

**OPINION NO. 77-023****Syllabus:**

The Transportation Research Board of Ohio is an autonomous, quasi-public entity created by statute. Expenditures made by the Board out of revenues from services rendered and bonds and notes issued pursuant to R.C. Chapter 5507 must be in accordance with the provisions of that Chapter, but are not subject to regulations adopted pursuant to R.C. 141.15.

**To: Roger Dreyer, Chairman, Transportation Research Board of Ohio,  
Columbus, Ohio**

**By: William J. Brown, Attorney General, May 3, 1977**

You have requested my opinion on the following question:

"Which statutory authority applies to, and controls the expenditures by the Transportation Research Board of Ohio of funds exclusively earned from the sale of services at the Transportation Research Center;

(a) those regulations covering the expenditures of appropriated money by state departments and agencies, or

(b) Chapter 5507 of the Revised Code."

It is my understanding from material furnished along with the opinion request that your question relates primarily to R.C. 141.15 and its applicability to expenditures by the Transportation Research Board of Ohio (hereinafter referred to as the Board). That section reads:

"Any elected or appointed state officer or state employee of any department, office, or institution of this state, whose compensation is paid, in whole or in part, from state funds, may be reimbursed for his actual and necessary traveling and other expenses incurred while traveling within this state on official business authorized by law or required in the performance of duties imposed by law.

"Such reimbursement shall be made in the manner and at the rates provided by rules and regulations governing travel adopted by the department of finance, in accordance with and subject to the provisions of Chapter 119. of the Revised Code, except that reimbursement for

expenses incurred by a member, officer, or employee of any bureau, commission, or committee created under the provisions of Chapters 103. or 105. of the Revised Code whose membership includes members or officers of the general assembly shall be made in the manner and at the rates established by the appropriate bureau, commission, or committee."

It is necessary then to consider the nature of the Board. The Board in its present form exists and operates pursuant to R.C. Chapter 5507, as that chapter was amended by Am. S.B. No. 508, effective 10/19/72. Review of pertinent provisions of R.C. Chapter 5507 reveals the Board to be a rather unique entity with an indisputable state-affiliated identity, but with a quasi-public character distinguishing it from most other state agencies. This character is essentially a result of the amendment of R.C. Chapter 5507 by Am. S.B. No. 508, *supra*. Specifically R.C. 5507.01 provides in pertinent part that:

"The board is a body both corporate and politic in this state, and the carrying out of its purposes and the exercise by it of the powers conferred by Chapter 5507. of the Revised Code are determined to be essential governmental functions and public purposes of the state, but the board shall not be immune from liability by reason thereof." (Emphasis added.)

In addition R.C. 5507.03 authorizes the Board to adopt by-laws for the regulation of its affairs and the conduct of its business, sue and be sued in its own name, enter contracts necessary for the performance of its duties and employ or contract with necessary personnel and consultants. R.C. 5507.03(K) provides specifically that the expenses of such employment or personnel contracts shall be payable solely from the proceeds of bonds and notes issued under R.C. Chapter 5507, from revenues, or from funds specifically appropriated for such purpose by the General Assembly.

R.C. 5507.09 provides for the payment of principal and interest on bonds and notes issued by the Board. That section expressly states that such bonds and notes are not debts of the state and further provides that the Board is not authorized to incur indebtedness or liability on behalf of or payable by the state.

In Harrison Construction Co. v. Ohio Turnpike Commission 272 F. 2d 337 (U.S.C.A. 6th Cir. 1959), the court considered the character of the Ohio Turnpike Commission under statutes (R.C. Chapter 5537) substantially similar to R.C. Chapter 5507. Specifically the court in that case addressed the issue of whether an action against the Ohio Turnpike Commission was in reality a suit against the State of Ohio.

The court reviewed the various provisions of R.C. Chapter 5537, which in the court's opinion gave the Commission a distinct character separate from the State itself, among them the establishment of the Commission as "a body both corporate and politic in this state" charged with the performance of "essential governmental functions"

but without immunity from liability by reason thereof. See R.C. 5537.02. In addition the court noted that expenses were to be paid from the proceeds of bonds issued and the operating revenues of projects, and that the Commission could not incur any liability or indebtedness on behalf of or payable by the state. In this regard the court noted that the Commission's authority to issue revenue bonds to finance turnpike projects was qualified by the proviso that principal and interest on the bonds was payable solely from revenue produced by the project.

Citing the above statutory characteristics the court observed in pertinent part that:

"It is apparent that the Legislature very carefully immunized the treasury of the state from any obligations whatever arising out of the creation of the turnpike commission or any projects which it might undertake.

". . . .

"It has been decided specifically in some other states which have similar commissions that the commission is not synonymous with the state. People v. Illinois State Toll Highway Commission, 3 Ill. (2d), 218, 120 N.E. (2d), 35; Indiana State Toll Bridge Commission v. Minor, 236 Ind. 193, 139 N.E. (2d), 445; Hope National Gas Company v. West Virginia Turnpike Commission, W. Va., 105 S.E. (2d), 630.

". . . .

"The nature of the commission as created by statute is pretty well summed up by the following sentence at pp. 11, 12 of appellant's brief. 'This would not indicate that the State Legislature considers the Commission to be an inseparable "other self", but rather that it considers it to be what, in fact, it really is - an autonomous entity vested with certain privileges and powers to accomplish a result which the State desires but in relation to which the State does not wish to utilize its governmental departments or to expose to risk its State treasury.'"

(Emphasis added.)

See also Hoffmeyer v. Ohio Turnpike Commission, 12 O.O. 2d. 436 (Cuyahoga Co. C.P. 1960), in which the above characterization of the Ohio Turnpike Commission was adopted by the court in concluding that the Commission did not share in the sovereign immunity of the state.

As discussed above the Transportation Research Board of Ohio exists and operates under statutes which are substantially similar, and in many cases virtually identical, to the statutes providing for the Ohio Turnpike Commission. While R.C. 5507.03(G) does authorize the Board to use appropriated funds for the payment of expenses under that section, it is my understanding that no such appropriations have in fact been made for the current biennium. It follows that the Board stands in essentially the same position as the

Ohio Turnpike Commission, and that it is an autonomous public entity financially separated by law from the rest of the state.

Because of this independent nature of the Board it appears that funds in the control of the Board, other than those appropriated or otherwise on deposit with the Treasurer and payable upon warrant of the Auditor, should not be considered "state funds" for purposes of those statutes, which purport to restrict the uses for which the funds may be expended. To construe such statutes otherwise would only serve to frustrate the clear attempt of the General Assembly to create a financially independent body. On this point see R.C. 1.49(D).

With respect to R.C. 141.15, which is set out above, that section imposes restrictions on reimbursements for travel expenses to an officer or employee of a department, office, or institution of the State, whose compensation is paid in whole or in part from state funds. Because of the independent financial structure of the Board, however, those funds, which as discussed above are not appropriated or payable upon the warrant of the Auditor, are not subject to the restrictions imposed by this section on the expenditure of state funds. I must, therefore, conclude in response to your question that the expenditure by the Board of revenues from services rendered and bonds and notes issued pursuant to R.C. Chapter 5507 are not subject to the restrictions imposed by R.C. 141.15 on the expenditure of state funds to pay reimbursements to officers and employees for travel expenses.

This does not, of course, except the Board from audits by the Bureau of Inspection and Supervision of Public Offices pursuant to R.C. Chapter 117. That chapter is broad in its scope and affects both public and private offices and institutions, which receive public money for their use. R.C. Chapter 5507, however, provides the standards by which the expenditures of the Board are to be reviewed pursuant to R.C. Chapter 117.

In specific answer to your question it is my opinion and you are advised that the Transportation Research Board of Ohio is an autonomous, quasi-public entity created by statute. Expenditures made by the Board out of revenues from services rendered and bonds and notes issued pursuant to R.C. Chapter 5507 must be in accordance with the provisions of that Chapter, but are not subject to regulations adopted pursuant to R.C. 141.15.