

May 15, 1959

MEMORANDUM TO ALL CONCERNED:

By letter dated May 8, 1959, from Howard E. Hill, Managing Director of the Michigan State Highway Department, and by general declaration signed by State Highway Commissioner John C. Mackie on November 14, 1958, we have been informed that Southfield Road between the Detroit Industrial Expressway and Northwestern Highway, in Oakland County, was made a State trunkline highway, effective March 31, 1959, and that the State Highway Department assumed maintenance of that section of Southfield Road as of April 1, 1959. You will please be governed accordingly.

McBeyers
Assistant Secretary

AEP:mc

MICHIGAN STATE HIGHWAY DEPARTMENT

LANSING, 26

Item 14

Minutes 5-14-59

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MAY 11 1959
WAYNE COUNTY ROAD COMMISSIONERS

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DIRECTOR FOR ADMINISTRATION

May 8, 1959

Mr. Sylvester A. Noetzel
Secretary & Clerk of the Board
Wayne County Road Commission
7th Floor, City-County Building
Detroit 26, Michigan

Dear Mr. Noetzel:

On May 4, you made an inquiry concerning the status of Southfield Road between the Industrial Expressway and Northwestern Highway. You requested a copy of the State Highway Commissioner's determination establishing Southfield Highway as part of the State Trunkline system.

This matter was brought to my attention by our Local Government Division. Under the provisions of Section 13 (a), Act 51, Public Acts of 1951, the State Highway Commissioner is required to certify the existing trunkline mileage in all incorporated cities and villages of over 30,000 population. This certification occurs once each year and the effective date is March 31. This year, at the time of our annual certification, the City of Detroit raised a question concerning the status of Southfield Road. To clarify the situation, I asked for a legal opinion from the Attorney General's Division assigned to the State Highway Department. A copy of this opinion and the General Declaration executed by the State Highway Commissioner are attached.

On the basis of the Attorney General's opinion and General Declaration, we were obliged to certify Southfield Road between the Industrial Expressway and Northwestern Highway as a part of the State Trunkline system, for the purpose of determining the Equivalent Municipal Trunkline Mileage in the cities of Detroit, Dearborn and Allen Park. The effective date of this certification is March 31, 1959, and I advised Mr. Gunderson that the Department would assume maintenance over that portion of Southfield Road as of April 1, 1959.

Mr. Sylvester A. Noetzel, May 8, 1959.

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We hope this clarifies the status of Southfield Road between the limits outlined in the General Declaration and questioned in your letter.

Very truly yours,

Howard E. Hill

Howard E. Hill
Managing Director

HEH:PJM:vw
Enclosures

cc: J. E. Meyer
F. E. Tripp
C. A. Weber
H. J. Rathfoot
C. H. Brown
P. J. Marek

K/W/2-1

MEMORANDUM April 17, 1959

TO: Mr. Howard E. Hill, Managing Director, Highway Department

FROM: Samuel D. Frane, Assistant Attorney General

Re: Transfer of Southfield - City of Detroit - to State Trunkline Status
Our file reference 59-46

Your memorandum of March 2, 1959 asks "Whether it is necessary for us to take Southfield (Expressway), in the City of Detroit, into the trunkline system prior to the time construction of the new highway is completed."

Your memorandum states that:

- (a) "The City of Detroit will be credited with and receive approximately \$95,000 per year as equivalent municipal trunkline mileage for the ten miles within the City when this section of highway is declared (designated) a trunkline."
- (b) "The maintenance of this highway will revert to the State upon declaration (designation) of Southfield as a trunkline highway . . . It is estimated that the ten miles will cost the Highway Department approximately \$50,000 per year to maintain."

The question posed is whether, pursuant to Section 13, subdivision "a" as amended by Act 262, Public Acts of 1957, during the period prior to completion of the Southfield Expressway within the City of Detroit, the sum of \$95,000 per year shall be paid to the City of Detroit out of the Motor Vehicle Fund or whether, during said period it shall be divided among eligible incorporated cities of over 30,000 population, including the City of Detroit; and whether, during the same period, the cost of maintaining the ten miles of said expressway within the City of Detroit (the total sum of \$50,000 per year) shall fall upon the State Highway Department or continue to fall upon Wayne County, (Southfield Expressway was a County Road).

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On May 20, 1958 the State Highway Commissioner, the Board of Wayne County Road Commissioners and the City of Detroit entered into an agreement designated as "Tri-Party" Agreement, providing, among other things, for the reconstruction of said highway as a limited access highway, designation of the project as a state trunkline highway and consent of City and County to such designation.

At the time the Tri-Party Agreement was entered into the exact location of the proposed trunkline highways had not been determined. It also provided that the exact route of the respective trunkline highways was to be determined by a sub-committee of the Administrative Committee and that if the said decision was not rejected by any of the three parties within twenty-one (21) days after said decision had been made, such route would become final.

Prior to May 20, 1958 in conformity with said provisions consent was given by City and County to designation of pre-existing Southfield Expressway from Ford Road in the City of Detroit north to Eight Mile Road as a state trunkline highway. On May 20, 1958 the State Administrative Board gave its approval to such designation. On July 7, 1958 the Federal Bureau of Public Roads approved Southfield Expressway to Federal Aid Primary Route No. 100. In November 1958 the State Highway Commissioner designated the route as a trunkline highway.

It was assumed that the provisions of Section 1, Act 12, 1925, being C. L. § 250.111 control and that the approval of the State Highway Advisory Board was not necessary. Such latter approval was never obtained. Section 1 reads as follows:

"The state highway commissioner, subject to the approval of the advisory board to the state highway commissioner and state administrative board, is hereby authorized and directed to lay out and establish not to exceed 500 miles of additional trunk line highways on such routes as are best adapted for serving the demands of public travel in various sections of the state. In addition, 'all roads that have been improved as federal aid projects, and all roads that have been, or that may hereafter be, approved for federal aid, shall be trunk line highways and subject to all provisions of law relating thereto.'" (Emphasis supplied)

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The necessity for such designation derives from the language of Sec. 1 (4), Act 352, P. A. 1925, as follows:

" * * * Provided, however, That before any proceedings are taken under this act involving the taking of any property or property rights in any city or village for the changing, altering, opening, or widening of any street or highway, said street or highway shall be * * * designated as a state trunk line or federal aid highway * * * and the consent of the village or city council by resolution so to take over or designate said street or highway as a county road or state trunk line or federal aid highway shall be first obtained." (Emphasis supplied)

On February 3, 1959 the State Highway Commissioner, the Board of Wayne County Road Commissioners and the City of Detroit mutually cancelled the Tri-Party Agreement and in the same instrument contracted for the issuance and sale of \$100 Million in bonds. The Board and City confirmed their previous consent to trunkline designation, repeated the provisions of the Tri-Party Agreement relative to federal aid, and, in section 50, provided:

" * * * The PARTIES hereto further covenant and agree that they will each comply with all the requirements of this Contract, and of any authorized supplemental Contract, promptly at the times and in the manner herein or therein set forth, and will not suffer to be done any act which would in any way impair such bonds, the security therefor, or the prompt payment of principal and interest thereon." (Emphasis supplied)

I

From reading the underscored language of Sec. 1, Act 12, P. A. 1925 the question arises whether the legislature intended Federal approval of a route for Federal aid, automatically, to convert the said route into a state trunkline highway.

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The answer to this question is found in the language of Sec. 1, Act 12, P. A. 1925. After authorizing establishment of 500 miles of trunkline highways, which by pre-existing law, could only arise by designation of the state highway commissioner, the legislature provided that, IN ADDITION, highway projects approved for federal aid should become trunkline highways. In the context of said Sec. 1 it was clearly intended that such transformation into trunkline highways could only occur when approval for federal aid had been given, followed by acceptance of such aid by the state highway commissioner, evidenced by his designation as a trunkline highway.

In such context consent of the State Administrative Board and State Highway Advisory Board to designation of federally aided highways would constitute surplusage but designation by the state highway commissioner is clearly necessary in order to provide public record of conversion of a pre-existing route into a state trunkline highway. Varying circumstances could and do render necessary supplementation of the offer of federal aid by the commissioner's later designation. Events arising subsequent to making application for federal aid, and even after approval of same, may delay or render inadvisable acceptance of federal aid or immediate construction of the highway approved for federal aid.

From the foregoing it follows that Southfield Expressway became a state trunkline highway, not on July 7, 1958, when approval of federal aid was given but in November 1958 when designation was made by the state highway commissioner.

II

When Southfield Expressway became a state trunkline highway, the applicable provisions of Act 51, P. A. 1951 as amended by Act 262, P. A. 1957 became automatically effective. For example, Section 1 of that Act provides that:

"The state trunkline system of this state shall consist of all roads, streets, and highways either located within or outside the limits of incorporated cities or villages now or hereafter constituted state trunkline highways pursuant to the provisions of the statutes of this state."

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Another statutory provision thus automatically brought into play was Section 13, subdivision "a", of said Act which section provided for division of 15% of 70% of 18% of the Motor Vehicle Highway Fund to cities and incorporated villages of over 30,000 population in the state on the basis of "equivalent municipal trunkline mileage" certified by the state highway commissioner as of March 30 of each year after 1957.

Another automatic result was that, on its conversion to a state trunkline highway, the Southfield Expressway passed from the jurisdiction of Wayne County Road Commission into the exclusive jurisdiction of the State Highway Commissioner and as an incident the obligation of maintenance became that of the State Highway Commissioner.

1956 AGO, p. 74
New Products vs. State Highway Commissioner, 352 Mich. 73, 82

III

When a route or pre-existing highway becomes a state trunkline highway, whether by consent of City or County, with approval of the State Administrative Board and the Highway Advisory Board, and designation by the State Highway Commissioner, as is the more usual case, or by approval for Federal aid, pursuant to Act 12, P.A. 1925, as is the less usual case, the route or pre-existing highway suffers a change of legal status of a dramatic nature and with dramatic consequences. The interests of other governmental units have been affected and such changes in status must be recognized and respected by the State Highway Commissioner and by all other parties. Any other procedure would create confusion to say nothing of violating the law.

Consideration must also be given to the fact that on February 3, 1959 an agreement was entered into by County, City and State for the sale of \$100 Million of bonds the proceeds of which were intended to be expended for construction of Southfield Expressway and other projects described in the bond agreement. The said bonds have been sold and are in the hands of the public.

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Paragraph 50 of the bond agreement provided that:

" * * * The PARTIES hereto further covenant and agree that they * * * will not suffer to be done any act which would in any way impair such bonds, the security therefor, or the prompt payment of principal and interest thereon."

The sale of said bonds and the cited provisions of the bond agreement require strict compliance with all the provisions of Act 51, P. A. 1951 as amended by Act 262, P. A. 1957, under Section 18d of which said bonds were issued, including compliance with Section 13 subdivision "a" of said act relating to certification of "equivalent municipal trunkline mileage."

If the effect of the designation as a state trunkline highway coupled with the provision of Section 13 subdivision "a" is too inflexible correction may be effected by amendment of Section 13 subdivision "a".

SDF:dcr