

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

MELISSA A. ULLMO,) Case No. CV 15-842397
)
)
Plaintiff,) JUDGE MICHAEL E. JACKSON
)
v.)
) **JOURNAL ENTRY AND OPINION:**
) **DEFENDANTS' MOTIONS TO DISMISS**
) **ARE GRANTED.**
OHIO TURNPIKE AND)
INFRASTRUCTURE COMMISSION, ET)
AL.,)
)
Defendants.)

Defendant the Ohio Turnpike and Infrastructure Commission's (OTIC) and Defendant State of Ohio's (Ohio) (collectively, Defendants) motions to dismiss Plaintiff Melissa A. Ullmo's (Ullmo) Second Amended Complaint for failure to state a claim upon which relief can be granted, filed by the OTIC on August 8, 2016 and by Ohio on November, 4, 2016 are granted.

BACKGROUND

Ullmo's Request for Relief

Ullmo asks the Court to: (1) certify the action as a class action pursuant to Civ.R. 23(b)(2) and (b)(3); (2) enter declaratory judgment that the Ohio Turnpike toll increases effective January 1, 2014 and imposed thereafter are an unlawful tax imposed by a quasi-governmental body lacking the authority to levy taxes; (3) enter orders to preliminarily and permanently enjoin the OTIC from collecting the unlawful tolls; (4) enter judgment in favor of Ullmo and class members requiring the OTIC to disgorge all excessive tolls collected by the OTIC since January 1, 2014; and (5) other just relief.

Ullmo's complaint fails as a matter of law. Even accepting her allegation that tolls charged by the OTIC are unauthorized taxes that fund infrastructure projects that benefit the general public and not solely Turnpike users, the Court determines that the OTIC did not exceed the authority delegated to it by the Ohio General Assembly. Therefore, the tolls, even if considered taxes, are not unlawful.

Ullmo does not dispute that the General Assembly has the authority to tax or to delegate this authority, rather she argues that because the General Assembly used the word "toll" and not "tax" the only authority the OTIC has is strictly limited to tolls. This argument fails to analyze the entire text of Chapter 5537 of the Ohio Revised Code, which governs the OTIC, and what the General Assembly intended to delegate to the OTIC. Moreover, Ullmo made it clear that she is not contesting the constitutionality of R.C. 5537 or the specific provisions as amended in H.B. 51. Rather she is challenging whether the OTIC exceeded the scope of its granted authority by approving various infrastructure projects for funding, and raising Turnpike tolls to pay for the junior bonds used to fund these projects. However, her complaint does not allege any facts demonstrating the OTIC's failure to comply with its various obligations pursuant to R.C. 5537, or that its discretion is subject to judicial scrutiny.

Factual History

The OTIC is responsible for maintaining the Ohio Turnpike, a 241 – mile long highway through northern Ohio comprising portions of Interstates 90, 80, and 76. The Turnpike Act was passed in 1949, and the constitutionality of issuing bonds to fund projects that are repaid by the tolls set by the commission has been upheld as constitutional since 1951. On April 1, 2013, House Bill 51 became law, and it expanded the OTIC's role by authorizing it to increase Turnpike tolls to fund infrastructure projects that had a "transportation related nexus" to the Ohio

Turnpike. Thereafter, the OTIC issued 2013 Junior Revenue Bonds for the purpose of, among other things, raising \$930 million to fund qualifying infrastructure projects. The toll increases authorized by House Bill 51 are being used, in part, to pay the 2013 Junior Revenue Bonds. The OTIC approved funding in 2013 for ten infrastructure projects including the inner belt bridge replacement, and the Opportunity Corridor in Cleveland. Those toll increases apply to all Turnpike drivers, went into effect beginning on January 1, 2014, and will continue over ten years. The drivers who use these approved infrastructure projects pay no tolls, unless they also drive on the Ohio Turnpike.

Ullmo, who alleges that she uses the Ohio Turnpike, asserts that this toll increase of \$930 million, is an unlawful tax because money from the toll increase, is and will be used to fund projects that are unrelated to the maintenance and operation of the Ohio Turnpike. She claims that the OTIC only has the authority to charge tolls, which confer a benefit to Turnpike users only, not a tax used to benefit the general public.

Procedural History

This case was originally filed in this Court March 20, 2015 asserting the following class action claims: (1) declaratory relief that Ohio Turnpike violated U.S. Const. Article I sect. 8, clause 3 (the Commerce Clause); (2) violation of the Commerce Clause; (3) Unjust Enrichment; (4) violation of right to travel under the U.S. Constitution; (5) violation of right to travel under the Ohio Constitution; (6) unlawful tax or user fee under Ohio Law. The OTIC filed a notice of removal to United States Northern District Court of Ohio on April 27, 2015. On August 25, 2015, the Northern District Court of Ohio dismissed all of Ullmo's federal claims, and remanded only claim six for adjudication by the state court because only Ohio state law applied to this claim. This case was remanded and returned to this Court's active docket on August 31, 2015.

On September 3, 2015, the Court granted Ullmo leave to file a first amended complaint. Ullmo asserted two class action claims in her first amended complaint filed September 18, 2015: (1) Declaratory relief – unlawful tax under Ohio law, and (2) unlawful tax or user fee under Ohio law. In response, the OTIC filed, (1) a motion to dismiss the first amended complaint pursuant to Civ.R. 12(B)(6), failure to state a claim, and Civ.R. 12(B)(1), lack of jurisdiction because of Ullmo's lack of standing, and (2) a motion to stay discovery until the motion to dismiss was resolved.

On June 13, 2016, the Court held a hearing on the OTIC's motion to dismiss. The Court denied the motion to dismiss on June 27, 2016, and granted Ullmo leave to file a second amended complaint that would clearly assert all constitutional challenges, and be served on the Ohio Attorney General (OAG). R.C. 2721.12(A).

On July 27, 2016, Ullmo filed her second amended complaint seeking two forms of equitable relief in class action. She seeks: (1) declaratory judgment that the tolls imposed by the OTIC are unlawful taxes because they violate Ohio Constitution Article II, §1, Article XIII § 5, and Article VIII, § 13; and (2) restitution of the unlawful taxes recovered by the OTIC under a court order that causes the excess funds the OTIC collected be disgorged to the class members.

On August 8, 2016, the OTIC filed a motion to dismiss Ullmo's second amended complaint. Ullmo filed a brief in opposition on September 7, 2016. The Court denied in part the OTIC motion on November 23, 2016 because it was based on the fact that Ullmo did not name the OAG a party as ordered by the Court; however, R.C. 2721.12(A) only requires that the OAG be served with a copy of the complaint, and Ullmo satisfied that requirement¹. The OTIC filed a motion for leave to file a reply brief on October 12, 2016 that the Court denied on November 14,

¹On November 23, 2016, the Court filed a Revised Journal Entry and Opinion: Ohio Turnpike and Infrastructure Commission's September 21, 2015 Motion to Dismiss to clarify that the moving party must serve the OAG.

2016. Subsequently, it filed a renewed motion to file a reply on November 17, 2016. Ullmo opposed the OTIC's renewed motion on November 28, 2016. The Court denies the OTIC's renewed motion and strikes the brief attached to the motion.

On September 19, 2016, the OAG entered a notice of appearance on behalf of Ohio, and advised that he intended to review the claims and decide whether to intervene on behalf of Ohio. The Court granted the OAG forty-five days to file a notice of intervention. On November 4, 2016, the OAG on behalf of Ohio filed a motion to intervene with an answer to the complaint, and a motion to dismiss Ullmo's complaint for failure to state a claim upon which relief can be granted. On November 23, 2016, the Court granted a motion to stay discovery, and Ohio's motion to intervene. Ullmo filed her brief in opposition to Ohio's motion to dismiss on December 14, 2016.

On February 10, 2017, Plaintiff filed supplemental authority to support its position to deny the motions to dismiss.

LAW & ANALYSIS

“A motion to dismiss² for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint. Thus, the movant may not rely on allegations or evidence outside the complaint; such matters must be excluded, or the motion must be treated as a motion for summary judgment. ‘The factual allegations of the complaint and items properly incorporated therein must be accepted as true. Furthermore, the plaintiff must be afforded all reasonable inferences possibly derived therefrom.’ It must appear beyond doubt that plaintiff can prove no set of facts entitling her to relief.” *Volbers-Klarich v. Middletown Mgmt.*, 125 Ohio St.3d 494,

²Pursuant to the Court's November 23, 2016 Journal Entry and Order it is reviewing both Defendants' motions to dismiss under the Civ.R. 12(B) standard, and not considering Ohio's answer to Plaintiff's complaint.

497 (2010), citing Civ.R. 12(B), quoting *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988), other citations omitted.

Authority to Delegate

“The power to tax lies exclusively with the General Assembly pursuant to the general legislative grant conferred by Ohio Constitution, Article II, Section 1.” *Beaver Excavating Co. v. Testa*, 134 Ohio St.3d 565, 2012-Ohio-5776 ¶ 40, 983 N.E.2d 1317. “The General Assembly's power to legislate is limited solely by the state and federal Constitutions. This plenary power includes the power to levy taxes.” *Desenco, Inc. v. City of Akron*, 84 Ohio St.3d 535, 538, 706 N.E.2d 323 (1999) (citations omitted). Accordingly, the General Assembly may establish special districts and boards to administer the districts with grants of various duties and powers, including the power to levy taxes within the district. *Desenco* at 538-539; *State ex rel. Bryant v. Akron Metro. Park Dist.* (1929), 120 Ohio St. 464, 166 N.E. 407, affirmed (1930), 281 U.S. 74, 50 S. Ct. 228, 74 L. Ed. 710 (park districts and boards of park commissioners); See, also, *State ex rel. McElroy v. Baron* (1959), 169 Ohio St. 439, 8 Ohio Op. 2d 457, 160 N.E.2d 10 (port authorities); *State ex rel. Wuebker v. Bockrath* (1949), 152 Ohio St. 77, 39 Ohio Op. 389, 87 N.E.2d 462, paragraph nine of the syllabus (joint township district general hospital and district hospital boards); *State ex rel. Fritz v. Gongwer* (1926), 114 Ohio St. 642, 151 N.E. 752 (joint county ditch improvement districts). “A statute does not unconstitutionally delegate legislative power if it establishes, through legislative policy and such standards as are practical, an intelligible principle to which the administrative officer or body must conform and further establishes a procedure whereby exercise of the discretion can be reviewed effectively. Ordinarily, the establishment of standards can be left to the administrative body or officer if it is

reasonable for the General Assembly to defer to the officer's or body's expertise.” *Blue Cross of Ne. Ohio v. Ratchford*, 64 Ohio St.2d 256, 260, 416 N.E.2d 614 (1980).

Ullmo, while not arguing that R.C. 5537 or any of its provisions are unconstitutional, argues that the OTIC violated the Ohio Constitution as follows:

1. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws. Oh. Const. Art. II, § 1.

2. No tax shall be levied, except in pursuance of law; and every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied. Oh. Const. Art. XII, § 5.

3. To create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state, to control air, water, and thermal pollution, or to dispose of solid waste, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, and research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of such property, structures, equipment and facilities. Laws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, the state, or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, and to authorize the making of guarantees and loans and the lending of aid and credit, which laws, bonds, obligations, loans, guarantees, and lending of aid and credit shall not be subject to the requirements, limitations, or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of

the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section.

Except for facilities for pollution control or solid waste disposal, as determined by law, no guarantees or loans and no lending of aid or credit shall be made under the laws enacted pursuant to this section of the Constitution for facilities to be constructed for the purpose of providing electric or gas utility service to the public.

The powers herein granted shall be in addition to and not in derogation of existing powers of the state or its political subdivisions, taxing districts, or public authorities, or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities.

Any corporation organized under the laws of Ohio is hereby authorized to lend or contribute moneys to the state or its political subdivisions or agencies or instrumentalities thereof on such terms as may be agreed upon in furtherance of laws enacted pursuant to this section. Oh. Const. Art. VIII, § 13.

Ullmo's argument is that the General Assembly did not intend to grant the OTIC taxing authority because it used the word "tolls" twice in the statute, and not "taxes." "Tolls" mean special fees or permit fees, or other charges by the [OTIC] to the owners, lessors, lessees, or operators of motor vehicles for the operation of the right to operate those vehicles on a Turnpike project. R.C. 5537.01(V). "State Taxes" mean receipts of the [OTIC] from the proceeds of state taxes or excises levied and collected, or appropriated by the General Assembly to the commission, for the purposes and functions of the [OTIC]. State taxes do not include tolls, or investment earnings on state taxes except on those state taxes referred to in Section 5a of Article XII, Ohio Constitution. R.C. 5537.01(U).

The General Assembly expanded the OTIC's authority to include developing transportation related infrastructure projects. R.C.5537.02(A). The OTIC is expressly:

"a body both corporate and politic, constituting an instrumentality of the state, and the exercise by it of the powers conferred by this chapter in the construction, operation, and maintenance of the Ohio turnpike system, and also in entering into agreements with the

department of transportation to pay the cost or a portion of the costs of infrastructure projects, are and shall be held to be essential governmental functions of the state, but the commission shall not be immune from liability by reason thereof. Chapter 2744 of the Revised Code applies to the commission and the commission is a political subdivision of the state for purposes of that chapter. The commission is subject to all provisions of law generally applicable to state agencies which do not conflict with this chapter.” R.C. 5537.02(A).

The General Assembly stated the purpose of the Turnpike projects including qualifying infrastructure projects, and granted the OTIC the authority to: “Issue revenue bonds of the state payable solely from pledged revenues, to pay the costs of turnpike projects”; and, “provide the infrastructure funds to pay the cost or a portion of the cost of infrastructure projects as recommended by the director of transportation pursuant to a determination made by the commission based on criteria set forth in rules adopted by the commission under section 5537.18 of the Revised Code.” R.C. 5537.03(A), and (B). The OTIC’s determination “to provide infrastructure funds for an infrastructure project shall be conclusive and incontestable³.” R.C. 5537.03(B).

The authority and powers of the OTIC are enumerated and include the power to: “Issue revenue bonds of the state, payable solely from pledged revenues, as provided in this chapter, for the purpose of paying any part of the cost of constructing any one or more turnpike projects or infrastructure projects; fix, and revise from time to time, and charge and collect tolls by any method approved by the commission, including, but not limited to, manual methods or through electronic technology accepted within the tolling industry; and fix and revise by rule, from time to time, such permit fees, processing fees, or administrative charges for the prepayment, deferred

³The Court discussed in its June 27, 2016 Journal Entry and Opinion denying OTIC’s first motion to dismiss that a statute that determines that a decision of a legislative or administrative entity is “conclusive and incontestable” is subject to a constitutional challenge and judicial review. However, Ullmo is not challenging this provision of the statute.

payment, or nonpayment of tolls and use of electronic tolling equipment or other commission property. R.C. 5537.04(A)(7), (8), (15). In addition, the General Assembly expressly granted the OTIC the authority to do all acts necessary or proper to carry out the powers expressly granted in the chapter. R.C. 5537.04(B).

Infrastructure Related Nexus

The “‘Ohio turnpike system’ or ‘system’ means all existing and future turnpike projects, constructed, operated, and maintained under the jurisdiction of the commission.” R.C. 5537.01(DD). “‘Ohio turnpike and infrastructure system’ means turnpike projects and infrastructure projects funded by the [OTIC] existing on and after July 1, 2013, that facilitate access to, use of, and egress from the Ohio turnpike system, and also facilitate access to and from areas of population, commerce, and industry that are connected to the Ohio turnpike system.” R.C. 5537.01(EE). The General Assembly expressly established the OTIC as the body that will establish the procedures and criteria to approve funding for infrastructure projects. R.C. 5537.18. In doing so, the OTIC must require “an infrastructure project to have an anticipated benefit to the system of public highways in the state of Ohio and transportation-related nexus with and relationship to the Ohio turnpike system and the Ohio turnpike and infrastructure system. R.C. 5537.18(A).

The General Assembly declared the criteria the OTIC must consider to determine if a proposed project has “the required nexus and relationship to the Ohio turnpike system and the Ohio turnpike and infrastructure system.” *Id.* It also established the application process for infrastructure funding. R.C. 5537.18(B). Finally, the General Assembly determined that the OTIC must evaluate applications pursuant to the rules, procedures, and criteria then expressly

stated that the OTIC's determination or approval of an application for infrastructure funding is conclusive and incontestable⁴. R.C. 5537.18(C).

Ullmo's complaint does not allege facts nor can any inference be made that the OTIC failed to evaluate the applications pursuant to the procedures and criteria established by the General Assembly or by the OTIC in accordance with the power delegated to it by the General Assembly. Ullmo's complaint appears to disagree with the discretion used by the OTIC, and its determinations about which projects to fund. However, no facts support a conclusion that the OTIC did not act within the authority delegated to it by the General Assembly, which only requires that the OTIC find an anticipated benefit to the system of public highways in Ohio and a transportation-related nexus to the Ohio turnpike and infrastructure systems. R.C. 5537.18(A).

Set & Collect Tolls, Spend Revenue

The General Assembly stated the purpose of the turnpike projects, and granted the OTIC the authority to: "Issue revenue bonds of the state payable solely from pledged revenues, to pay the costs of turnpike projects"; and, "provide the infrastructure funds to pay the cost or a portion of the cost of infrastructure projects as recommended by the director of transportation pursuant to a determination made by the commission based on criteria set forth in rules adopted by the commission under section 5537.18 of the Revised Code." R.C. 5537.03(A), and (B). The OTIC's determination "to provide infrastructure funds for an infrastructure project shall be conclusive and incontestable." R.C. 5537.03(B). When the General Assembly established criteria for tolls and bonds it established the following: the OTIC has the authority to fix, revise, charge and collect tolls for each turnpike project pursuant to specific restrictions that do not apply in this

⁴Again, it was the express determination of the General Assembly that OTIC's determination or approval of these infrastructure projects for funding is conclusive and incontestable, which Ullmo is not challenging as unconstitutional.

case⁵. R.C. 5537.13(A). It established criteria that prohibited the OTIC from increasing toll rates, and for fixing and adjusting tolls to provide sufficient funding. R.C. 5537.13(C). Tolls may even continue after all outstanding bonds have been paid in connection with any turnpike system project. R.C.5537.21. The General Assembly also expressly determined that “tolls are not subject to supervision, approval, or regulation by any state agency other than the OTIC.” R.C. 5537.13(D). However, it specified how revenues and proceeds of bonds must be applied, deposited or otherwise used. R.C. 5537.13(E), and (F). In as much as Ullmo is not challenging the constitutionality of any part of this statute, she does not allege any facts that the OTIC has violated the scope of its authority by establishing and collecting tolls since 2013, even if those tolls are considered taxes.

The General Assembly also determined that “all costs and expenses incurred by the commission in carrying out this chapter shall be payable solely from revenues and state taxes, and no liability or obligation shall be incurred by the commission beyond the extent to which revenues have been provided for pursuant to this chapter.” R.C. 5537.02(D). This provision unequivocally determines that revenues and state taxes will be used to pay costs and expenses, and makes no exception for the OTIC’s decisions related to infrastructure projects. Assuming that the OTIC’s tolls are taxes, by this express language they may be used to pay the junior bonds Ullmo alleges are unlawfully funded.

The revenue bonds are not the State’s debt, or a pledge of the State’s faith and credit, and must contain statement to this effect on their face. R.C. 5537.11(A). Bond service charges on

⁵R.C. 5537.13(A) is subject to division (C)(1) as follows: “ Except as necessary to comply with covenants in bond proceedings in existence before July 1, 2013, for calendar years 2013 through 2023, the commission shall not increase the toll rates for any class of passenger vehicle as fixed on the effective date of this amendment, when both of the following apply: (a) The tolls are collected and remitted in accordance with a multi-jurisdiction electronic toll collection agreement; and (b) The distance traveled is thirty miles or less.” Pursuant to R.C. 5537.26 changes in toll rate structure requires notice and hearing.

outstanding bonds are payable solely from the pledged revenues pledged for their payment as authorized by this chapter and as provided in the bond proceedings. *Id.* “All expenses incurred in carrying out this chapter shall be payable solely from revenues provided under this chapter and from state taxes. This chapter does not authorize the [OTIC] to incur indebtedness or liability on behalf of or payable by the state or any political subdivision of the state.” R.C. 5537.11.

The General Assembly plainly intended that the OTIC be empowered to set the toll rates, use tolls to pay revenue bonds for turnpike and infrastructure projects, and determine which infrastructure projects qualified for revenue bond funding. Ullmo’s complaint does not assert facts that dispute this authority. Even if these tolls are considered taxes, the General Assembly has provided the OTIC with the authority to carry out the duties, and the responsibility as written in the statute.

Independence of the OTIC’s Ability to Issue Bonds

The Turnpike Act of 1949 authorized the issuance of turnpike revenue bonds and predates Ohio Const. Art. VIII, § 13. In 1951, the Supreme Court of Ohio upheld the constitutionality of these bonds fifteen years before Ohio Const. Art. VIII, § 13 was implemented. The Supreme Court of Ohio subsequently determined that this amendment to the Ohio Constitution, which was submitted as a unit to the voters, had “a single purpose, to allow the state and governmental subdivisions to give financial assistance to private industry or to other governmental units in order to create new employment within this state.” *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St.2d 34, 36-37, 218 N.E.2d 446 (1966). Comparatively, the Turnpike Commission is “a public organization created for a public purpose.” *State ex rel. Kauer v. Defenbacher*, 153 Ohio St. 268, 282, 91 N.E.2d 512 (1950).

“Wherever reference is made in the turnpike act to the issuance of turnpike bonds, it is stated specifically that such bonds shall be payable solely from revenues derived from the turnpike project concerned. It is also specifically provided in several instances, that such bonds ‘shall not be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision.’ Words to this effect are required to be placed on the face of all turnpike bonds issued under the act.” *State ex rel. Allen v. Ferguson*, 155 Ohio St. 26, 38, 97 N.E.2d 660 (1951). “In Ohio it is well settled that such bonds do not constitute a "debt" within the meaning of the constitutional provisions hereinbefore referred to.” *State ex rel. Allen at 38: Kasch v. Miller, Supt.*, 104 Ohio St., 281, 135 N. E., 813; *State, ex rel. Public Institutional Bldg. Authority, v. Griffith, Secy. of State*, 135 Ohio St., 604, 22 N. E. (2d), 200; *State, ex rel. State Bridge Comm., v. Griffith, Secy. of State*, 136 Ohio St., 334, 25 N. E. (2d), 847. The Supreme Court of Ohio considered the fact that the revenues used to pay the bonds would be the tolls collected from the members of the public for use of the highway. *State ex rel. Allen*, 155 Ohio St. 26, 40. It further found that standards for determining the tolls were contained in the Turnpike Act. *Id.*

When Article VIII § 13 was implemented it specified that “the powers herein granted shall be in addition to and not in derogation of existing powers of the state or its political subdivisions, taxing districts, or public authorities, or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities.” The General Assembly specified in 2013 when it amended the turnpike laws that: “this chapter provides an additional and alternative method for doing the things and taking the actions authorized by this chapter. This chapter shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers

existing on or after September 1, 1949. Except for section 126.11 of the Revised Code, the issuance of bonds under this chapter need not comply with any other law applicable to the issuance of bonds.” R.C. 5537.10. This provision plainly states the General Assembly’s intent to maintain the status quo regarding use of turnpike revenue bonds, and to satisfy the same bond requirements as those in the 1949 Act by stating that the revenue bonds are payable solely from turnpike revenue and state on their face that they are not a debt of the State. R.C. 5537.08(A); R.C. 5537.11(A).

Ullmo does not assert facts that demonstrate that the OTIC does not have the authority to approve infrastructure projects, issue bonds, or set toll rates that may generate revenue to pay for the bonds used to fund the approved infrastructure projects. The statute plainly grants the OTIC the authority to determine which applications for funding for infrastructure projects have the required “transportation related nexus” to the Ohio Turnpike such that the use of tolls to fund the bonds which pay for those projects is proper. Moreover, Ullmo does not allege sufficient facts that the Turnpike Commission enacted in 1949 or Amended in 2013 was created pursuant to Ohio Const. Art. VIII, § 13.

CONCLUSION

Accepting all of Ullmo’s factual allegations as true and making all reasonable inferences in her favor that the tolls collected pursuant to R.C. 5537 were taxes, the General Assembly had the authority to delegate that authority to the OTIC provided it established practical standards and procedures for the administration of its authority and exercise of discretion. *Volbers-Klarich*, 125 Ohio St.3d 494 at 497; *Desenco*, 84 Ohio St.3d 535 at 538-539. In this case, all of the duties, obligations, and grants of authority are expressed in R.C. 5537, and come directly from the General Assembly. *Id.* Therefore, Ullmo’s arguments that the OTIC violated Oh. Const. Art. II, §

1 or Oh. Const. Art. XII, § 5 fail as a matter of law. Moreover, Ullmo does not assert facts that the original Turnpike Commission, or the OTIC was created pursuant to Oh. Const. Art. VIII, §13, or that this constitutional provision has any derogating effects on the OTIC's use or payment of such bonds.

For all the forgoing reasons, Ullmo's Second Amended Complaint is dismissed with prejudice for failure to state a claim upon which relief can be granted. Civ.R.12(B)(6).

IT IS SO ORDERED.

DATED: _____

JUDGE MICHAEL E. JACKSON

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.