

COUNTY COURTS: County courts may appropriate funds for purchase  
AIRPORTS: and maintenance of airport in the county.

April 20, 1943



Honorable Roger Hibbard  
Prosecuting Attorney  
Marion County  
Hannibal, Missouri

Dear Sir:

This will acknowledge receipt of your request for  
an official opinion, which request reads:

"The County Court of Marion County  
has requested the opinion of this  
office as to the right and power of  
the County Court to appropriate  
county funds for the purchase of land  
within the county to use as an air-  
port. No doubt your office has made  
a former ruling upon this matter which  
we do not have in file. If not, will  
you please give me the benefit of the  
opinion of your office in this con-  
nection."

We regret to advise that this Department has never  
ruled upon this matter. The Supreme Court has repeatedly  
held that county courts are courts of limited jurisdiction  
and have only such authority as is conferred by statute.  
In *J. H. Bayless et al. v. Justus Gibbs et al.*, 251 Mis-  
souri 492, l. c. 506, so often referred to we find the fol-  
lowing:

"This court, in numerous cases, has  
repeatedly held that the county courts  
of the respective counties of the State

are not the general agents of the counties of the State. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null and void."

Therefore, we must examine the statute to determine the extent of such authority of the county court to expend funds for such purpose.

Section 15123, R. S. Missouri 1939, authorizes the county court of any county after a hearing to acquire, by purchase or gift, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields.

"The county court of any county in this state is hereby authorized after a hearing to acquire, by purchase or gift, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate, in whole or in part, alone or jointly or concurrently with others, airports or landing fields for the use of airplanes and other aircraft within the limits of such counties, and may use for such purpose or purposes any property suitable therefor, that is now or may at any time hereafter be owned or controlled by such county."

Section 15124, R. S. Missouri 1939, further provides that counties shall have the right to acquire property for such purposes under the power of eminent domain.

"Any lands acquired, owned, controlled or occupied by such cities, villages, towns or counties for the purposes enumerated in sections 15122 and 15123 hereof shall and are hereby declared

to be acquired, owned, controlled, and occupied for a public purpose and as a matter of public necessity, and such cities, villages, towns, or counties shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public necessity."

Section 15125, R. S. Missouri 1939, provides that the purchase of such land or airport may be wholly or partly from the proceeds of the sale of bonds subject, however, to the adoption of a proposition at an election.

"Private property needed by a city, including cities under special charter, village, town, or county for an airport or landing field shall be acquired by purchase if such city, village, town or county is able to agree with the owners on the terms thereof and otherwise by condemnation, in the manner provided by the law under which such city, village, town or county is authorized to acquire real property for public purposes, other than street purposes, or, if there be no such law, in the manner provided for and subject to the provisions of the condemnation law. The purchase price or award for real property acquired for an airport or landing field may be paid for wholly or partly from the proceeds of the sale of bonds of such city, village, town, or county, as the local legislative body of such city, village, town or county shall determine, subject, however, to the adoption of a proposition therefor at an election to be held in such city, town, village or county for such purpose."

Section 15127, R. S. Missouri 1939, further authorizes the county court to appropriate annually funds to carry out the purpose of this article.

"The local authorities of a city, includ-

ing cities under special charter, village, town or county to which this article is applicable having power to appropriate money therein may annually appropriate a sum sufficient to carry out the provisions of this article."

In *Dysart v. City of St. Louis et al*, 11 S. W. (2) 1045, l. c. 1048-1049, the Supreme Court held that the acquisition, improvement and development of land for an airport with the necessary landing field, buildings, runways, etc., by the city constitutes public purpose as provided in Section 3, Article X of the Constitution of the State of Missouri.

"The question of whether the acquisition and control of a municipal airport is a public purpose within the purview of the constitutional principle heretofore adverted to is obviously a new one. The courts which have had occasion to consider it have, however, answered in the affirmative. *City of Wichita v. Clapp*, supra; *State ex rel City of Lincoln v. Johnson*, State Auditor (Neb. 1928) 220 N. W. 273; *State ex rel Hile v. City of Cleveland et al.* (Ohio Ct. App. 1927) 160 N. E. 241; and no court of last resort, so far as we are advised, has ever held the contrary. Not only that, but the governmental nature of the function involved is given tacit recognition in numerous recent statutory enactments, both state and federal: Laws of Georgia 1927, p. 779; R. S. Kansas 1923, 3-110; Public Acts Conn., 1925, ch. 249; Laws of Mass. 1922, ch. 534, Sec. 57; Laws of Mont. 1927, ch. 20; General Code of Ohio, par. 15, Sec. 3677; Pa. Act. No. 328 of 1925 (Pa. St. Supp. 1928, Secs. 460C-1 to 460C-3); Act 254 of the 69th Congress (the Federal Air Act (49 USCA Sec. 171 et seq.)). We have no doubt as to the soundness of the view which obtains."

It was next held that such acquisition and control of an airport is a city purpose within the purview of general constitutional law. In so holding the court said:

"It is next contended by the appellant that, even if it be held that the acquisition and maintenance of an airport is a public purpose, it is not a municipal or city purpose. By this he means, as we understand, that such acquisition and maintenance does not fall within the scope of the powers which may be constitutionally delegated to a city.

"\* \* \* \* \* Cities have long exercised the power: To acquire, construct, maintain, control, supervise and regulate docks, wharves, and harbor facilities, including the making of river and harbor improvements in connection therewith; to own and operate ferries; to lay out and improve roads and highways; and to construct and maintain canals, bridges and other works of internal improvement of a public character. The building of a bridge connecting the cities of New York and Brooklyn by those cities, was held to be a city purpose as to each. *People v. Kelly*, 76 N.Y. 475, 487. It was also held by this court that the building of a bridge across the Mississippi River at St. Louis for the benefit of the public, by the City of St. Louis, was a public city purpose. *Haeussler v. St. Louis*, supra. An airport with its beacons, landing fields, runways, and hangars is analogous to a harbor with its lights, wharves and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air. With respect to the public use which each subserves they are essentially of the same character. If the ownership and maintenance of one falls within the scope of municipal government, it would seem that the other must necessarily do so. We accordingly hold that the acquisition and control of an airport is a city purpose within the purview of general constitutional law."

What was said in *Dysart v. City of St. Louis*, supra, is likewise applicable to counties, that it is for a public purpose

and is also considered as a county purpose as referred to in the Constitution of the State of Missouri.

Therefore, it is the opinion of this Department that the county court may appropriate funds to purchase and operate an airport. However, while the above statutory provisions authorize the expenditure of funds for airports and landing fields we must not lose sight of the Constitution, namely, Section 11, 12, Article X, which places a limitation upon the amount of taxes any county may levy.

Respectfully submitted

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

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