

849.

STATE BRIDGE COMMISSION—SANDUSKY BAY BRIDGE—FORT STEUBEN BRIDGE—NATIONAL TOLL BRIDGE ASSOCIATION—TOLLS—NO AUTHORITY TO PAY FOR BRONZE PLAQUE, DUES IN CERTAIN ASSOCIATION, CONVENTION EXPENSES—COMMISSION MUST CONTRIBUTE TO STATE INSURANCE FUND—SECTION 1465-60 G. C.—RESALE TICKETS OR COUPONS SOLD AT DISCOUNT—FEE SCHEDULE.

SYLLABUS:

1. *The state bridge commission is without authority legally to expend funds derived from tolls collected for transit over the Sandusky Bay Bridge for a bronze plaque to be placed on said bridge containing the following inscription:*

“Acquired May 1, 1936, by the State Bridge Commission of Ohio for the purpose of making it a free bridge at no cost to the taxpayers by issuing revenue bonds to be retired by the tolls collected.

Commission created by the Kalb Bridge Act of 1935 and appointed by Governor Martin L. Davey.

Commissioners

Nick Stevens, Chairman

George C. Hill

Robert B. Lucas”

2. *The state bridge commission cannot legally expend funds derived from tolls collected for transit over the bridges operated by such commission for the purpose of paying dues in the national toll bridge association or paying the expenses incurred in the attendance of commission members at conventions of such association.*

3. *Under the provisions of Section 1465-60 and related sections of the General Code (Workmen's Compensation Law), it is the duty of the state bridge commission to contribute to the state insurance fund.*

4. *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.*

COLUMBUS, OHIO, July 7, 1939.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: I have your letter of recent date requesting my opinion as follows:

"1. Is it legal for the State Bridge Commission of Ohio to expend its funds for a bronze plaque to contain the following inscription:

SANDUSKY BAY BRIDGE

Acquired May 1, 1936, by the State Bridge Commission of Ohio for the purpose of making it a free bridge at no cost to the taxpayers by issuing revenue bonds to be retired by the tolls collected.

Commission created by the Kalb Bridge Act of 1935 and appointed by Governor Martin

L. Davey.

Commissioners

Nick Stevens, Chairman

George C. Hill

Robert B. Lucas

2. Is it legal for the Sandusky Bridge Commission of Ohio to expend its funds for dues in the National Toll Bridge Association, and pay the expenses of the Commission to attend conventions of that Association?

3. Should the State Bridge Commission of Ohio pay into the Industrial Commission for insurance covering their employes?

4. The toll schedule in effect at Ft. Steuben bridge permits coupons to be purchased by merchants at a discount, to be resold by the merchants at a profit. Is this legal?"

The State Bridge Commission was created by Section 3 of an act passed on May 16, 1935, which was carried into the General Code as Section 1084-3.

Section 1084-6, General Code, contains general provisions with reference to the powers and duties of the commission and reads in part as follows:

"Upon the appointment and qualification of the members of the state bridge commission * * *, they shall at once proceed to organize. * * * 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. * * * Each member of the state bridge commission

shall receive a salary at the rate of \$2,000.00 per annum, *and the necessary expenses incurred in the discharge of the duties of his office.* * * * All salaries and compensation *shall be paid solely from funds provided under 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 ours.)

Section 1084-8, General Code, authorizes the commission to acquire certain toll bridges by purchase or condemnation, whether such bridges are wholly or partly constructed, "but solely by means of or with the proceeds of bridge revenue bonds."

Section 1084-12, General Code, reads in part as follows:

"In the discretion of the state bridge commission * * * such bonds may be secured by a trust indenture, by and between the state * * * and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state, but no such trust indenture shall convey or mortgage any bridge or any part thereof. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the state and the state bridge commission, * * * in relation to the acquisition, improvement, maintenance, operation, repair and insurance of the bridge or bridges, the custody, safeguarding and application of all moneys, * * *.

* * * 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."

Section 1084-13, General Code, provides in part that:

"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. The tolls

from the bridge or bridges for which a single issue of bonds is issued, *except such part 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, * * *." (Italics ours.)

Section 1084-14, General Code, provides that where bonds issued for the purpose of acquiring a particular bridge or bridges shall have been paid, or a sufficient amount to pay such bonds shall have been provided, tolls shall cease except where necessary for the cost of maintaining, repairing and operating such bridge or bridges.

Certain additional powers are conferred in Sections 1084-15a and 1084-15b, General Code (Am. S. B. No. 288, effective June 3, 1939) not necessary here to be noted.

Succinctly stated, the state bridge commission is authorized and empowered to acquire certain toll bridges; to issue revenue bonds to finance such acquisitions, and enter into reasonable and proper trust indentures to secure such bonds; to operate such bridge or bridges after the same are acquired and to fix the tolls for transit thereover (subject to the conditions prescribed in Section 1084-13, General Code, supra), so as "to provide funds to pay the principal and interest of the bonds issued and the cost of *maintaining, repairing and operating such bridge or bridges.*" When the bonds shall have been retired from the tolls collected, the bridge is to be "a free bridge at no cost to the taxpayer", which legend, together with certain other information, is proposed to be stated on the bronze plaque desired to be placed on the Sandusky Bay Bridge and paid for from the funds in the hands of the commission.

1-2. That statutory officers, boards and commissions have such powers, and *only such powers*, as are expressly conferred by law and impliedly necessary to carry the express powers into effect, is so well settled in this state that the citation of authority is unnecessary. Probably no principle of public law is better settled. And it is equally well settled that when the question to be determined is concerned with the existence or non-existence of the power and authority to expend public moneys, any doubt as to the legality and propriety of such expenditure must be resolved against the existence of the power. The third branch of the syllabus in *State ex rel. v. Pierce, Auditor*, 96 O. S., 44 (1917), reads:

"In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such

doubt must be resolved in favor of the public and against the grant of power."

See also *Peters v. Parkinson*, Treasurer, 83 O. S., 36 (1910).

While it might be urged that, since the funds derived from tolls are not raised by taxation and are not in the state treasury, they are not public moneys and therefore the above rule has no application, such a contention is not tenable. Quite obviously the state and the public have a very direct and substantial interest in these funds. The sole purpose of creating the bridge commission and providing for the acquisition of bridges (the title to which is placed in the state of Ohio) was to make them free to the traveling public, thus facilitating and promoting that intercourse and commerce among the people deemed advantageous to all. The title to the bridges being in the state, no income is derived therefrom by taxation, and to facilitate the sale of the bridge revenue bonds the Legislature provided in Section 1084-10, General Code, that such bonds should be exempt from state and municipal taxation; the state thus foregoing a source of income in order to expedite the acquisition and freeing of the bridges. To protect holders of the securities issued by the bridge commission and effect the expeditious removal of the tolls, the Legislature, in more than one of the sections above quoted in part, limited the use of the funds derived from tolls to the repair, maintenance and operation of the bridge and the retirement of the bonds.

Having thus determined that the funds under consideration are funds charged with a public interest, which may only be expended for the purposes and in the manner provided by law, your first inquiry narrows to the question as to whether or not an expenditure to cover the cost of erecting a bronze plaque of the kind described by you is for repair or maintenance, or is a legitimate operating expense.

I do not hesitate to answer this question in the negative. In so far as repair or maintenance is concerned, the mere statement of the question furnishes its own answer. Nor do I see how it can be said that such expenditure is a legitimate operating expense. Certainly the placing of the kind of plaque described by your Bureau would in nowise serve to lessen the necessary overhead, and it is inconceivable that it would cause a greater use of the bridge by the traveling public. Any expenditure reasonably tending to decrease operating expenses or increase operating revenues would undoubtedly be legitimate, to the end that the retirement of the outstanding revenue bonds and the reduction or abolishment of the tolls might be quickened. It is my opinion that an expenditure to advertise or commemorate the names of those who happened to be in office when a bridge was purchased cannot meet this test.

Your question as to the lawfulness of an expenditure of funds under the control of the bridge commission "for dues in the National Toll Bridge

Association" is not without difficulty, and were it not for the rule of law applicable to public expenditures and the holding of the Supreme Court in the case of *State ex rel. v. Semple*, 112 O. S., 559 (1925), I would be inclined to hold such an expenditure legal. However, in view of the *Semple* case, I am constrained to resolve any doubt against this expenditure. This case was the basis of Opinion No. 109, Opinions of the Attorney General for 1929, Vol. I, p. 157, in which the then Attorney General held, at page 159, as follows:

"In the case you mention, decided by the Supreme Court on May 5, 1925 (112 O. S. 559) a very similar condition existed. In that case the party furnishing the service was called 'Conference of Ohio Municipalities' which was organized for the purpose of serving as an agency of common action in all matters of common concern to the municipalities of Ohio. The compensation to be paid in that case was called dues for a membership therein. However, very little distinction, if any, can be drawn between the two enterprises. In the first case, upon paying the membership fees, the municipality became entitled to certain services. In the instant case the municipality agrees to pay certain stipulated sums for specific services.

It is therefore believed that what was said by the court with reference to the former case is applicable to the situation before us.

The following is quoted from the *per curiam* opinion of the court in that case:

"It does not follow, from the broad powers of local self government conferred by Article XVIII of the Constitution of the state, that a municipal council may expend public funds indiscriminately and for any purpose it may desire. The misapplication or misuse of public funds may still be enjoined, and certainly a proposed expenditure, which would amount to such misapplication or misuse, even though directed by a resolution of council, would not be required by a writ of mandamus, without considering the validity of such a provision, it must be conceded that there is no express provision of the charter of the city of Cleveland relative to the contribution from the treasury of the city to a fund made up of contributions of various municipalities for the purposes enumerated in the constitution of the "Conference of Ohio Municipalities," and no general provision from which authority may be inferred to expend the funds of the city to assist in creating and maintaining an organization with offices and officers entirely separate from those of the city, se-

lected by representatives from those of the city, selected by representatives of various municipalities of the state, with salaries and expenses also fixed by them.'

In view of this case and its evident application to the question you present, I am constrained to advise you that a charter city may not legally expend its funds for services and periodicals of an association known as 'Conference of Ohio Municipalities' in the absence of specific charter provisions; whether or not such a charter provision could authorize such an expenditure is not decided."

If a charter city could not expend its funds to pay dues for membership in a "Conference of Ohio Municipalities", it is difficult to see how the bridge commission, a statutory board, can legally expend the funds under its control for dues in a national association. I am aware, of course, that the benefits from the commission's membership in the National Toll Bridge Association might serve to bring about a reduction in repair and maintenance costs or a more efficient operation of the bridges under the commission's control. Since, however, there is some doubt as to the lawfulness of the expenditure, I feel that the expenditure should not be made.

In so far as using the funds in question "to pay the expenses of the commission to attend conventions of that association" is concerned, I have no difficulty whatever in answering this question in the negative. Certainly, if it is not lawful to pay dues for the commission in this association, *a fortiori* the expense of the individual members thereof incurred in attending the association's conventions may not be paid from these funds. Moreover, the Legislature has expressly limited the members of the commission to receiving only such expenses as are *necessary* in the discharge of their duties, it being provided in Section 1084-6, General Code, that each member might receive in addition to his salary "the necessary expenses incurred in the discharge of the duties of his office." It is not such expenses as might be "necessary and proper" or "necessary and incidental" but necessary, i. e., unavoidable, indispensable, that which cannot be dispensed with. See New Century Dictionary. And it is significant that while in the same section the commission is authorized "to make and enter into all contracts and agreements *necessary or incidental* to the performance of its duties", only such expenses may be paid as are *necessary*.

A case in point is *State ex rel Marani v. Wright, Auditor*, 17 O. C. C. (N. S.), 396 (C. C. Cuyahoga County, 1911), in which the headnote reads:

"A municipality is not liable for the traveling expenses of one of its officials incurred in attending a convention of like officials of other municipalities."

At page 397 the court said:

“We hold that in the absence of any specific statutory provision for such cases, the test of the city’s liability must be deemed to be: is the trip or journey in which the expenses were incurred necessarily implied in or reasonably and directly incident to the prescribed duties of the municipal officer who undertakes such journey?”

It has been pointed out in argument that a municipal officer may properly undertake a journey at the city’s expense to inspect material or supplies, for the purchase of which, on behalf of the city, he is authorized to negotiate, if such journey is reasonably necessary for that purpose.

This is upon the ground that the object of the journey is directly related to the duties of his office. Here, however, the purpose of the journey was to acquire such information in regard to the duties of his office as the building inspector might reasonably acquire while in attendance upon a convention of officials holding like positions, in various cities. We are unable to see how such an object relates itself either directly or with reasonable necessity to the duties of the relator’s office. He was presumably appointed to his present position because of his fitness by experience and education to discharge the duties of the place, * * *. The salary attached to the office * * * is presumed to be sufficient to enable him to maintain his professional or official efficiency at proper standard.”

This opinion was followed by one of my predecessors in office in Opinion No. 2003, Opinions of the Attorney General for 1924, p. 652, in which it was held at page 653:

“In answer to your first question, it is my opinion that the decision of the Supreme Court of this state in the case of State ex rel Locher vs. Manning, 95 O. S. 97, is applicable to boards of library trustees as well as to boards of county commissioners. Bearing in mind the differences in statutes relating to the two types of board and the differences in the character of the functions performed by them, you are advised that a board of trustees of a library is restricted in the expenditure of the library funds to such objects as are specifically authorized by statute, or as are reasonably necessary in the attainment of such objects.

In answer to your second question, it is my opinion that the decision of the Circuit Court of Ohio in the case of State of Ohio ex rel Marani vs. Wright, 17 O. C. C. (N. S.) 396, states correctly the principle involved.

* * *

We believe the principles of this case are directly applicable to the second question submitted, and you are accordingly advised that the expenses of the secretary or librarian or other employes in attendance on conventions may not properly be paid out of the library fund.

The answer to your third question is found in the language of the court above quoted. The purpose of a library is to furnish books and reading materials for the public, and the purchase of such materials is directly and necessarily related to the duties of the librarian and the functions of the library, and if the board of trustees, in the exercise of their sound discretion, deem it necessary to send the librarian or other employe to distant cities for the purchase of such books, the expense of such employe may properly be paid out of the library fund."

In Opinion No. 2711, rendered by my immediate predecessor in office on July 15, 1938, the same conclusion was arrived at as those above expressed. The first branch of the syllabus reads:

"The state bridge commission has authority to expend its funds for (a) advertising on bill boards 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."

However, in citing this opinion I deem it proper to point out that although it was expressly announced by the then Attorney General that he was 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",

the test actually applied more nearly approximates the test herein followed. Furthermore, having cited this opinion, I feel it my duty to say that I am not in accord with the conclusions that the bridge commission may not use its funds to purchase uniforms and deputy sheriff's badges for its toll clerks. In view of the character of their work, including the fact that it is their duty to collect and safeguard moneys and that they must at all times deal with all kinds of persons, it seems to me that such an expenditure would be a proper operating charge. Be that as it may, since Section 1084-6, General Code, expressly authorizes the

commission "to employ * * * such employes as may be necessary in its judgment, and fix their compensation," it would be lawful in my opinion, to fix the compensation of such employes in cash and uniforms and badges, if the commission in the sound exercise of the discretion conferred upon it deemed such action advisable.

In view of the conclusions above reached, it is unnecessary to examine the provisions of the trust indenture given to secure the payment of the revenue bonds, the provisions of the statutes being here dispositive.

3. It seems clear that, under the provisions of Section 1465-60 and related sections of the General Code, the state bridge commission is required to contribute to the public insurance fund.

To answer your third inquiry, it is unnecessary to determine whether this commission be a public or a private employer within the meaning of the Workmen's Compensation Law. I am informed that the commission has in its service three or more workmen or operatives regularly in its business. Therefore, even if it should be determined that the bridge commission is a private employer within the meaning of this law, it would be required to contribute to the fund in question.

4. I know of no statute making it a crime or making it unlawful 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.

Specifically answering your question, it is my opinion that:

1. The state bridge commission is without authority legally to expend funds derived from tolls collected for transit over the Sandusky Bay Bridge for a bronze plaque to be placed on said bridge containing the following inscription:

"Acquired May 1, 1936, by the State Bridge Commission of Ohio for the purpose of making it a free bridge at no cost to the taxpayers by issuing revenue bonds to be retired by the tolls collected.

Commission created by the Kalb Bridge Act of 1935 and appointed by Governor Martin L. Davey.

Commissioners:

Nick Stevens, Chairman
George C. Hill
Robert B. Lucas"

2. The state bridge commission cannot legally expend funds de-

rived from tolls collected for transit over the bridges operated by such commission for the purpose of paying dues in the national toll bridge association or paying the expenses incurred in the attendance of commission members at conventions of such association.

3. Under the provisions of Section 1465-60 and related sections of the General Code (Workmen's Compensation Law), it is the duty of the state bridge commission to contribute to the state insurance fund.

4. 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.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

850.

PETITION—IN RE: SECTIONS 6346-5, 6346-5A, G. C.—RATES OF INTEREST—LOAN—INSPECTION FEE—MAXIMUM CHARGE—SECTION 4785-175, G. C.

COLUMBUS, OHIO, July 7, 1939.

MR. LESLIE H. SNYDER, *2640 Kemper Lane, Cincinnati, Ohio.*

DEAR SIR: You have submitted for my examination a written petition bearing over one hundred names, containing a proposed law and a summary of the same under section 4785-175, General Code. Copy of said proposed law and summary thereof is hereto attached.

Section 4785-175, General Code, so far as pertinent to your request, is as follows:

“Whoever seeks to propose a law or constitutional amendment by initiative petition or to file a referendum petition against any law, section, or item in any law, shall by a written petition signed by one hundred qualified electors submit such proposed law, constitutional amendment or measure to be referred, and a summary of same to the attorney general for examination. If in the opinion of the attorney general the summary is a fair and truthful statement of the proposed law, constitutional amendment or measure to be referred, he shall so certify.”

In construing the above section, the Supreme Court in the case of *State, ex rel. Hubbell, v. Bettman*, 124 O. S., 24, held as disclosed by the second branch of the syllabus as follows: