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TURNPIKE PROJECT:

1. CONSTITUTES "PUBLIC ROAD WORK"—PERSONS WHO OPERATE MOTOR VEHICLES FOR CONTRACTORS ARE "ENGAGED IN THE OPERATION OF MOTOR VEHICLES FOR CONTRACTORS ON PUBLIC ROAD WORK"—CHAPTER 5537. RC—SECTION 4923.02 RC.
2. OPERATED AS TOLL ROAD BY OHIO TURNPIKE COMMISSION—A "PUBLIC HIGHWAY IN THIS STATE"—SECTION 4921.02 R.C.

SYLLABUS:

1. A turnpike project being constructed under the provisions of Chapter 5537., Revised Code, constitutes "public road work" within the meaning of that term as used in Section 4923.02, Revised Code, and persons engaged in the operation of motor vehicles for contractors on a turnpike project are persons "engaged in the operation of motor vehicles for contractors on public road work" within the purview of such section.

2. A turnpike project, operated as a toll road by the Ohio turnpike commission, as provided in chapter 5537., Revised Code, is a "public highway in this state" as that term is employed in Section 4921.02, Revised Code.

Columbus, Ohio, November 12, 1953

The Public Utilities Commission of Ohio
Columbus, Ohio

Gentlemen :

Your request for my opinion reads as follows :

“The Public Utilities Commission of Ohio has had numerous inquiries concerning the Ohio Turnpike. Our interest in this case is two-fold. First, Section 614-103, subsection 7, of the Ohio General Code, Revised Code section 4923.02, subsection 7, exempts private motor carriers from the Public Utilities Commission’s jurisdiction in the operation of motor vehicles ‘for contractors on public road work.’

“The other phase of the Commission’s problem deals with Section 614-84, subsection a, Revised Code Section 4921.02, subsection A, giving the Commission jurisdiction over ‘motor propelled vehicles of any kind, including trailers, over any public highway in this state.’ Section 614-84, subsection b and Revised Code Section 4921.02, subsection A, further defines public highways.

“Our first question is this: In the operation of motor vehicles for contractors who have contracts or subcontracts to do work in building the Ohio Turnpike, is this Ohio Turnpike project a ‘public road work’ within the meaning and concept of Section 614-103, subsection 7 of the Ohio General Code and Revised Code Section 4923.02, subsection 7?

“Our second question is this: Is, or will, the Ohio Turnpike be a ‘public highway in this state’ within the meaning of Section 614-84, subsection a of the General Code and 4921.02 subsection A of the Revised Code?”

With respect to your first question, it may be observed that Section 4923.04, Revised Code, Section 614-104, General Code, provides :

“No private motor carrier shall operate any motor vehicle for the transportation of persons or property, or both, for hire, on any public highway in this state except in accordance with Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4925. of the Revised Code. No such private motor carrier shall continue or commence its operation as such in this state without obtaining a permit from the public utilities commission as provided in sections 4923.05 to 4923.07, inclusive, of the Revised Code.”

The term "private motor carrier," as used in this section, is defined in Section 4923.02, Revised Code, Section 614-103, General Code, so as to exclude "any corporation, company, association, joint-stock association, person, firm, or copartnership * * * (7) engaged in the operation of motor vehicles for contractors on public road work * * *."

The precise question thus presented is whether the construction of a turnpike project by the Ohio turnpike commission constitutes "public road work" within the meaning of this definition.

The concept of turnpikes and toll roads as falling within the term "public highway" is recognized in numerous American jurisdictions. In this connection we find the following statement in 54 American Jurisprudence, 494, Section 2:

"* * * A turnpike or toll road is a public highway, established by public authority for public use, and is to be regarded as a public easement and not as private property, the acceptance by a corporation of a franchise to construct such a road and the operation thereof constituting a dedication of the same as a public highway. * * * Indeed, the only difference between a turnpike and a common highway is that while a turnpike is authorized and laid out by public authority, it is built at the expense of private individuals in the first instance, the cost and construction and maintenance being subsequently reimbursed by a toll levied by public authority for the purpose."

Moreover, in the same work it is said, p. 495, section 3:

"In its broad, popular sense, the term 'public highways' is considered as including turnpikes or toll roads, and, generally speaking, in statutes referring to public highways the term is used with that meaning. Thus, for example, turnpikes have been held highways within the meaning of statutes respecting the construction of railways upon any 'street or highway,' the use of highways by public utilities, the power of public officials to discontinue or alter parts of a 'public road or highway' interfering with other public works, the regulation of cattle running at large on highways, and the speeding of automobiles on public highways."

There can be scarcely any question that Ohio is in agreement with the general rules above stated, the Supreme Court of this state having twice expressed its views on the matter.

In state ex rel Kauer v. Defenbacher, 153 Ohio St., 268, the syllabus reads in part:

"2. Money expended for the study of turnpike project represents a capital outlay for additions and betterments for highway improvement. * * *

"6. Money so expended would be 'expended for * * * costs for construction * * * of public highways and bridges and other statutory highway purposes,' within the meaning of section 5a of Article XII of the Constitution."

In *State ex rel Turnpike Commission v. Allen*, 158 Ohio St., 168, the court held the turnpike act to be a constitutionally valid legislative enactment, and in the opinion by Chief Justice Weygandt the 6th paragraph of the syllabus in the *Defenbacher* case, *supra*, was quoted in full, and referring to that paragraph, and to numerous other related conclusions stated by the court in earlier cases, the writer said, p. 173:

"It would extend this opinion unnecessarily to repeat the reasoning on which the foregoing conclusions were based. It is sufficient to state that a majority of the court adheres to those pronouncements."

It is to be noted that the court in each of these cases was concerned with the expenditure of state funds for the *study* of a turnpike project, but it is quite clear that the court's conclusion was that the "expense of such study was to be included within the costs for construction * * * of public highways * * *."

In my opinion it clearly follows, *a fortiori*, that the actual construction work of a turnpike project would constitute "construction * * * of public highways"; and I perceive no basis whatever for a distinction between (1) "construction * * * of public highways," and (2) "public road work."

For this reason I readily conclude that persons engaged in the operation of motor vehicles for contractors on a turnpike project, authorized under the provisions of Chapter 5537., Revised Code, are persons "engaged in the operation of motor vehicles for contractors on public road work," within the meaning of Section 4923.02, Revised Code.

In your second inquiry the precise question raised is whether a turnpike project is comprehended within the term "public highway in this state" as used in subsection (A) of Section 4921.02, Revised Code. This section defines "motor transportation company" in part as follows:

“(A) ‘Motor transportation company,’ or ‘common carrier by motor vehicle,’ includes every corporation, company, association, joint stock association, person, firm, or copartnership, and their lessees, legal or personal representatives, trustees, and receivers or trustees appointed by any court, when engaged or proposing to engage in the business of transporting persons or property, or the business of providing or furnishing such transportation service, for hire, whether directly or by lease or other arrangement, for the public in general, in or by motor-propelled vehicles of any kind, including trailers, over *any public highway in this state.* * * *”
 (Emphasis added.)

This section defines “public highway” as “any street, road, or highway of this state, whether within or without the corporate limits of a municipal corporation.” The latter definition, of course, provides little if any aid in the present inquiry, since we still are concerned with the definition of a “road or highway of the state.”

Referring again to the authorities already pointed out as dispositive of your first question, it is readily apparent that there is an equally strong case for concluding that a turnpike project is comprehended by the term “public highway,” since the Ohio Supreme Court has twice definitely indicated that the construction of such a project would constitute “construction * * * of public highways * * *” within the meaning of such term as used in the constitution.

In passing we may note that in the recently enacted “axle tax,” Section 5728.01, et seq., Revised Code, the Legislature defined “public highway” as follows:

“(I) ‘Public highway’ means any highway, road or street dedicated to public use except a highway under the control and jurisdiction of the Ohio turnpike commission created by the provisions of section 5537.02 of the Revised Code.”

It may be conceded, of course, that we are here concerned with the intent of the Legislature which enacted the statutes here under consideration rather than with the notion of the 100th General Assembly as to the meaning of the term “public highway.” However, it is believed that the fact that the 100th General Assembly thought it necessary to define this term so as to exclude turnpike projects is indicative of the common understanding that in the absence of such a stated exception, such term would include toll roads.

For all of these reasons I must conclude that your second question likewise must be answered in the affirmative.

Accordingly, in specific answer to your inquiry, it is my opinion that :

1. A turnpike project being constructed under the provisions of Chapter 5537., Revised Code, constitutes "public road work" within the meaning of that term as used in Section 4923.02, Revised Code, and persons engaged in the operation of motor vehicles for contractors on a turnpike project are persons "engaged in the operation of motor vehicles for contractors on public road work" within the purview of such section.

2. A turnpike project, operated as a toll road by the Ohio turnpike commission, as provided in Chapter 5537., Revised Code, is a "public highway in this state" as that term is employed in Section 4921.02, Revised Code.

Respectfully,

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