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BRIDGE COMMISSION, STATE OF OHIO—CHAIRMAN—COMMISSION DOES NOT HAVE AUTHORITY TO ISSUE BRIDGE REVENUE BONDS—PURPOSE, TO PAY COST OF BUILDING AND IMPROVING APPROACHES TO STEUBENVILLE-WEIRTON BRIDGE.

SYLLABUS:

The State Bridge Commission does not have the authority to issue bridge revenue bonds for the purpose of paying the cost of building and improving the approaches to the Steubenville-Weirton bridge.

Columbus, Ohio, March 13, 1953

Russell M. Wilhelm, Chairman State Bridge Commission of Ohio
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"As you know, the State Bridge Commission of Ohio operates under the provisions of Sections 1084-1 to 1084-17 of the old sections of the General Code of Ohio, the new numbers in the proposed revision of the General Code being 5593.01 to 5593.19. In addition to these sections the Commission is, under a temporary piece of legislation, Amended Senate Bill Number 356 passed May 29th, 1951, and has been collecting tolls on the Steubenville-Weirton bridge between Steubenville, Ohio, and Weirton, West Virginia, since February, 1952. The purpose of reimposing tolls on this bridge by the temporary act was to make certain repairs and improvements to the bridge, including the approaches thereto. I have here an extra copy of the Amended Senate Bill Number 356 which I am going to attach to this letter in order to expedite matters but I would appreciate it if you would return this copy.

"We have now had plans prepared for an extensive improvement of the approaches to the bridge referred to in order to abolish the bottle neck in traffic which presently exists.

"I might call your attention to the wording in Section C of Amended Senate Bill Number 356 which says that 'any such construction shall be financed entirely out of the proceeds of the tolls which is for the use of the bridge.'

"The Commission has now reached a point where it is uncertain as to its financing of the entire project and we, therefore, submit to you for formal opinion the following question:

"Does the Ohio State Bridge Commission under old Sections 1084-1 to 1084-17 of the General Code, new Sections 5593.01 to 5593.19 inclusive, Revised Code, together with the temporary legislation known as Senate Bill Number 356, have the authority and power to issue bridge revenue bonds of the State for the purpose of paying the cost of building and improving the approaches to the Steubenville-Weirton bridge?"

The records of the Bridge Commission show that the bridge in question was purchased in 1936 and that revenue bonds were issued to finance the payment pursuant to the provisions of Section 1084-10, et seq., General

Code. Later, refunding bonds were issued to retire this original issue and all of the bonds were paid off in 1947. On September 11, 1947 the bridge was made toll free and its maintenance was assumed by the state highway department, pursuant to the provisions of Sections 1084-14 and 1084-15, General Code. Those sections provide in part as follows :

Section 1084-14

"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 or for the repayment of any valid obligation due the state of Ohio incurred by the state bridge commission in retiring its bonds. 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."

Section 1084-15

"* * * It shall be the duty of the state highway director to maintain and keep in repair any bridge together with its approaches constructed or 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. * * *"

In 1951 the 99th General Assembly enacted Senate Bill No. 356, referring to the Steubenville-Weirton bridge. That act provided as follows :

"Section 1. Notwithstanding any of the provisions of sections 1084-1 to 1084-17 of the General Code, both inclusive, and in addition to the powers heretofore granted, the state bridge commission is hereby authorized and empowered :

"(a) To assume jurisdiction over, operate and maintain the Steubenville-Weirton bridge, between Steubenville, Ohio and Weirton, West Virginia, heretofore acquired by the commission, notwithstanding the fact that tolls for the use of such bridge have ceased and such bridge has been maintained by the state highway department. Jurisdiction over such bridge shall be assumed upon determination by the commission that it is in the best interest of the people of the state of Ohio for the commission to assume jurisdiction over such bridge and to operate and maintain the same

as a toll bridge until sufficient proceeds have been realized from the charge of tolls to completely finance the cost of all constructions, repairs, maintenance, alterations and improvements in the bridge and the approaches thereto, found by the commission to be necessary or advisable to the continued proper functioning of the bridge;

“(b) To charge tolls for the use of such bridge in order to provide a fund with which to finance the cost of all constructions, repairs, maintenance, alterations and improvements in such bridge or the approaches thereto, deemed necessary or advisable by the commission;

“(c) To construct, repair, maintain, alter or improve the bridge or the approaches thereto, the cost of any such construction, repair, maintenance or alteration to be financed entirely out of the proceeds of the tolls charged for the use of the bridge;

“(d) To cease the charging of tolls for the use of such bridge and to relinquish jurisdiction over, operation and maintenance thereof to the state highway department, upon determination by the commission that to do so would be in the best interest of the people of the state of Ohio.”

It is my opinion that a reading of the above act discloses a clear legislative intent that the tolls which your Commission was authorized to reimpose on the use of the bridge were to be accumulated “until sufficient proceeds have been realized to completely finance the cost of all improvements,” and that the legislature did not intend that bonds should be issued to finance such improvements.

The only language in Senate Bill No. 356 which could possibly be construed to authorize the issuance of bonds is the language in paragraph (c) to which you have referred, which language provides that any construction shall be “financed” entirely out of the proceeds of tolls. At best, this refers us back to the provisions of the Bridge Commission law to determine what powers exist to “finance” such projects by the issuance of bonds. In this connection the following statutes are pertinent.

Section 1084-8, General Code, provides in part as follows:

“The state bridge commission is hereby authorized to construct or acquire by purchase or condemnation whenever it shall deem such acquirement expedient but solely by means of or with the proceeds of bridge revenue bonds hereinafter authorized any toll bridges located as provided in section 1 of this act, or any such toll bridge or bridges wholly or partly constructed, upon such

terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, title thereto be taken in the name of the state. * * *."

Section 1084-9, General Code, provides in part as follows:

"The state bridge commission and the bridge commission of any county or city shall have power to acquire by condemnation or purchase any bridge, land, rights, easements, franchises and other property deemed necessary or convenient for the improvement and/or the efficient operation of any property acquired or constructed hereunder, or for securing right of way leading to any such bridge or its approaches. * * *."

Section 1084-10, General Code, provides in part as follows:

"The state bridge commission and the bridge commission of any county or city is hereby authorized to provide by resolution for the issuance of bridge revenue bonds of the state or of such county or city for the purpose of paying the cost as hereinabove defined of any one or more *such* bridges, which resolution shall recite an estimate of such cost, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment. * * *." (Emphasis supplied.)

It will be noted that Section 1084-10, *supra*, which grants the power to issue bonds, authorizes their issuance to pay the cost of "such bridges." Since the word "such" must be presumed to have an antecedent the only logical reference it can have is to those bridges which the Commission is authorized to acquire by Sections 1084-8 and 1084-9. As I read those sections, they refer only to bridges which the Commission constructs or to existing bridges which the Commission buys in order to make them eventually toll-free. It is my opinion that no authority is granted to issue bonds for the purpose of making repairs on a bridge owned by the state of Ohio.

It is true that under the broad definitions of "bridge," "improvements," and "cost" contained in the law, it could be argued that the project which you contemplate is in reality new construction within the meaning of the law. However, it is not necessary to decide that problem since Section 1084-15c, General Code, effective in 1949, provides as follows:

"The state bridge commission shall have no power to construct or to contract for the construction of a bridge or to issue bonds to pay the cost of the construction thereof, from and after the date this section becomes effective."

In view of this specific limitation on the power of the commission to issue bonds — a power which must be clearly spelled out — I cannot find a repeal by implication in the rather vague reference in Senate Bill No. 356 the “financing” of the program.

In answer to your question it is therefore my opinion that the State Bridge Commission does not have the authority to issue bridge revenue bonds for the purpose of paying the cost of building and improving the approaches to the Steubenville-Weirton bridge.

Respectfully,

C. WILLIAM O'NEILL
Attorney General