

MEMORIAL AIRPORTS: One municipality only may establish a memorial airport under House Bill #192. Two or more municipalities cannot combine for such purpose. An appraisal or valuation of real estate previously acquired cannot be used by a municipality as a basis for appropriated funds for matching the \$10,000 State aid. The Governor and the Missouri State Division of Resources and Development would have the right to follow matching State funds for memorial airports to see that they are lawfully expended.

December 9, 1946

Missouri State Division of
Resources and Development
State Office Building
Jefferson City, Missouri

Attention: Honorable Hugh Denney

Gentlemen:

This will acknowledge your recent request to this Department directed to the attention of Mr. Will F. Berry, Jr., requesting an opinion concerning the procedure to establish local airports under the terms of C.S. for House Bill #192. Since your letter came to Mr. Berry the attention of this Department to the legal matters of the Missouri State Division of Resources and Development has been assigned to the writer.

The contents of your letter follow:

"In connection with the approval of memorial airports for state aid under Senate Committee Substitute for House Bill 192, the question has arisen as to whether or not a city and a county, or two or more cities may combine for purposes of complying with the Memorial Airport Act. I would like to have your opinion:

"1. As to the legality of these political subdivisions of government combining to the extent of \$10,000 on a single project approved by the Division of Resources and Development as a desirable airport project for the two or more political subdivisions.

"2. The legality of two or more political subdivisions combining to

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the extent of \$10,000 each of state matching funds on a single project approved by the Division of Resources and Development as a desirable airport project for the two or more political subdivisions.

"Further, I would like to have your opinion as to the legality of allowing an appraised value of real estate previously acquired by a political subdivision as the basis for local funds for matching the \$10,000 state aid. A number of Missouri communities, such as Maryville, Eldon, Bolivar, Carthage, and Columbia, have expended considerably more than \$10,000 of local funds in acquiring lands and starting an airport project. It would be unfortunate, indeed, if these progressive communities were to be denied the benefits of this Act and less progressive communities get all the benefits.

"Also, I would like to have your opinion as to whom is responsible for the verification of the expenditure of state funds for the approved projects. As I understand it, the funds have been made available to the Governor's Office for release upon the approval of this Division. Does that mean that responsibility for following up on the project to determine the proper expenditure of state funds falls upon the Governor's Office, the Budget Director, or whom?"

Your request for the opinion is divided into four different subjects which appear on the face of the letter to be as follows:

1) Whether the political subdivisions or municipal corporations mentioned in said House Bill #192 must proceed singly or whether they may combine into two or more enterprises, and proceed jointly in order to obtain the financial benefits prescribed in said House Bill #192.

2) Whether two or more political subdivisions combining, if they should combine, and appropriate \$10,000.

each of their own funds on a single project for the purchase and operation of an airport would be entitled to have allocated to them jointly, matching funds from the State equal to the appropriation of each one as a single unit.

3) Whether it would be lawful to use the appraised value of real estate previously acquired by a municipality as a basis for securing the matching funds from the State.

4) Upon whom the responsibility rests for the verification of the expenditure of State funds for approved projects under said House Bill #192, whether the Governor's office, the Budget Director, or whom?

Committee Substitute for House Bill #192 is as follows:

"AN ACT

"To provide airfields as memorials to those who died while serving in the Armed Forces of the United States in the war against Germany, Japan and their allies; to promote the advancement of aviation; to authorize Municipal Assemblies and County Courts to appropriate funds therefor; to provide that the State of Missouri shall grant an equal amount not exceeding ten thousand dollars (\$10,000.00) to such city, town or county; to authorize cities, towns or counties to accept State, Federal or other funds; to provide free technical advice from the Department of Resources and Development; to provide for the approval of the Department of Resources and Development.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. In appreciation of the services of our gallant Armed Forces

and to perpetuate the memory of their heroic achievements in the war against Germany, Japan and their Allies and to promote the advancement of aviation in the name of those who gave their lives as members of our gallant Armed Forces in the war against the aforesaid enemies, cities, towns and counties are hereby authorized to purchase sites and construct and operate air fields in such counties or near such cities and towns and to receive free technical advice from the Department of Resources and Development. Provided further that when any city, town or county in Missouri shall certify to the Governor that it has appropriated a specific sum for the aforesaid purpose and is ready to proceed with the purchase or construction of such air fields a like sum not exceeding ten thousand dollars (\$10,000.00) shall be allotted to said city, town or county from the appropriation hereinafter made for such purpose but said sum shall be released to such city, town or county only after the Department of Resources and Development has certified to the Governor that in their judgment the air field in question is desirable and in the interest of the development of aviation and that the funds proposed are adequate to complete the project; and provided further that cities, towns or counties are hereby authorized to receive Federal grants in addition to all other grants or funds made available for such purpose under this act."

The first two queries you submit in paragraphs one and two are so closely interwoven in the matter of whether a political subdivision shall proceed singly in the premises or may join with one or more other political subdivisions in proceeding under said House Bill #192 that we believe it will be intelligible and clear to answer them both in one reply as if there were only one question.

We observe in the beginning that the title to the Bill as well as the subject matter of the Bill uses the disjunctive "or" in describing the several municipal subdivisions entitled to purchase, establish and maintain such airports. The language of the Bill and the punctuation indicate very clearly, we think, that the intention of the Legislature was that any one of the municipalities named in the title and in the body of the Bill may proceed to appropriate funds and receive matching sums from the State, purchase sites, construct and operate air fields, but there is no word in any part of the Bill that would justify the idea that the Legislature intended that two or more of such municipalities could combine to carry out any such project.

The word "or" may only be converted into the conjunctive "and" when it is strictly and absolutely necessary to arrive at the intention of the Legislature. 46 C.J. page 1127, states that rule as follows:

"When used to connect a series of words in the permission or the prohibition of a given act, 'or' may be construed to mean 'and' when necessary to make the statute express the true legislative intent, but only when so necessary; * * *".

The Supreme Court of this State had before it many years ago, the case of Drainage District vs. Bates County, 216 S.W. 949. That was a case where there was a controversy over the question of whether the statute relating to drainage districts required all lands or public roads to be included in a drainage district, and subject to assessment, and whether the drainage ditch in the district had to be sufficient to drain all the lots, lands, public and corporate roads and railroads, or whether it had to be sufficient only to drain any lands, or any roads, public or corporate, or any railroads, if necessary. The Court held that the statute was in the disjunctive and meant any lands that might require drainage through any ditch might be brought into the district and become subject to assessment for benefits. The Court on the point, l.c. 953, said:

"Nor do we agree with respondent's contention that no land or public

roads can be included in the drainage district and subjected to assessment or apportionment for benefits, unless it is necessary to drain such lands or roads.

"This district was formed upon the petition of one or more landowners to the county court under article 4 of chapter 41, R.S. 1909, relating to drains and levees. Section 5578 provides:

- "The county court * * * shall have power, * * * when the same shall be conducive to the public health, convenience or welfare, or where the same will be of public utility or benefit, to cause to be constructed * * * any ditch * * * within said county, when the same is necessary to drain any lots, lands, public or corporate roads, or railroads."

"This does not require that the ditch must be necessary to drain all the lots, lands, public and corporate roads and railroads. It is sufficient if it is necessary to drain any lands, or any roads, public or corporate, or any railroads. The law has put the different kinds of property in the district, which it may be necessary to drain, asunder in the disjunctive, and we are not authorized to join them together in the conjunctive.* * *".

There is no line or word in said House Bill #192, as we view it, authorizing two or more municipalities, each procuring and appropriating a separate \$10,000, then add such separate sums together making \$20,000 or more perhaps, according to the number so joining, and then procure a matching sum from the State. While House Bill #192 itself is more or less obscure in the method of procedure to accomplish the objective of the Bill we think we have ample authority in the new Constitution to clarify the proposition.

Section 27, Article VI of the new Constitution of 1945, is as follows:

"Sec. 27. Revenue Bonds for Municipally Owned Utilities.-- Any city or incorporated town or village in this state, by vote of four-sevenths of the qualified electors thereof voting thereon, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any revenue producing water, gas or electric light works, heating or power plants, or airports, to be owned exclusively by the municipality, the cost of operation and maintenance and the principal and interest of the bonds to be payable solely from the revenues derived by the municipality from the operation of such utility."

It will be noted that said Section 27, supra, uses the words "to be owned exclusively by the municipality". We believe the Legislature had said Section 27 in mind in passing said Bill, and intended only that any one of the municipalities mentioned in said House Bill #192 could proceed to procure its funds and ask for matching funds from the State to purchase, establish and maintain airports, and that it was not the intention of the Legislature to allow two or more of such municipalities to combine for such purposes.

That inevitably brings up the question of the title to the real estate purchased or condemned under the right of eminent domain. When the framers of the Constitution included in said Section 27 of said Article VI the words "to be owned exclusively by the municipality" it was forever put out of the power of the Legislature to allow more than one municipality to exercise a joint sovereignty over such real estate. This, for the reason that in most, if not all, cases it will be necessary for any municipality, proceeding under said House Bill #192, to vote bonds to obtain funds for the purchase of real estate for an airport. The question of levying taxes for the payment of the bonds and interest would be one of constant confusion, dispute and possible litigation if two municipalities were involved. Therefore, the framers of the Constitution made it absolute that the

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title to such real estate should vest in only one municipality.

We believe this will answer your questions in paragraphs one and two of your letter.

Answering question three, whether a former appraisal may be used in the process of the purchase of real estate for the purpose of a memorial airport, we assume that by the employment of the following language in paragraph 4 (unnumbered) which is as follows:

"Further, I would like to have your opinion as to the legality of allowing an appraised value of real estate previously acquired by a political subdivision as the basis for local funds for matching the \$10,000 state aid. A number of Missouri communities, such as Maryville, Eldon, Bolivar, Carthage, and Columbia, have expended considerably more than \$10,000 of local funds in acquiring lands and starting an airport project. It would be unfortunate, indeed, if these progressive communities were to be denied the benefits of this Act and less progressive communities get all the benefits."

you mean municipalities which have already acquired lands for memorial airports. House Bill #192 would, we think, scarcely permit any other construction of the effect of the Bill on your part.

If, as we take it you do refer to past acquisition of such lands, it is our belief that the value of such land, whatever may have been paid for them is not to be taken as the appraised, or actual value, to obtain the matching sum from the State provided for in said House Bill #192. We think it quite plain that the language of said Bill, and the intention of the Legislature in employing it, look only to the future as prospective enterprises in the establishment of memorial airports by municipalities.

A well established rule of construction is that a statute must be held to operate prospectively only, unless

the intent of the Legislature is clearly expressed in the language of a statute, that it shall act introspectively, or that the language of the statute admits of no other construction by the Courts.

The Supreme Court of Missouri in one of many other like decisions by it, in the case of Lucas vs. Murphy, et al., 156 S.W. (2d) 686, l.c. 690, in announcing this rule said:

"* * * Regardless of the type of legislation under consideration, 'In the construction of statutes the uniform rule is that they must be held to operate prospectively only, unless the intent is clearly expressed that they shall act retrospectively, or the language of the statute admits of no other construction.' * * *".

The Legislature in the expression of its intention in said House Bill undoubtedly had in mind Section 13 of Article I of the Constitution of this State of 1945, which is as follows:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

Keeping the above quoted Section of our Constitution in mind, and observing again the full terms of said House Bill #192, we see that the terms and effect of said Bill are prospective. We believe that, under such authorities, and the proper rule of construction of the terms of said paragraph (unnumbered) 4, it would not be lawful to allow an appraised value of real estate previously acquired by a political subdivision as the basis for local funds for matching the \$10,000 each of State aid. We may conceive, however, that if real estate has been acquired and a memorial airport constructed by a municipality in the past, and the municipality involved would desire to expand and broaden its facilities as an airport, and would thence appropriate an additional sum of \$10,000 for such expansion,

and additional construction, then it would come within the prospective terms of said House Bill #192. The idea of "construction" of an airport might be germane to "additional construction" in the terms of said Bill as well as to refer to the future initial construction of such airport.

Sections 26(b) and 26(c) of Article VI of the present Constitution are as follows:

"Any county, city, incorporated town or village, school district or other political corporation or subdivision of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per centum of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes."

"Any county or city, by vote of two-thirds of the qualified electors thereof voting thereon, may incur an additional indebtedness for county or city purposes not to exceed five per centum of the taxable tangible property shown as provided in section 26(b)."

Said House Bill #192 itself includes counties in the naming of municipalities which may acquire memorial airports. Therefore, counties would come within the terms of said Section 27, Article VI, supra, of our present Constitution.

The succeeding procedure looking to the final establishment of a memorial airport would be governed by the statutes of this State in regard to a municipality voting for the creation of a debt and the issuance of bonds in payment therefor. This would include the passing of legislation by ordinance by the legislative body of any city, town or village. Such ordinances should, under proper legal guidance, provide for the safe and proper expenditure

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of the sums derived from the creation of an indebtedness for a memorial airport, including the appointment of committees, the requiring of reports and auditing of the expenditure of public monies, both appropriated and matching sums derived from the State, in any such project, Such necessary ordinance or ordinances should, and no doubt would, be required to be passed and approved in conformity to all laws pertaining thereto, under the direction, observation and approval of prospective purchasers of bonds to be issued in payment of any indebtedness created by such municipality.

None of such steps as are necessary to be taken in such proceedings are provided in said House Bill #192. This Bill provides only for the acquisition and operation of such memorial airports. The proceedings to acquire title to such real estate as may be needed, its appraisal and the payment therefor, have been as best we may, indicated hereinabove. We are not able to anticipate and outline, perhaps, all of the necessary steps and measures to be taken in any case under said House Bill #192. Most of such steps would have to be taken and be guided by the statutes of this State, and ordinances of any city, town or village involved.

We believe this will answer your query number 3.

Proceeding now to the fourth and last question you submit as to whom is responsible for the verification of the use of the funds for such airport projects, and whether the Governor's office, the Budget Director, or your Department shall exercise such responsibility and follow the project to its conclusion to determine if the funds supplied have been properly spent, we find that in Section 22, Article IV of the new Constitution, under the title of "Revenue", the last two sentences of said Section are as follow:

"* ** The division of the budget and comptroller shall assist the director of revenue in preparing estimates and information concerning receipts and expenditures of all state agencies as required by the governor and general assembly. The comptroller shall be director of the budget, and shall pre-approve all claims and accounts and

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certify them to the state auditor for payment."

Apparently, that part of said Section 22 of Article IV of the new Constitution requires the pre-approval of claims and accounts against the State by the Budget Director. Here, however, we have the matter of an appropriation for a definite purpose as is provided for in said House Bill #192. It is not an account, neither is it a claim against the State. House Bill #192 is silent upon this question also. But we are of the belief that the Budget Director has no further duty to perform in such matters after the matching sum has been appropriated and placed in the hands of the Governor to be used for an airport project to be released upon the approval of the Division of the Missouri State Division of Resources and Development. It would appear, however, that the Governor's Office and the Missouri State Division of Resources and Development would have the right, and would be charged with the duty of performing it, to exercise a correlative check upon the disposition of the matching funds supplied by the State for any airport project. This, we believe, could be accomplished by requiring certified copies of ordinances and steps taken to purchase, or condemn by eminent domain, real estate for such purposes, copies of appraisalment of such real estate, vouchers for all sums paid out, and in fact, a complete abstract of all proceedings from the beginning to the end of any such project.

No doubt the ordinances passed by a municipality would cover these propositions so that it should not be a very difficult matter for the Governor's office and the Missouri State Division of Resources and Development to keep a complete check on the proceedings, expenditures, and outcome of such projects.

CONCLUSION

It is, therefore, the opinion of this Department considering the foregoing, that:

- 1) A separate and single municipality only may proceed to appropriate funds to establish a memorial

airport, under C.S.H.B. #192, and receive a matching sum from the State.

2) Two or more municipalities may not combine to establish a single airport.

3) That the terms of said House Bill #192 are prospective and not retrospective. That an appraised value of real estate previously acquired by a political subdivision of this State as a basis for local funds for matching the \$10,000 State aid may not be used.

4) That the Budget Director would not have any duty to perform after the matching sum provided for in said House Bill #192 has been made available to the Governor's office for release upon the approval of the Missouri State Division of Resources and Development. However, the Governor and the Missouri State Division of Resources and Development, we think, would have the lawful right to follow such funds and require proof by means of vouchers and other data showing that such funds have been properly expended.

Respectfully submitted,

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APPROVED:

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