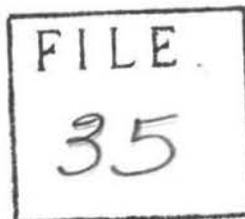


CITY AND AIRPORTS: West Plains may lease an airport under Section 15122, Revised Statutes 1939.

October 10, 1944

Honorable H. J. Griffin
Attorney at Law
West Plains, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion under date of October 5, 1944, which request reads as follows:

"Will you please give me your opinion on Section 15125 of Session Acts of 1943, with the following questions involved therein:

"The City of West Plains through its proper officers desires to enter into an easement, lease or use under said section for airport purposes. The City has in mind an easement, lease or use for the term of ten years, paying therefor the sum of one thousand dollars (\$1,000.00) per year, with an option to purchase at any time during said term at a stipulated sum. There is no question involved as to the required funds.

"Could the City legally execute this easement, lease or use under said Section 15125 of 1943 Session Acts under the above circumstances?

"This is a very important matter to the parties interested and all parties concerned are anxious to know about this at your earliest convenience. The owner of the real estate is insisting that this be settled at once. The City Council is very anxious to take this question up at its next regular meeting to be held Tuesday evening, October 10th. This is the subject the writer called your office about this afternoon."

You state there is no question involved as to the required funds, so we are assuming that the raising of money for this proposed lease will not violate any limitations prescribed in the statutes or constitution of this State.

Section 15125, Laws of 1943, page 326, repealed this same section of the Revised Statutes 1939, and authorized any city to not only acquire, by purchase, property for an airport or landing field, or an addition thereto, but if necessary the city may now condemn such property and further prescribe the manner of such procedure.

Section 15125, Laws of 1943, further defines property, which was not defined in the Revised Statutes 1939. Property is now defined as any real and personal property whether publicly or privately owned, or any easement or use therein. Section 15125, Laws of 1943, further granted the additional authority to purchase or condemn publicly owned property. In defining property, by using the words "easement or use therein," we think the Legislature intended to include electric lines, telephone lines, water mains, roads, etc. Section 15125, Laws of 1943, page 326, is as follows:

"Any county, city or city under special charter shall have the power to acquire by purchase, property for an airport or landing field or addition thereto, and if unable to agree with the owners on the terms thereof, may acquire such property by condemnation in the manner provided by law under which such county or city is authorized to acquire real property for public purposes, or if there be no such law, then in the same manner as is now provided by law for the condemnation of property by any railroad corporation.

"The term 'property' as used in this section shall mean and include any real and personal property whether privately or publicly owned or any easement or use therein, including, but not by way of limitation, property owned by school districts, water districts, fire districts, road districts, sewer districts, drainage districts, levee districts, railroads, and property both real and personal owned by any other corporation and shall include churches, graveyards, graveyard associations, parks, private roads, bridges, culverts, pipe lines, water lines, water reservoirs or storage tanks, canals, ditches, and levees, railroads or other rights of way, streetcar or traction lines and tracks,

telegraph, telephone and power lines, poles and conduits and including state roads or roads under the jurisdiction of the State Highway Commission. The purchase price or the award of compensation or damages for the taking of any real or personal property or any easement or use therein acquired for an airport or a landing field or any addition thereto may be paid for wholly or in part from the proceeds of the sale of bonds of such county, city or city under special charter as the Governmental or legislative body of such county, city or city under special charter shall determine, subject, however, to the adoption of a proposition therefor at any election to be held in such county, city or city under special charter for such purpose; also to permit said municipality or municipalities mentioned in this section to issue revenue bonds for said above mentioned purpose on authority of the governing body of said municipality; Provided, that no airport or landing field shall be established or located in any county, city or city under special charter in violation of any plan or master airport plan or zoning regulation restricting the location of an airport or landing field adopted by the planning commission of any such county, city or city under special charter."

When a city only contemplates leasing an airport, such authority to lease airports or landing fields is derived from Section 15122, Revised Statutes 1939, which reads as follows:

"The local legislative body of any city, including cities under special charter, village or town in this state is hereby authorized to acquire, by purchase or gift, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate, in whole or in part, alone or jointly or concurrently with others, airports or landing fields for the use of airplanes and other aircraft either within or without the limits of such cities, villages, or town, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such city, village, or town."

It is a well established principle of law that where a statute is plain and unambiguous there is no room for construction, and technical rules for interpretation should be rejected.

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In State v. Shain, 106 S.W. (2d) 898, l.c. 899, 900, the court said:

" * * * The cardinal rule to be followed in the construction of statutes is to arrive at the legislative intent. 'Rules for the interpretation of statutes are only intended to aid in ascertaining the legislative intent, "and not for the purpose of controlling the intention or of confining the operation of the statute within narrower limits than was intended by the lawmaker.'" Sutherland on Statutory Const., Sec. 279. If the intention is clearly expressed, and the language used is without ambiguity, all technical rules of interpretation should be rejected.'"

Therefore, it is the opinion of this department that Section 15125, Laws of Missouri 1943, merely gives cities additional authority for obtaining airports, landing fields, easements and uses; that it did not in any manner repeal Section 15122, Revised Statutes 1939; that under Section 15122, Revised Statutes 1939, any city is specifically authorized to lease airports or landing fields. Therefore, in view of Section 15122, supra, it is the opinion of this department that the city of West Plains may lease an airport as proposed in your request.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

VANE C. THURLO
Acting Attorney General

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