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TURNPIKE COMMISSION, OHIO—SECTION 1218 G. C. IS A MANDATORY STATUTE—MUST BE COMPLIED WITH BY COMMISSION—FRACTIONAL PORTION OF CALENDAR YEAR 1949 COMMISSION WAS IN EXISTENCE—COMMISSION'S ACTIVITIES DURING PERIOD MAY HAVE BEEN RESTRICTED BY COMPLETE LACK OF OPERATING FUNDS.

## SYLLABUS:

Section 1218 of the General Code of Ohio is a mandatory statute and must be complied with by the Ohio Turnpike Commission with respect to the fractional portion of the calendar year 1949 that the commission was in existence despite the fact that the commission's activities during such period may have been restricted by a complete lack of operating funds.

Columbus, Ohio, June 23, 1950

Hon. Theodore J. Kauer, Secretary-Treasurer  
Ohio Turnpike Commission, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 1218 of the General Code includes among its provisions the following:

“‘On or before the 1st day of February, in each year, the commission shall make an annual report of its activities for the preceding calendar year to the governor and the General Assembly. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The commission shall cause an audit of its books and accounts to be made at least once each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of the project.’

“Your advice is requested as to whether or not a report is required to be made by the Ohio Turnpike Commission to the governor and to the General Assembly covering that portion of the calendar year 1949 in which the Commission was in existence.”

I am informed that shortly after this act became effective on September 1, 1949, the Governor, acting under the authority of the provisions

of Section 1203, General Code, appointed four members of the turnpike commission. Your own membership on the commission was of course effected by operation of law. I am further informed that these members subsequently met, organized and functioned as the Ohio Turnpike Commission as fully as possible although the activities of the commission were sharply restricted due to lack of funds and impending litigation on the availability of funds theretofore appropriated for its use.

It is assumed that your doubt as to the propriety of making a report to the Governor covering the calendar year preceding February 1, 1950, arises from two considerations, namely (1) that the commission was in existence during the calendar year 1949 for only a few months, and (2) that since the report in question is primarily a financial report setting forth a complete operating and financial statement, and because the commission, due to complete lack of funds has nothing to report with respect to its financial activities, such report would be essentially a negative one.

With respect to the first consideration, I think it is well established that the expression "calendar year" means the period beginning on January 1 and ending December 31. See *Carroll v. Wright*, 63 S. E. 260-267. Therefore, if the report covering the period from the organization of the commission in September, 1949, to December 31, 1949 were not to be covered in a separate report to the Governor in 1950, it would appear that the activities of the commission for this period would never be so reported, since the report due on February 1, 1951 would cover only the period from January 1, 1950 to December 31, 1950.

Moreover, the word "shall," as used in Section 1218, General Code, is clearly expressive of a mandatory duty. This expression in the absence of any indication to the contrary found elsewhere in the law, should be given its usual and ordinary meaning. Webster's New International Dictionary states:

"Thus, 'shall', when used in the second and third person, has a special force from the fact that the speaker predicts or promises another's action and hence his expression of some authority or compulsion on the speaker's part. \* \* \*"

For these reasons, it is my opinion that the statute requires a report to be made covering the fractional part of the calendar year 1949 during which the commission was actually in existence.

It must be remembered, of course, that the law does not contemplate the doing of an impossible or vain thing and it is entirely possible that the commission's first report based on the fractional year mentioned above, will be essentially a negative one, if not a completely negative one. This situation, however, does not in my opinion obviate the necessity of making a report for this period describing, in so far as is possible, those activities of the commission which the statute requires to be incorporated therein.

In view of the foregoing and in specific answer to your question it is my opinion that Section 1218 of the General Code of Ohio is a mandatory statute and must be complied with by the Ohio Turnpike Commission with respect to the fractional portion of the calendar year 1949 that the commission was in existence despite the fact that the commission's activities during such period may have been restricted by a complete lack of operating funds.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.