information to the prospective customers.

You refer in question 1 (b) to "maps." If by this is meant maps which are used for the purpose of advertising the location of the bridge and the desirability of its use, I likewise believe this expense would be proper.

In question 1(c), you refer to "uniforms for toll clerks." Here we are presented with a slightly different problem as I fail to see how the expense involved in the purchase of uniforms for toll clerks could be justified as one which would promote the operation of any bridge. Furthermore, it seems to be a well settled policy in this state that the state will not provide uniforms for any of its employes. I have been informed that uniforms are not furnished to any of the guards or attendants in any of the state prisons or institutions and that further, the uniforms worn by the clerks in the state liquor stores are not purchased by the Department of Liquor Control. In view of this well established policy and since I can not see how the purchasing of uniforms for bridge attendants would promote the interests of the state in the operation of its toll bridges, I am of the opinion that the State Bridge Commission has no power to make such an expenditure.

Your next item in question 1 relates to "deputy sheriffs' badges." Inasmuch as such badges are issued to individuals and the powers and duties conferred upon deputy sheriffs would not be co-

extensive with the functions of an employe of the State Bridge Commission, I am of the opinion that the expense for the purchase of the badges is one to be borne by the individual employes of the Commission who are deputized.

In your second question you ask whether the Public Utilities Commission has jurisdiction over bridge tariffs. There should be no doubt on this point inasmuch as it is answered in the following portion of Section 1084-13, General Code:

“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.*” (Italics the writer’s).

In view of this section, I have no hesitancy in saying that the Public Utilities Commission has jurisdiction over bridge tariffs.

In your third question you ask whether the trustees of the State Bridge Commission Sinking Fund may deposit funds in savings and loan companies. Inasmuch as there is no general Bridge Commission Sinking Fund, I assume you refer to the individual sinking funds which are created in connection with the bond issues of each bridge. I again wish to direct your attention to the portion of Section 1084-12 above quoted. It is there provided that the Commission “may provide * * * 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 depositary as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.” You will notice that the place of deposit is left for the determination of the Commission. The newly enacted Uniform Depository Act, Sections 2296-1a, et seq. provides in Section 2296-1a that:

“‘Public moneys’ means all moneys in the treasury of the state, or any subdivisions thereof, or coming lawfully into the possession or custody of the treasurer of state, or of the treasurer of any such subdivision. ‘Public moneys of the state’ includes all such moneys coming lawfully into the

possession of the treasurer of state; and 'public moneys of a subdivision' includes all such moneys coming lawfully into the possession of the treasurer of the subdivision."

Inasmuch as the Uniform Depository Act is a more recent enactment than the legislation which created the State Bridge Commission hereinabove mentioned, it is necessary to inquire whether the more recent enactment should prevail. It should be noted that the Uniform Depository Act comes within the category of legislation referred to as general. It does not apply to a specific body or locality inasmuch as its provisions are broad and generally inclusive, whereas the legislation whereby the State Bridge Commission was created is what is commonly known as special legislation. It is my opinion that the Uniform Depository Act did not repeal the provisions of Section 1084-12, *supra*, which provide that the State Bridge Commission shall determine where the funds obtained from the sale of bonds or revenues should be deposited and this opinion is based on the principle of law which is stated in Lewis' Sutherland Statutory Construction, 2nd Edition, Vol. 1, page 533, as follows:

"There is no rule of law which prohibits the repeal of a special act by a general one, nor is there any principle forbidding such repeal without the use of words declarative of that intent. The question is always one of intention, and the purpose to abrogate the particular enactment by a later general statute is sufficiently manifested when the provisions of both can not stand together."

Additional authority for this rule of law is found in the following question from 37 O. J., page 408:

"It has been broadly stated that there is no rule which prohibits the repeal by implication of a special act by a general one. A general statute declaring a general policy of legislation entered upon by the general assembly may repeal by implication all other statutes in conflict therewith. 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 unaffected 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.”

There is no manifestation in the Uniform Depository Act of an intention by the Legislature to repeal Section 1084-12 and I, therefore, am of the opinion as aforesaid that the State Bridge Commission may determine, as expressly provided for in Section 1084-12, where its funds shall be deposited. In view of the foregoing, there is no restriction prohibiting the deposit of the funds of a sinking fund, created pursuant to a trust indenture executed by the State Bridge Commission, in savings and loan companies.

Your last question is whether the properties owned by the State Bridge Commission are “subject to real estate or any other Ohio tax.” It is provided in Section 1084-9 of the General Code, paragraph (L) that when properties are acquired by the State Bridge Commission, the State of Ohio receives a title in fee simple. This being the case, I think the answer is obvious that the properties owned by the State are not subject to taxation, assuming that you have reference to property taxes.

In conclusion and in specific answer to your inquiries, it is my opinion that: (1) the State Bridge Commission has authority to expend its funds for (a) advertising on billboards or (b) maps, if such maps are used for advertising purposes, but that said Commission does not have authority to expend its funds for (c) uniforms for toll clerks or (d) for the purchase of deputy sheriffs’ badges; (2) 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; (3) the determination of the institution wherein State Bridge Commission Sinking Funds are to be deposited is within the power of the State Bridge Commission and if there is nothing in the trust indenture to the contrary, the trustees of any State Bridge Commission Sinking Fund may deposit their funds in savings and loan companies; (4) real estate and bridges owned by the State Bridge Commission are not subject to Ohio property taxes of any kind.

Respectfully,

HERBERT S. DUFFY,

Attorney General.