

**OPINION NO. 96-064****Syllabus:**

Pursuant to R.C. 121.42 and R.C. 5537.02(A), the Inspector General has jurisdiction to investigate the Ohio Turnpike Commission, because the Commission is a state agency, as that term is defined at R.C. 121.41(D) and R.C. 1.60.

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**To: Richard G. Ward, Inspector General, Columbus, Ohio**  
**By: Betty D. Montgomery, Attorney General, December 2, 1996**

I am in receipt of your request for an opinion concerning whether the Inspector General has jurisdiction to investigate the Ohio Turnpike Commission (OTC).

The powers and duties of the Inspector General are set out at R.C. 121.41 through R.C. 121.50. Pursuant to these statutes, the Inspector General has jurisdiction to investigate "state agencies" and the state officers and employees of "state agencies." See R.C. 121.42(A) and (B); R.C. 121.46; R.C. 121.41(E), (F). Thus, the threshold issue is whether the OTC is a state agency.

The term state agency is expressly defined for purposes of the statutes governing the Inspector General. R.C. 121.41(D) provides that "[s]tate agency' has the same meaning as in section 1.60 of the Revised Code but does not include any of the following: (1) The general assembly; (2) Any court; (3) The secretary of state, auditor of state, treasurer of state, or attorney general and their respective offices." R.C. 1.60, in turn, states that "[a]s used in Title I of the Revised Code, 'state agency,' except as otherwise provided in the title, means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government." If the OTC meets this basic definition of "state agency" and is not subject to any statutory exceptions, the Inspector General has jurisdiction to investigate.

The elements of the R.C. 1.60 definition, as discussed in recent opinions of this office, are as follows: (1) the entity must be created by law; (2) the entity must be an organized body, office, or agency; and (3) the entity must be established to act on the state's behalf for the exercise of a function of state government. 1996 Op. Att'y Gen. No. 96-032 at 2-125; 1992 Op. Att'y Gen. No. 92-034 at 2-130.

The OTC is established and governed by the provisions of R.C. Chapter 5537. R.C. 5537.02(A) states:

There is hereby created a commission to be known as the "Ohio turnpike commission." The commission is 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 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. 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(B) further provides that the commission is comprised of seven members — four appointees, the Director of the Department of Transportation, and two nonvoting members appointed from the state house of representatives and the state senate.

It is apparent from the provisions of R.C. 5537.02 that the OTC is created by statute and that it can be characterized as an organized "body." See *Webster's Third New International Dictionary* 246 (unabridged ed. 1993) ("a group of individuals united by a common tie or organized for some purpose"). Further, R.C. 5537.02 characterizes the OTC as "an instrumentality of the state" and the exercise of its powers as "essential governmental functions of the state." Thus, the express terms of the enabling statute indicate that the OTC acts on the state's behalf for the exercise of a function of state government. Accordingly, the basic elements of the R.C. 1.60 definition of "state agency" are satisfied.

This conclusion is not inconsistent with the fact that the General Assembly has given the OTC a greater degree of autonomy and financial independence than the typical state agency. For example, the OTC is recognized as a "body both corporate and politic," which may sue and be sued in its own name and is not entitled to sovereign immunity. R.C. 5537.02(A); R.C. 5537.04(A)(4); *Hoffmeyer v. Ohio Turnpike Comm'n*, 12 Ohio Op. 2d 436, 166 N.E.2d 543 (C.P. Cuyahoga County 1960). The OTC must pay all its expenses from revenues provided under R.C. Chapter 5537 and from state taxes; it has no authority to incur indebtedness or liability on behalf of the state. R.C. 5537.11(B). The OTC may issue revenue bonds, and in doing so, is not required to comply with any law governing bond issuance outside R.C. Chapter 5537. R.C. 5537.04(A)(6); R.C. 5537.08; R.C. 5537.10. Bonds issued by the OTC do not constitute a debt of the state nor a pledge on the faith and credit of the state. R.C. 5537.11(A). Because of these characteristics, particularly those creating financial independence from the state, the OTC has for some purposes been treated not as a state agency, but as "an autonomous entity." *Hoffmeyer*, 12 Ohio Op. 2d. at 438-39, 166 N.E.2d at 545-47 (holding that the OTC has no sovereign immunity from general tort liability).

Such characteristics are not relevant, however, in determining whether a particular entity meets the basic definition of "state agency" at R.C. 1.60. *See* 1994 Op. Att'y Gen. No. 94-016 at 2-76 (financial independence of the Ohio Retirement Study Commission does not affect conclusion that it is a state agency under R.C. 1.60). Rather, they are factors which must be considered in determining whether a specific entity that qualifies under the basic definition should be exempted from the operation of another statute that applies to state agencies generally. As noted in a recent opinion of this office, "a conclusion that an entity is or is not a state agency as defined at R.C. 1.60 does not determine the extent to which any particular provision of Title I applies," since the term "state agency" is not used consistently throughout Title I. 1996 Op. Att'y Gen. No. 96-032 at 2-124 n.2. More directly to the point, R.C. 5537.02(A) expressly provides that "[t]he commission is subject to all provisions of law generally applicable to state agencies *which do not conflict with this chapter.*" (Emphasis added.) Thus, to the extent that provisions of law generally applicable to state agencies are in conflict with the financial independence of the OTC, they do not apply. *See, e.g.,* 1974 Op. Att'y Gen. No. 74-029 (the OTC is not subject to statute requiring state officers to purchase certain equipment through the department of finance); 1965 Op. Att'y Gen. No. 65-145 (employees of the OTC are excepted from the state civil service because they are not paid with state funds).

There is no such inherent conflict, however, in subjecting the OTC to the authority of the Inspector General to inspect "state agencies." The charge of the Inspector General is to determine "whether wrongful acts and omissions have been committed or are being committed." R.C. 121.42(A). Nothing in the Inspector General statutes requires the OTC to comply with any provision of law that would otherwise be inapplicable, nor does anything in the OTC statutes indicate that it is protected from investigation by legitimate authorities. None of the exceptions to the Inspector General's jurisdiction that are specifically provided in R.C. 121.41(D) are applicable to the OTC. Although two members of the General Assembly serve as nonvoting members of the OTC, the OTC is not established as part of the General Assembly and the exception for the General Assembly cannot be extended to include the OTC. Thus, there are no statutory exceptions that remove the OTC from the Inspector General's investigatory authority over state agencies.

It is, therefore, my opinion, and you are hereby advised, that pursuant to R.C. 121.42 and R.C. 5537.02(A), the Inspector General has jurisdiction to investigate the Ohio Turnpike Commission, because the Commission is a state agency, as that term is defined at R.C. 121.41(D) and R.C. 1.60.