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UNITED STATES GOVERNMENT—INTERSTATE AND INTRA-STATE BRIDGES—MAY TRANSPORT TROOPS AND STATE MAY NOT COLLECT TOLL—STATE ENTITLED TO OFFICIAL MILEAGE AS PROVIDED IN TITLE 33, CHAPTER 11, SECTION 492, UNITED STATES GENERAL CODE.

*SYLLABUS:*

*The jurisdiction of the United States Government over bridges over navigable waters, interstate or intrastate, is paramount. The rights of a State in a bridge over navigable waters are at all times subject to the Federal Government's prior rights. The State of Ohio has no authority in law to charge and collect from the United States Government, toll for the passage or transportation of its soldiers over Sandusky Bay Bridge but it may charge and collect for such passage or transportation the "rate per mile paid for the transportation over any railroad, street railway or public highway leading to said bridge" as provided by Title 33, Chapter 11, Section 492, United States General Code.*

COLUMBUS, OHIO, July 2, 1937.

HON. OSCAR P. GRISCHY, *State Bridge Commission of Ohio, 2405 Union Central Bldg., Cincinnati, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of recent date as follows:

"I have communicated with the other members of the Commission with reference to the request for free passage of troops and government vehicles over the Sandusky Bay Bridge and they urge me to request that you render a formal ruling upon this question.

The request for free passage is made by Charles H. Traeger, Lieut. Colonel, and Commanding Officer Erie Ordnance Depot, Lacarne, Ohio, under date of May 17th, 1937, and covers 'regular army personnel and vehicles when traveling under official orders.' The request is predicated upon the decision of Acting Comptroller General A-75335, copy of which decision is enclosed herewith. The decision is contained in Volume 16 which I hope is on file in your library as the enclosed copy is not very legible.

It is the desire of the Commission to be fortified with

your formal ruling before taking the proposed action of refusing the request.

Inasmuch as these troops will shortly begin to move over the Bridge, I trust that you will find it convenient to render your ruling at an early date."

It is fundamental that the jurisdiction of the Federal Government over post-roads, post routes and navigable waters is paramount. A state or a natural person has such authority on and over navigable waters as the Federal Government sees fit to grant, and no more, and this is true whether such water is interstate or intrastate.

It is safe to assume that the portion of Sandusky Bay that the bridge spans, is navigable, else it would not have been necessary to obtain the consent of Congress for its construction. I find it necessary, in order to determine the relative rights of the state and Federal governments to the use of Sandusky Bay Bridge, to consider the legislative history of the bridge.

The Act providing for the construction and maintenance of Sandusky Bay Bridge, being special and local, is found in the Appendix to the General Code of Ohio and is comprehended in Sections 13996-2 to 13996-8, inclusive. All of these sections went into effect June 28, 1927. I will quote such parts of these sections as I deem pertinent to the question herein involved.

Section 13996-2, General Code, provides in substance that subject to the rights of the government of the United States, authority is granted to the Sandusky Bay Bridge Co., a Delaware corporation, its successors and assigns, to construct, maintain and operate a bridge and approaches thereto, to be used as a highway for public travel across Sandusky Bay at a point suitable in the interest of navigation between Martin's Point, in Erie County, on the southerly side of said Bay and Presque Isle Road, or Danbury, in Ottawa County, on the northerly side of said Bay, and for such purpose there is hereby granted to the Sandusky Bay Bridge Company, its successors, and assigns, a perpetual easement in the land underlying the waters of said Bay between said points.

The plans and specifications for the bridge and the means for caring for navigation in the Bay across the easement to be submitted to and receive the approval of the Director of Highways and Public Works of the State, and the construction of the bridge, as far as the interest of the state is concerned, shall be subject to supervision by the Director of Highways and Public Works.

Section 13996-3, General Code, declares that the bridge and appurtenances shall be a lawful structure. The purpose of this enactment was to preclude the courts from subsequently declaring the

structure unlawful in case it interfered with the rights of the public in the waters of the Bay or the underlying land, and comply with federal laws.

Section 13996-4, General Code, granted power to the Bridge Company to sell, transfer and mortgage all its rights, easements, powers and privileges and carried all the power and rights granted the Bridge Company to subsequent grantees or purchasers at judicial sale.

Section 13996-5, General Code, provides that after the completion of the bridge, as determined by the Secretary of War, either the State of Ohio, any political subdivision thereof within which any part of the bridge is located, or two or more of them jointly may at any time acquire such bridge by purchase or condemnation.

Section 13996-6, General Code, provided that the authority and easement granted in the Act should be null and void unless the work on the bridge be begun in one year and such bridge be completed within three years from the effective date of the Act.

Section 13996-7, General Code, authorized the Bridge Company, its successors, and assigns to fix and charge tolls for transit over the bridge and that the rates so fixed should be the legal rates of toll until changed by the Secretary of War under authority of the Act of Congress approved March 23, 1906, entitled "An Act to regulate the construction of bridges over navigable waters" or by the Public Utilities Commission of the State of Ohio. Subject to the powers conferred upon the Secretary of War by such Act of Congress, with respect to prescribing rates of toll, the Public Utilities Commission of the State of Ohio, may at any time and from time to time, fix and determine reasonable rates of toll for transit over the bridge.

Section 13996-8, General Code, is the "cure-all" section, declaring every section of the Act and every part thereof to be independent sections and parts of sections and the holding of any section or part thereof to be void or ineffective for any cause should not affect any other section or part thereof.

Section 1084-3, General Code; provides for the creation of the State Bridge Commission of the State of Ohio.

Section 1084-8, General Code, empowers such Commission to acquire toll bridges by purchase or condemnation.

Section 1084-9, General Code, outlines the procedure to be followed when a bridge is sought to be acquired by condemnation.

Section 1084-13, General Code, amongst other things, provides in substance that tolls shall be fixed 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 Ohio now in force or hereafter to be enacted or made.

Section 1034-15, General Code, provides that a bridge connected at each end with a highway which is a part of the highway system of Ohio shall be added to the highway system by the Director of Highways.

It may be asserted as fact and law that the Sandusky Bay Bridge was and is a toll bridge, that it has been taken over by the State of Ohio, that the State Bridge Commission of the State of Ohio administers and operates the bridge, and that the bridge is a part of the State Highway System. The State of Ohio as successor to this Bridge Company took all the rights of the Bridge Company, *subject to the rights of the government of the United States* as provided in Section 13996-2, General Code, *supra*. Of course the State lost none of its sovereign rights because of such arrangement. What were and are the rights of the government of the United States with reference to Sandusky Bay Bridge? I quote the following statutes of The United States, viz:

Title 23, Ch. 9, Sec. 401, U. S. G. C.:

“It shall not be lawful to construct or commence the construction of any bridge, dam, dike or causeway over or in any port,, roadstedd, harbor, canal, navigable river or other nava-gable water of the United States until the consent of Congress to the building of such structure shall have been obtained and until the plans for the same shall have been submitted to and been approved by the Chief of Engineers and by the Secretary of War:

Provided that such structure may be built under authority of the legislature of a state across rivers and other water-ways, the navigable portions of which lie wholly within the limits of a single state, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced.

And provided further that when plans for any bridge or other structure have been approved by the Chief of En-gineers and by the Secretary of War, it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of said plans has been previously submitted to and received the approval of

the Chief of Engineers and the Secretary of War." (Passed March 3, 1899).

Title 33, Ch. 11, Sec. 491, U. S. G. C. provides, viz :

"When after March 23rd, 1906, authority is granted by Congress to any person to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location, as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, nor until they have approved such plans and specifications and the location of such bridge and accessory works \* \* \*." (Passed March 23rd, 1906).

Title 33, Ch. 11, Sec. 492, U. S. G. C. provides :

"Any bridge built in accordance with this chapter, sections 491 to 498, inclusive, shall be a lawful structure and shall be recognized and known as a post-route upon which no higher charge shall be made for the transmission over the same, of the mails, the troops and the munitions of war of the United States, than the rate per mile paid for the transportation over any railroad, street railway or public highway leading to said bridge, and the United States shall have the right to construct, maintain and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches and equal privileges in the use of said bridge and its approaches shall be granted to all telephone and telegraph companies." (Passed March 23rd, 1906).

Let it be noted that these sections of The United States General Code had been effective more than a score of years prior to June 28th, 1927, the date when the Sandusky Bay Bridge Act became effective.

The State of Ohio and The Sandusky Bay Bridge Company were aware that their rights in the bridge were permissive in so far as the Federal government was concerned. The first section of The Sandusky Bay Bridge Act, viz: Section 13996-8, Appendix to The General Code of Ohio, and first sentence thereof reads as follows: "*Subject to the rights of The United States, authority is granted to The Sandusky Bay Bridge Company, etc.*"

The rights of The United States were recited by the sections of

the Federal Statutes above quoted and such statutes were an integral part of the contract between the State and the Bridge Company. Both the State and the Bridge Company were charged with a knowledge of the right of the Federal Government to transport its troops over the bridge, as provided by Section 492, United States General Code, on the mileage basis therein provided for, which would mean that it would be absolved from the toll charges for such transportation. The State of Ohio, as grantee, stands in no better shoes than the Bridge Company, the grantor, in so far as the rights of The United States are concerned. It was held in the case of *City of Newark vs. The Central Rd. Co. of New Jersey*, (D. C. N. Y. 1923), 287 Fed. 196; approved C. C. A. 1924-297 Fed 77 and reaffirmed 1925 in 45 Supreme Court 328; 267 U. S. 377; 69 L. Ed. 6661:

“Section 401 of this title acquiring consent of Congress to the building of bridges over navigable waters and Section 491 of this title and this section (492), requiring approval of the plans for any such bridge by the War Department and providing that a bridge built in accordance therewith shall be a lawful structure, constitute an exercise of the paramount constitutional power of Congress over such structures which has the effect of excluding all control by the states.”

In the case of this decision, affirmed by The Supreme Court of the United States, little remains to be said.

I must conclude that The State of Ohio is a tenant at sufferance of The United States in the Sandusky Bay Bridge and has no right to collect toll for the passage of transportation of soldiers of the United States over such bridge, but can collect on the mileage basis therefor, as provided in Title 23, Chapter 11, Section 492, United States General Code.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*