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N. J. Legislature.

MAJORITY REPORT OF THE SPECIAL GENERAL ASSEMBLY COMMITTEE

(STATE OF NEW JERSEY

APPOINTED UNDER ASSEMBLY RESOLUTION) TO INQUIRE

INTO THE CONSTRUCTION OF A THIRD TUBE FOR THE

LINCOLN TUNNEL BY THE PORT OF NEW YORK AUTHORITY

*Received by Clerk of General Assembly, Jan. 8, 1954*

TO THE GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY:

This Committee was appointed by resolution of the House of Assembly of the New Jersey State Legislature introduced by Assemblyman William V. Musto of Hudson County and adopted on May 18, 1953 to inquire into the facts and circumstances surrounding the construction of a third tube for the Lincoln Tunnel by The Port of New York Authority, particularly in reference to the western terminus thereof. The reference to the western terminus relates to the exits and entrances and other installations in the Township of Weehawken.

Your Committee held two public hearings, at which all had ample opportunity to be heard. The principal participants were representatives of the Township and of the Port Authority. Prior to the commencement of the first hearing it was agreed that the Port Authority and the Township would each have three witnesses testify. Following the conclusion of this formally organized testimony, others who wished to address the Committee were heard.

The record is voluminous, consisting of 339 pages and many exhibits.

It was necessary to make specific rulings as to the scope of the hearing and the questions were stated by the Chairman to be the following:

1. Is an additional facility needed to handle the heavy traffic condition in vehicular crossings of the Hudson River? (Concerning this issue there was no contest)

(16)

2. Where should the additional facility be constructed?
3. Did the Port Authority act within the applicable statutes in making a final determination that the most needed additional facility is a third tube of the Lincoln Tunnel and in determining the location of the facility, its approaches and connections and the manner and time of construction?

The Committee considered these questions as stated at the hearing solely for the purpose of determining whether additional legislation is needed, in connection with the third tube, and assurance was given that this report would make recommendation for such legislation, if the Committee has any.

The Port Authority is a bi-state agency created by legislation of the states of New Jersey and New York consented to by Congress. The legislation authorizing the construction of the Lincoln Tunnel is also concurrent legislation which was passed by the two states. The Committee is mindful that any legislation which it might recommend, if passed by the New Jersey legislature, would require concurrent action by the New York legislature.

The Committee has studied the decisions of Judge Drewen in litigation between the Port Authority and the Township, pending at the time of the investigation in which the Court received testimony and ruled on essentially the same issues of fact as were presented to the Committee. We have, therefore, the clarifying effect of judicial decisions on issues which, at the time of the hearing were disputed. Judge Drewen's two decisions in the action entitled "Superior Court of New Jersey, Chancery Division, Hudson County, Docket

No. C-2001-52, The Port of New York Authority et als, against Township of Weehawken", handed down on June 12, 1953 and on August 31, 1953, exhaustively consider the questions whether the third tube of the Lincoln Tunnel is an "additional vehicular tunnel" within the meaning of Section 2 of the 1931 statutes (RS 32:1-119), and whether the Port Authority as an agency of the State of New Jersey and of the State of New York was obligated to obtain municipal permits and otherwise directly conform to the regulations of local ordinances of the Township. Judge Drewen decided that the third tube is not an additional separate, independent vehicular tunnel, but effects an organic unification of all three tubes into a single facility, that is, into a single Lincoln Tunnel.

The concurrent legislation pursuant to which the Port Authority is constructing the third tube of the Lincoln Tunnel requires that

"\*\*\* the said Midtown Hudson Tunnel (now called the Lincoln Tunnel) shall have an appropriate entrance and exit in the township of Weehawken, county of Hudson, state of New Jersey." (Chapter 4, Laws of New Jersey, 1931 [R.S. 32:1-118 et seq.] and Chapter 47, Laws of New York, 1931, 83.)

and the Commissioners of the Port Authority are acting pursuant to such bi-state legislative direction in the construction of the Lincoln Tunnel at such location.

In the opinion of the majority of the Committee, the Commissioners of the Port Authority have properly determined that the construction of a third tube to the Lincoln Tunnel is necessary. The majority of the Committee adopts Judge Drewen's conclusion that no additional legislation is required to authorize this essential improvement. The testimony establishes clearly that construction of two additional lanes to carry the traffic under the river is the best available means of relieving the existing traffic congestion on the

Tunnel approaches in Weehawken. DeLeuw and Brill, an independent firm of consulting engineers chosen by the Township to review the Port Authority's plans and submit a report directly to the Township, concluded in their report to Mayor Krause (a copy of which report was furnished the Committee), that:

" We believe that the third tube of the Lincoln Tunnel will provide relief from the serious traffic congestion which frequently occurs on the approaches in the Township of Weehawken many years before any other means of providing relief could be constructed.  
\* \* \* No serious congestion should occur (on the approach ramp) except when the traffic desiring to use the Tunnel exceeds the capacity thereof \*\*\*  
The overall plans for improvements in the New Jersey approaches are, therefore, adequate for the presently foreseeable traffic until such time as it becomes greater than the capacity of the Tunnel itself.

" We conclude that the location of the western portal of the third tube, whether east or west of Bergen Hill, would have little, if any, effect on traffic using the streets of Weehawken."

The Port Authority submitted details of the third tube project in its annual reports for the years 1950, 1951 and 1952. The two legislatures and Governor Driscoll and Governor Dewey were fully informed.

The Township officials expressed apprehension that a fourth tube with a terminus in the Township or a fourth crossing, in addition to the George Washington Bridge and the Lincoln and Holland Tunnels, likewise with a terminus in Weehawken, might be constructed in the future which would aggravate traffic congestion in the Township. The Port Authority surveys and the testimony conclusively showed to the satisfaction of the majority of this Committee that it is a physical impossibility to construct a fourth tube within this vehicular thoroughfare with entrances and exits east of the Palisades in Weehawken and that a fourth crossing could

not be served by the Weehawken Plaza and approaches. In any event, under existing legislation, erection of a fourth crossing by the Port Authority being physically impossible of construction within the Lincoln Tunnel Vehicular thoroughfare and being therefore in the nature of a new, independent and "additional" tunnel would require authorization by concurrent additional legislation adopted by both states.

The question whether the construction of the third tube is subject to the building code, blasting and other ordinances of the Township was decided by Judge Drewen in the negative. The Township urged that such construction should hereafter be subject to local municipal ordinances. In the opinion of the majority of this Committee there is no necessity that this agency of the two states be subjected to such ordinances. The state itself as a matter of law, is not subject to such ordinances. The Port Authority is the performing agent for the two states in the discharge of essential governmental functions, - the construction and operation of facilities projecting beyond state lines. It itself is an arm of the state, of demonstrated competence to exercise sound judgment in the public interest. It has a skilled staff experienced in construction matters, and in the conduct of its construction operations it has conformed to standards at least as high as those embodied in municipal and state codes. To subject it to varying requirements of ordinances of the various municipalities within the two states is not practical and would only hamper it in the discharge of its public duty. Wherefore, your Committee does not recommend any change in existing law in this respect.

This does not exempt the Port Authority from the control of the two states since it must report annually to the Governors and Legislatures of each state and inasmuch as new projects must be authorized by concurrent legislation

adopted by the two states.

There was presented to this Committee a proposal that there be provision for taxation of Port Authority property on the local tax rolls. Bridges and tunnels and their approaches are specifically exempted from taxation in the concurrent legislation adopted by the two States under which the existing two tubes of the Lincoln Tunnel were constructed and financed and the third tube is being constructed and financed. Bonds were issued by the Port Authority to finance the construction of the three tubes of the Lincoln Tunnel and were purchased by investors in reliance, in part, upon this legislation. The tax exemption could be repealed only by concurrent legislation of the two States, and, if adopted, would impair the contract with the bondholders which situation would create a multiplicity of constitutional questions. For these reasons, legislation which would render the Lincoln Tunnel taxable is not recommended.

In this connection, it is noted that any such legislation must be considered against the present background of tax exemption with respect to all highway construction in New Jersey, even though financed by tolls.

One witness suggested that the Port Authority should share the "profits" of the Lincoln Tunnel with the municipality. In the opinion of the majority of this Committee, it would not be consistent with the policy of the two states with respect to interstate vehicular crossings to provide for a division of revenues from any such crossings between the Port Authority and any single municipality within the port district.

The testimony before this Committee was largely devoted to a consideration of the negotiations between the Township and the Port Authority for consent by the Township to the use by the Port Authority of a portion of the playground in Weehawken necessary for the entrances and portal of the third tube. Under both the compase of 1921 and the joint legislation of 1931, no real property of the municipality may be taken by the Port Authority without the consent of the municipality. The negotiations between the Port Authority and the Township involved a decided difference of opinion as to the terms which may be imposed by the Township as a condition for granting its consent.

Among the proposals made by the municipality which were rejected by the Port Authority was a request that the Port Authority erect a sewerage disposal plant to serve its needs as well as those of an adjoining municipality. It would appear to the majority of this Committee that such an improvement is of purely local concern, bearing no relationship to the fundamental purpose for which the Port Authority was created, namely, the continuous development of port facilities.

At the time of the hearing and under the testimony received by this Committee, tha above alternatives appear to have been withdrawn and the fundamental position of the Township was that it had the power to, and would require a payment by the Port Authority to the Township of \$1,5000,000.00 in cash as a condition for the granting of consent to the use of municipal property. The Port Authority obtained an appraisal of the value of the property which it required at this location, of \$70,000.00, but it made an offer to pay

and transfer to the Township \$285,000.00 in money and other benefits estimated by it to be of the total value of \$567,000.00.

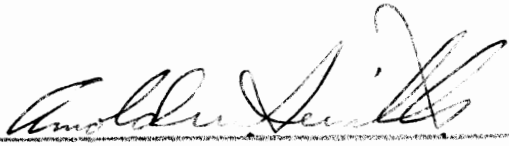
The Township demanded \$1,500,000.00 for the conveyance of the vacant property appraised by the Port Authority at \$70,000.00 and for intangible damages heretofore alleged to be suffered by it by reason of the location of the entrance and exit plaza and consequential traffic congestion. In the opinion of the majority of the Committee, it would appear that the demand by the Township for the payment to it of the sum of \$1,500,000.00 is excessive and unconscionable and that it is highly problematical as to whether such payment by the Port Authority under such circumstances might not be considered as contrary to public policy. The majority of the Committee notes again that comparable situations exist in most municipalities which are traversed by public highways and that the approval of the Township's demand would set a precedent contrary to public welfare and not justified by financial considerations.

It appears to the majority of the Committee that the offer of the Port Authority presents a basis of settlement and it is recommended that the officials of the Township and of the Port Authority continue their negotiations in an effort to settle the differences along sound lines.

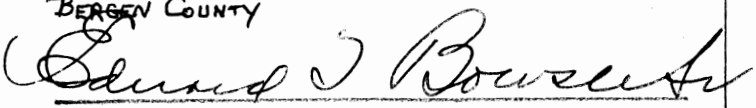
This report is limited to the testimony which was found by the Committee to be pertinent to the fundamental issue as to whether additional legislation is required.

The majority of the Committee believes that the hearings served to clarify the differences of opinion which existed between the Port Authority and the Township of Weehawken. The majority of the Committee also believes that

through the extensive presentation of the position of both sides, a real basis for ultimate agreement between the municipality and the Port Authority on the use of municipal property can be reached.

  
PASSAIC COUNTY CHAIRMAN

ARTHUR VERVAET

BERGEN COUNTY  
  
ESSEX COUNTY