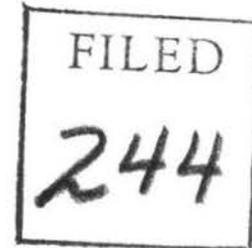


PARK BOARD:
AIRPORTS:
PARKS:

The State Park Board has implied power and authority to construct an airport on State Park Land.

OPINION NO. 244

July 6, 1967



Honorable Thomas A. Walsh
State Representative - 52nd District
City of St. Louis
Capitol Building
Jefferson City, Missouri

Dear Representative Walsh:

Recently you requested an opinion from this office as follows:

"Does the State Park Board have authority to construct an airport in a State Park."

It is our understanding that your inquiry concerns the authority of the State Park Board to construct an airport on the Lake Ozarks State Park.

Section 253.040 (1) RSMo. Supp. 1965, which sets forth the powers of the State Park Board provides as follows:

"1. The board is hereby authorized to accept or acquire by purchase, lease, donation, agreement or eminent domain, any lands, or rights in lands, sites, objects or facilities which in its opinion should be held, preserved, improved and maintained for park or parkway purposes. The board is authorized to improve, maintain, operate and regulate any such lands, sites, objects or facilities when such action would promote the park program and the general welfare. * * *"

Section 253.090 (1) RSMo. Supp. 1965, provides as follows:

"1. The board may construct, establish and operate suitable public services, privileges, conveniences and facilities on any land, site or object under its jurisdiction and control, and may charge and collect reasonable fees for the use of same. The board may charge reasonable fees for supplying services on park areas."

It is apparent from a reading of the foregoing statutes that they do not expressly authorize the construction, or operation of airports by the Park Board. The problem remains however, whether the construction of an airport is authorized by implication from the language used in the statutes.

It appears that if an airport is a facility which is properly included within the phrase "park purposes," the State Board does have under such Section the implied power to construct an airport in a State Park.

The courts have been rather liberal in determining the facilities that may be constructed and maintained within parks.

In the Case of City of Wichita vs. Clapp, 263 Pac. 12, a Case which held that an airport may be located in a municipal park, the Supreme Court of Kansas pointed out the wide range of facilities which have been held to be properly installed in parks stating, l.c. 13:

" * * * Under various authorities, the expression 'park purposes' has been held to include a race track, a tourist camp, bridle trails, boating, bathing, refreshment and lunch stands, providing bathing suits, towels and rooms for bathers, dressing pavilion, waiting room for street cars, refreshment and shelter room for the public, grand stand, ball games, baseball diamond, race meets, tennis courts, croquet grounds, children's playgrounds, hotels, restaurants, museums, art galleries, zoological and botanical gardens, conservatories, and many other recreational and educational facilities. * * * "

In the Case of Schmoldt vs. City of Oklahoma City, 291 Pac. 119, another case holding that an airport could be constructed as part of a park, the Supreme Court of Oklahoma said, l.c. 120:

"It is a matter of public knowledge that the erection of museums, art galleries, zoological and botanical gardens, conservatories, auditoriums, veterans' memorial halls, tennis courts, swimming pools, and the like in public parks, is common, and that their establishment has not been regarded as a diversion from legitimate park uses, but, on the contrary, such buildings have been generally recognized as ancillary to the complete enjoyment by the public of the property set apart for their benefit. * * *"

Concerning the question of the authority of a city to construct and maintain an airport as part of a city park, the Supreme Court of Kansas in the Case of City of Wichita vs. Clapp, supra said l.c. 15:

"The airway is essentially a free highway. As such it is open to all qualified aircraft. It is rightly, therefore, a federal undertaking to lay out and equip airways. The maintenance of airports, however, comes legitimately within the scope of the municipality in much the same manner as docks and harbor facilities for marine shipping. Airports are said to be as important to commerce as are terminals to railroads or harbors to navigation. Municipalities are studying local conditions and commercial organizations are pressing the importance of establishing terminal airports and of providing proper lighting for landing fields, and facilities such as hangars, garages, and repair shops. The possession of the airport by the modern city is essential if it desires opportunities for increased prosperity to be secured through air commerce. Lands susceptible of improvement, as parks, playgrounds, or general recreational purposes, may be utilized and developed around the modern airport so that the municipality may bring to itself not only the advantages of air commerce but afford its citizens those other inestimable advantages of improved beautification and health-giving opportunities. * * * In any event, we are of opinion that the airport or landing field is as properly included within park purposes as tourist camps and other named recreational objects, and that the board of park commissioners of Wichita is authorized and empowered, under the provisions of chapter 117 of the Laws of 1927, to proceed to purchase or condemn the lands in question for the purposes stated."

The Supreme Court of Oklahoma in the Case of Schmoldt vs. City of Oklahoma City, supra, said l.c. 121:

"Under the authorities from our sister states passing upon this question, it seems to be settled by the courts of last resort, in the states that have passed upon this proposition, that a city may use a portion of its park as an airport or aviation field.

* * * * *

"The only question for us to determine is whether or not the city of Oklahoma City has a right to use any portion of the funds, derived from the sale of the bonds voted to purchase or maintain a park, in constructing a landing field for airplanes, and as said before, if a city may use a portion of such funds for building sidewalks around, walks and driveways through, its park for the amusement of the public, we see no good reason for holding the city cannot expend a part of its funds in maintaining an airport for the pleasure and amusement of the public. * * * "

In the Case of Aquamsi Land Company vs. City of Cape Girardeau, 142 SW2d 332, the Supreme Court of Missouri upheld as proper construction by the City on municipal park property of baseball and football fields, a large arena adapted to public speaking, theatrical and musical entertainment, dances and indoor athletics, and containing a hall to accommodate banquets and exhibits and a track for horse racing because such facilities constituted proper park usage. In such Case the Court had the following to say concerning the Case of Wichita vs. Clapp, supra, l.c. 336:

" * * * Also City of Wichita v. Clapp, 125 Kan. 100, 263 P. 12, 63 A.L.R. 478, ruled the devotion of a reasonable portion of a public park to an aviation field for recreation and other attendant purposes, came within the legitimate and proper use for which public parks are created. The reasoning of these cases, which makes the outdoor recreative nature of the proposed use the determinative factor, would apply to a track and facilities for horse racing. * * *"

In the Aquamsi Case, the Court pointed out that a liberal construction of the use to which park property may be put, is adopted by the Courts when there is no restriction on the use of park land in the instrument granting such real property. The Court said l.c. 335:

" * * * Where the land has been dedicated to public use as a park by private grant with conditions annexed, the conditions must be complied with; but where purchased or condemned by the municipality greater liberality of construction is allowed.
* * * "

In the Case of School District of Kansas City vs. Kansas City, 382 SW2d 688, the Supreme Court held that the construction and operation of a public library on land owned in fee simple by Kansas City as part of its park system is a proper park usage.

The park land herein involved was obtained by the State of Missouri from the United States. The quitclaim deed conveying the property to the State of Missouri provides that such property can be used only for public park recreational and conservational purposes. However, the State has obtained from the United States Department of Interior a written declaration that the construction of an airport on the State Park Land quitclaimed by the United States to the State of Missouri, does not violate the conditions of the deed but is in compliance with such conditions.

The Kansas City Court of Appeals in the Case of Kennedy vs. City of Nevada, 281 SW 56; 222 Mo. App. 459, held that a municipal tourist camp in the City of Nevada was not a public park. However,

the tourist camp involved in that Case was for the exclusive use of transient non-residents, and the Court said that a park is a place open to the public and that exclusion of any class of a community from a facility is repugnant to the idea of a park. We do not believe that such Case is any authority for holding that the construction and maintenance of an airport, the use of which is not restricted to non-residents is not a park purpose.

CONCLUSION

It is the opinion of this office that the State Park Board has implied power and authority to construct an airport on State Park Land.

This opinion of which I hereby approve was prepared by my assistant, Mr. C. B. Burns, Jr.

Very truly yours,



NORMAN H. ANDERSON
Attorney General