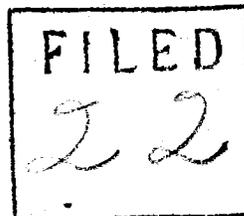


AIRPORTS: ) Statutes constitute waiver of State's  
SURPLUS GOVERNMENT PROPERTY: ) prior claim to surplus government  
 ) airports.



May 27, 1947

6/3

Mr. Hugh Denney, Director  
Department of Resources and Development  
Jefferson City, Missouri

Dear Mr. Denney:

This is in reply to your letter of December 13, 1946, requesting an opinion from this department, which reads as follows:

"I would like to have the opinion of your office as to who in the State is responsible for releasing the State's prior claim to surplus Government airports.

"Recently, letters submitted from mayors of Missouri communities to the Governor asking for the State to waive its prior claim to Government airports in their vicinity have been referred to this office. Acting on this basis, we have in each case written a letter indicating the State was not interested in taking over such surplus airport property. There is, however, in my mind a doubt as to the legal right of this agency to speak for the State in this matter, and for that reason I would like to have your opinion."

The statutes relating to the establishment and operation of airports are Sections 15122 through 15127.1, Mo. R.S.A. Upon a reading of the above statutes we find no indication of an interest in or prior claim to surplus government airports by the state as such. The establishment and operation

of airports have been expressly delegated to the various cities, towns and counties of the state. We believe that this is a declaration of the policy of the state to vest this authority solely in said subdivisions.

The Surplus Property Act of 1944, Public Law 457, 78th Congress, 2d Session, Chap. 479, H. R. 5125, provides as follows with respect to airports, Sec. 13 (c):

"(c) No airport and no harbor or port terminal, including necessary operating equipment, shall be otherwise disposed of until it has first been offered, under regulations to be prescribed by the Board, for sale or lease to the State, political subdivision thereof, and any municipality, in which it is situated, and to all municipalities in the vicinity thereof."

The 63rd General Assembly, in Section 2 of House Bill 364, Laws of Missouri, 1945, page 1269, recognized the Surplus Property Act of 1944 as follows:

"Any municipality or political subdivision of this state is hereby authorized and empowered to obtain United States government property under the provisions of the 'Surplus Property Act of 1944, Public Law 457, 78th Congress, Chapter 479, Second Session, H. R. 5125,' and any amendments thereto, in the manner and according to the rules, regulations and conditions required by such Act, or any amendments thereto, irrespective of any provisions otherwise imposed by law or municipal charter or ordinance requiring certain bidding and purchasing procedures."

Under the provision of the above statute all municipalities and political subdivisions of the state are authorized to obtain United States government property. It is clear from said statute that no priority was retained by the state with respect to surplus government airports.

It is a general rule of law that the state may waive the benefits of a priority by enacting laws which evidence this intent. There is no need for an express waiver. In the case of *In re Holland Banking Co.*, 281 S.W. 702, the court said at page 705:

"There is a wealth of cases cited by appellant showing that the common-law priority of the state for debts due to it has been recognized in most of the states. There seems to be no question about such general recognition. It is unnecessary to discuss the cases. Such cases will be appended to this opinion by our reporter.

"Notwithstanding the existence upon its statute books of the priority law applicable by its terms to every conceivable debt due to the state, the state may waive the benefits of such priority law by enacting other laws which evidence such intent. \* \* \*"

Any prior claim to surplus government airports which might be said to exist in favor of the state as against the various municipalities and political subdivisions under the Surplus Property Act of 1944, can be considered waived by the policy of the state which is declared in the statutes delegating to said subdivisions the power and authority to establish and operate airports. No waiver on the part of any state agency is required as the statutes constitute such waiver.

#### Conclusion

Therefore, it is the opinion of this department that no waiver of the state's prior claim to surplus government airports by a state agency is necessary, as the statutes delegating to the municipalities and political subdivisions of the

Mr. Hugh Denney, Director

-4-

state the power and authority to establish and operate airports, constitute such waiver.

Respectfully submitted,

DAVID DONNELLY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

DD:EG