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January 29, 2002

**OFFICIAL OPINION 2001-12**

The Honorable Allen Paul  
Indiana State Senator  
Indiana Senate  
200 West Washington Street  
Indianapolis, Indiana 46204

RE: White County Bridge Commission

Dear Senator Paul:

This letter responds to your request for an advisory letter on the following question:

Who has government oversight over the White County Bridge Commission?

The White County Bridge Commission (the "Commission") is a private entity created by an Act of Congress. As such, it is subject to Congressional oversight.

**BACKGROUND AND ANALYSIS**

The toll bridge over the Wabash River linking Posey County, Indiana with White County, Illinois was completed in 1930. Construction was specifically authorized by the Act of May 1, 1928, Pub. L. No. 70-340, 45 Stat. 480 (as amended), pursuant to which Congress, exercising its powers to regulate commerce, authorized certain named individuals to construct the private bridge and collect tolls from its users. The bridge was owned and operated from 1930 through 1941 by several private corporations, all of which experienced financial difficulties. *See generally*, REPORT OF THE SELECT COMMITTEE TO CONDUCT AN INVESTIGATION AND STUDY OF THE FINANCIAL POSITION OF THE WHITE COUNTY BRIDGE COMMISSION, H. R. Rep. 84-2052 (1956) ("SELECT COMMITTEE REPORT").

By Act of April 12, 1941, Congress created the White River Bridge Commission:

For the purpose of carrying into effect the objects stated in this Act, there is hereby created the White County Bridge Commission. . . . [S]aid body shall have perpetual succession; may contract and be contracted with, sue and be sued, implead and be impleaded, complain and defend in all courts of law and equity; may make and have a common seal; may purchase or otherwise acquire and hold or dispose of real estate and other property; may accept and receive donations or gifts of money or other property and apply same to the purposes of this Act; and shall have and possess all powers necessary, convenient, or proper for carrying into effect the objects stated in this Act.

Act to Create the White County Bridge Commission, § 8, Pub. L. No. 77-37, 55 Stat. 140 (1941) (the “1941 Act”). The 1941 Act defined the Commission’s authority, power and duties, authorized the Commission to purchase the bridge by a bond issue, provided for the retirement of the bonds, and further provided:

Section 7. After payment of the bonds and interest, or after a sinking fund sufficient for such payment shall have been provided and shall be held for that purpose, the commission shall deliver deeds or other suitable instruments of conveyance of the interest of the commission in and to the bridge, that part within Illinois to the State of Illinois or any municipality or agency thereof as may be authorized by or pursuant to law to accept the same (hereinafter referred to as the Illinois interests ) and that part within Indiana to the State of Indiana or any municipality or agency thereof as may be authorized by or pursuant to law to accept the same (hereinafter referred to as the Indiana interests), under the condition that the bridge shall thereafter be free of tolls and be properly maintained, operated, and repaired by the Illinois interests and the Indiana interests, as may be agreed upon; *but if either the Illinois interests or the Indiana interests shall not be authorized to accept or shall not accept the same under such conditions, then the bridge shall continue to be owned, maintained, operated, and repaired by the commission, and the rates of tolls shall be so adjusted as to provide a fund of not to exceed the amount necessary solely for the proper maintenance, repair, and operation of the bridge.*

Section 9 . . . All salaries and expenses shall be paid solely from the funds provided under the authority of this Act. *After all bonds and interest thereon shall have been paid and all other obligations of the commission paid or discharged, or provision for all such payment shall have been made as hereinbefore provided, and after the bridge shall have been conveyed to the Illinois interests and the Indiana interests as herein provided . . . the commission shall be dissolved and shall cease to have further existence by an order of the Commissioner of Public Roads.*

*Id.* at §§ 8 and 9 (emphasis added).

Numerous deficiencies in the 1941 Act relating to the appointment of Commissioners and financial reporting requirements were noted in the 1956 SELECT COMMITTEE REPORT. In response, Congress passed the Act of April 27, 1962 to Provide for the Annual Audit of Bridge Commissions (the “1962 Act”). The primary focus of the 1962 Act was to impose audit controls

and to clarify the appointment of Commissioners. In addition, the 1962 Act provided a non-mandatory authorization for transfer of the Commission's assets to the adjoining states:

Section 4. Authority is hereby granted to transfer all functions, powers, duties, responsibilities, authority, assets, liability, obligations, books, records, property, and equipment of any existing bridge commission or authority created by Act of Congress to the highway department or other agency of the State or States concerned, or to joint agencies established by interstate compact or agreement. Such transfer shall be carried out in a manner as may be prescribed or authorized by the laws of the State or States concerned. Upon such transfer, such bridge commission or authority shall cease to exist.

Act of April 27, 1962, Pub. L . No. 87-441, 76 Stat. 59.

During the highway construction boom of the 1960's and 1970's, the existence of privately-owned toll bridges was carved out as an exception to the requirement of 23 U.S.C. § 301 that all highways constructed with federal funds "shall be free from tolls of all kinds". Congress specifically authorized the limited use of federal funds to reduce the bond indebtedness on interstate toll bridges owned by states prior to January 1, 1975, 23 U.S.C. § 129(h), and further provided that

(i) notwithstanding section 301 of this title [23 U.S.C. 301], the Secretary may permit Federal participation, through funds for any Federal-aid system other than the Interstate System, in any engineering and fiscal assessments, traffic analyses, network studies, preliminary modification planning, and any other study necessary to determine whether a privately owned toll bridge should be acquired by a state or political subdivision thereof.

23 U.S.C. § 129(i).

We have been unable to determine if such a study was done with regard to the White County bridge; regardless, ownership of the bridge remained with the Commission. Documentation indicates that numerous discussions between the Commission and officials from Indiana and Illinois have taken place over the years. At various points in time, both states have indicated an interest in assuming control over their respective parts of the bridge (as permitted under the 1941 Act); and, at other times, they have clearly stated they would not be willing to assume control.

In the 1991 amendments to 23 U.S.C. § 129, subsections (h) and (i) were repealed. Act of December 18, 1991, Pub. L. # 102-240, Title I, § 1012(c)(1), 105 Stat. 1938. The effect of the 1991 amendments was to remove the availability of federal participation in a determination as to whether a privately owned toll bridge should be acquired by a state.

The most recent federal action relating to control of the bridge appears to have occurred in 1998 when Congress repealed the 1962 Act: "Public Law 87-441 (76 Stat. 59) is repealed." Transportation Equity Act for the 21<sup>st</sup> Century, Pub. Law No. 105-178, 112 Stat. 107 at 189.

The effect of repealing the 1962 Act appears to free the Commission from various audit and reporting requirements. Because a transfer of the Commission's assets and responsibilities to Indiana, Illinois, or a joint commission never occurred, the Commission remains the owner, and in control, of the bridge.

#### CONCLUSION

In summary, the intent of Congress in the 1941 Act was to create the White County Bridge Commission, a private entity, to oversee financing and maintenance of the bridge through bond sales. Once the bonds were paid off, the Act contemplated, *but did not require*, that control of the bridge be transferred to the adjoining states and the Commission dissolved. The distinct lack of enthusiasm of either Indiana or Illinois to take control of the bridge stems, in large part, from the deteriorating condition of the bridge and the prohibitive cost of repairs in light of ever decreasing toll revenue.

The White County Bridge Commission (the "Commission") is a private entity created by an Act of Congress. As such, it is subject to Congressional oversight.

Sincerely,

Stephen Carter  
Attorney General

Gregory Zoeller  
Deputy Attorney General