

MUNICIPALITIES: When state aid is given a municipality to acquire a  
AIRFIELDS: site, construct and place its memorial airfield in  
OPERATION: operation under Section 305.230 RSMo 1949, said  
DISPOSITION: municipality has no obligation to State of Missouri  
to continue operation of airfield for any definite  
period of time, but may dispose of same. Section  
305.230 imposes no duty on municipality to reimburse  
state for prior grant of aid out of proceeds of air-  
field sale.

February 1, 1960



Honorable James D. Idol, Director  
Missouri Division of Resources and  
Development  
Jefferson Building  
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion, which request reads:

"The Memorial Airport Act, Section 305.230, Revised Statutes of Missouri, 1949, was enacted to give state aid in the sum of \$10,000 matching funds to cities in the construction of airfields. Due to changing conditions, establishment of new airfields, or acceptance by cities of abandoned military fields, some cities are finding it to their advantage to abandon airfields constructed through these matching state aid funds.

"We are in need of an opinion from your office on the following questions. Under the Memorial Airport Act, does a municipality have any obligation to the State of Missouri to continue operation of the airport for any definite period of time? Does the municipality have the right to dispose of the property? If so, must the State be reimbursed for the money advanced?"

Section 305.230, RSMo 1949, authorizes cities, towns and counties to purchase sites, construct and operate memorial airfields in honor of the veterans of the war against Germany, Japan and their allies. Said section reads as follows:

"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

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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 airfields in such counties or near such cities and towns and to receive free technical advice from the division 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 airfields a like sum not exceeding ten thousand dollars shall be allotted to said city, town or county from the appropriation herein made for such purpose but said sum shall be released to such city, town or county only after the division of resources and development has certified to the governor that in their judgment the airfield 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 section."

From the factual situation involving the present request for a legal opinion, it is assumed that a municipality which has substantially complied with the provisions of Section 305.230, supra, has been granted state aid in an amount sufficient to enable it to acquire real estate upon which to construct an airfield and that the site has been acquired, the airfield constructed thereon, and it has finally been placed in operation by the municipality. That after the airfield has been in operation for some undisclosed period of time the municipality desires to dispose of its airfield. The first inquiry regarding such factual situation reads:

"Under the Memorial Airport Act, does a municipality have any obligation to the State of Missouri to continue operation of the airport for any definite period of time?"

Our belief that no particular period of operation is required before the airfield may be disposed of is based upon the fact that the

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section contains no provisions that the airfield shall be operated for any definite period of time before it can be abandoned or otherwise disposed of, or that it never can be abandoned or disposed of under any circumstances. Since the lawmakers have not inserted any such provisions in the statute, we can only assume they elected not to do so and, therefore, we cannot read provisions into it which are not there.

A municipality which has received a state grant of aid is not required for that reason to operate its airfield for any particular length of time but rather the grant is an outright gift with no conditions or strings attached.

Therefore, in view of the foregoing, and in answer to the first inquiry, it is our thought that under the provisions of Section 305.230, supra, a municipality which has received a state grant of aid for the purchase of a site, construction and operation of a memorial airfield on said site, has no obligation to the State of Missouri to continue operation of the airfield for any definite period of time.

The second inquiry asks if the municipality has the right to dispose of the (airfield) property. In the case of Behnke v. City of Moberly, 243 S.W. 2d 549, it was held by the Kansas City Court of Appeals that the ownership and maintenance of an airport by a city was a municipal or proprietary function. At l.c. 553, the court said:

"[4] It was also stated in Annotation, 138 A.L.R. 126: 'The weight of authority supports the view that in the absence of a statute indicating an intention to exempt municipalities from liability in such cases, the maintenance or operation of an airport by a municipal corporation is the exercise of a proprietary function, and that the municipality may be liable for torts in connection therewith.' See, also, Annotation, 83 A.L.R. 333, 351. Under the record before us and in the absence of statute to the contrary, we conclude that the ownership and maintenance of the airport by the City of Moberly was a municipal or proprietary function and not a governmental one."

It is held in Section 962 C.J.S Vol. 63, page 510 as follows:

"\* \* \*On the other hand, a municipal corporation may, as a general rule, alienate without legislative sanction property which it holds in its private or proprietary capacity and property acquired and held

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for general municipal purposes is subject to its discretionary power of use and disposal if not needed for a municipal purpose. \* \* \* \*"

In view of the fact a municipality owns and operates its memorial airfield in its proprietary capacity, it is our thought that it has the legal right to dispose of its airfield property.

In our discussion of the first inquiry it was pointed out that state aid given a municipality for the purpose of enabling the municipality to acquire a site, construct, complete and operate its memorial airfield thereon, under provisions of Section 305.230, supra, was an outright grant of aid with no conditions or strings attached, consequently, in the absence of statutory provisions to the contrary, when a municipality sells its memorial airfield, the municipality owes no duty to the State of Missouri to reimburse it for a prior grant of aid out of the proceeds of such sale.

#### CONCLUSION

Therefore, it is the opinion of this department that when the State of Missouri makes a grant of aid for the purposes of enabling a municipality to acquire a site, construct and place its memorial airfield in operation, under provisions of Section 305.230 RSMo 1949, said municipality has no obligation to the State of Missouri to continue operation of such airfield for any definite period of time, but such municipality may dispose of its memorial airfield property. In the event of a sale of the airfield property, Section 305.230, RSMo 1949, does not impose the duty upon the municipality to reimburse the State of Missouri for a prior grant of aid from the proceeds of such sale.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul N. Chitwood.

Yours very truly,

John M. Dalton  
Attorney General

PHG:cmw