

AIRPORTS:
CITIES OF THIRD CLASS:
CITIES OF THIRD CLASS WITH
CITY MANAGER FORM OF GOVERNMENT:
CITY MANAGER:
CITY COUNCIL:

The city council of a city of the third class with city manager form of government has authority to create an airport board to maintain and operate a municipal airport.

November 6, 1961



Honorable Herman G. Kidd
State Representative
Randolph County
Jacksonville, Missouri

Dear Mr. Kidd:

This will acknowledge your request for an opinion upon the following question:

"Does a city council, of a city of the third class with city manager form of government, have the authority to create an airport board to operate a municipal airport?"

Section 305.170, RSMo 1959, provides in part, as follows:

"The local legislative body of any city . . . is hereby authorized to acquire, by purchase or gift, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate . . . airports or landing fields for the use of airplanes and other aircraft . . ."

Section 305.210, RSMo 1959, provides in part:

"The local legislative body of a city . . . which has established an airport or a landing field and acquired, leased, or set apart real property for such purpose may construct, . . . maintain, and operate the same, or may vest jurisdiction for the construction, improvement, equipment, maintenance, and operation thereof, in any suitable officer, board or body of such city, . . ."

or may by franchise or contract authorize others, in whole or in part, to construct, equip, maintain, and operate the same . . . The local legislative body of a city . . . may adopt regulations and establish fees or charges for the use of such airport or landing field."

Section 305.220, RSMo 1959, provides that the local authorities of the city to which the foregoing sections are applicable, having power to appropriate money therein, may annually appropriate a sum sufficient to carry out the provisions of said sections.

The foregoing statute enacted in 1929, applicable generally to all cities, contains no exceptions in its grant of express authority to the legislative body of a city which has established an airport to vest jurisdiction for the operation and maintenance thereof in any suitable officer, board or body of such city. The discretion to determine which officer, board or body is suitable is left to the local legislative body. Hence, if such body determined that an airport board was suitable for the purpose, the provisions of Section 305.210 would authorize the local legislative body of any city to create such a board and confer jurisdiction upon it over the maintenance and operation of the airport. An opinion of this office, dated January 29, 1946, to Mr. Hugh Denney, Director of the Department of Resources and Development, so held.

The specific question here presented is whether the fact that a city of the third class has a city manager form of government operates to foreclose the power of the legislative body to create such an airport board and to vest jurisdiction in said board for the purpose of maintaining and operating the airport. A careful study of the statutes applicable to cities of the third class generally as well as those applicable specially to cities of the third class having a city manager form of government fails to disclose any legislative intention to exclude cities of the third class with city manager form of government from the general provisions of Section 305.210 applicable to all other cities.

Sections 78.430 to 78.640, RSMo 1959, enacted in 1921, contain the provisions specially applicable to the city manager form of government of cities of the third class. Section 78.440 provides in part, "All laws governing any city under its former organization and not inconsistent with the provisions of Sections 78.430 and 78.460 shall apply to and govern such city after it adopts" the city manager form of government.

Section 78.460 provides for a council consisting of five members. Said section provides in part as follows:

"The terms of office of the mayor and councilmen or aldermen in such city, in office at the beginning of the terms of office of the council first elected under the provisions of Sections 78.430 to 78.640, including all boards and commissions, shall cease and determine and the terms of office of all other city officers, whether elective or appointive, in force in such city except as herein provided shall cease and determine as soon as the council shall by resolution declare; provided, however, the council may continue the board of public works, and the library, hospital and park boards for such time or times after organizing under sections 78.430 to 78.640, as the interests of the city in its judgment may require."

You have informed us that it is the above-quoted provisions which are relied on by those who believe that cities of the third class with city manager form of government may not create an airport board, the contention being that such cities have no authority or power to create any boards other than those specifically mentioned in Section 78.460. We do not believe that the statute is subject to such construction. In our view, the "cease and determine" reference to "all boards and commissions" pertains to the terms of office of those in office when the new form of government became effective, and not to the boards themselves. Such language is not apt if the intent were to prohibit the creation of new boards and commissions.

It is to be noted that the provision for "continuing" the board of public works and the library, hospital and park boards is permissive and not phrased in such a manner as to exclude the creation of any other board or commission than those specifically enumerated. It is further to be noted that the reference to such boards which are specifically enumerated states that the council may "continue" such boards, language which would imply the continuance of an existing board rather than the creation of a new one of such kind. The obvious intent of this statute was to permit the new council to continue both the existence and terms of membership of existing boards of public works, and of library, hospital and park boards, rather than to preclude the creation of such board or commission as the council thereafter might deem necessary or desirable as being in the interest of the city.

Paragraph 2 of Section 78.570, RSMo 1959, makes it the duty of the council to pass all ordinances "conducive to the welfare

of the city", and expressly authorizes the council to provide for all offices and positions in addition to those therein specified "which may become necessary for the proper carrying on of the work of the city." Thus, Section 78.570 leaves it to the discretion of the council to determine what offices and positions shall be created for the proper carrying on of the work of the city.

Section 78.570, RSMo 1959, provides in paragraph 1 that:

"Except as herein otherwise provided the council of any city organizing under sections 78.430 to 78.640, shall have all of the powers now or hereafter given to the council or to the mayor and council jointly, under the law by which such city adopting said sections was governed under its former organization; and shall have such power over and control of the administration of the city government as is provided in said sections."

Chapter 77, which relates to cities of the third class generally, contains no legislative expression which would exclude the applicability of the general airport law to such cities, and therefore Section 305.210 gives to the councils of such cities the power to create an airport board.

We find no provision in any statute which would bar the council of a city of the third class having the city manager form of government from creating a new board of any kind which it deems necessary or suitable. On the contrary, the council is expressly granted power to create all offices, which would include any board or commission, it deems desirable or necessary for the proper carrying on of the work of the city. Absent an express prohibition against the creation of an airport board by the council of such a city, it is our view, therefore, that Section 305.210 is applicable, and that under the provisions thereof the council of a city of the third class with city manager form of government is authorized to create an airport board having jurisdiction over the operation and maintenance of the municipal airport.

Conclusion

It is the opinion of this office that the city council of a city of the third class with city manager form of government has authority to create an airport board to maintain and operate a municipal airport.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Joseph Nessenfeld.

Yours very truly,

THOMAS F. EAGLETON
Attorney General