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A BOARD OF COUNTY COMMISSIONERS MAY LEASE A PORTION OF A COUNTY AIRPORT NOT NEEDED FOR PUBLIC USE TO THE CIVIL AIR PATROL FOR NOT LONGER THAN 20 YEARS—§307.09 R.C., OPINION 591, OAG 1957.

SYLLABUS:

Land used by the Civil Air Patrol for its authorized activities would be for the purpose of airports, landing field, or air navigational facilities under Section 307.09, Revised Code, and a board of county commissioners may lease a portion of the county airport land not needed for public use to said Civil Air Patrol for a period of not more than twenty years, and may renew such lease for a similar period.

Columbus, Ohio, March 3, 1962

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have before me your recent request for my opinion, which reads:

“The Board of County Commissioners of Cuyahoga County owns and operates an airport within the geographical limits of the county. The Civil Air Patrol has requested a lease of more than one (1) year from the Board of County Commissioners of a small portion of the airport land not needed for public use. It proposes to erect on said land a small building needed for its activities.

“The Civil Air Patrol is not incorporated under the laws of Ohio. It was established on December 1st, 1941 as a private, non-profit corporation of a benevolent character, incorporated by the U. S. Congress on July 1st, 1946 (36 USC 201-208). It was subsequently established as a civilian auxiliary of the U. S. Air Force on May 26th, 1948, by an act of Congress (10 USC 9441). The Public Law, and its amendments, did not change the character of Civil Air Patrol as a private corporation, nor make it an agency of the U. S. Government, but gave the Secretary of the Air Force certain authority to furnish assistance to the Civil Air Patrol, and to accept and utilize the services of the Civil Air Patrol in the fulfillment of the non-combatant mission of the Air Force.

“The objects and purposes of the Civil Air Patrol, as contained in the Federal Statutes and Article V of its constitution, are:

“(a) ‘To provide an organization to encourage and aid American citizens in the contribution of their efforts, services, and resources in the development of aviation and in the maintenance of air supremacy, and to encourage and develop by example the voluntary contribution of private citizens to the public welfare ;

“(b) ‘To provide aviation education and training especially to its senior and cadet members; to encourage and foster civil aviation in local communities and to provide an organization of private citizens with adequate facilities to assist in meeting local and national emergencies.’

“The Civil Air Patrol also aids in searches for lost persons, aircraft and vessels.

“Your opinion is respectfully requested as to whether the Board of County Commissioners has any legal power to enter into a lease with the Civil Air Patrol of county owned airport land, not needed for public use, for a period of more than one (1) year, under authority of Section 307.09, Revised Code of Ohio.”

Section 307.09, Revised Code, provides :

“If the interests of the county so require, the board of county commissioners may sell any real estate belonging to the county and not needed for public use or may lease it, but no such lease shall be for a longer term than one year, unless such lease is part of a lease-purchase agreement, in which case the lease may be for a period not exceeding twenty-five years ; except that in the case of real estate used for or to be used for the purpose of airports, landing fields, or air navigational facilities, or parts thereof, belonging to the county, the term of such lease shall not exceed twenty years and may renew such leases for similar terms of years ; provided the board may grant leases, right, and easements to municipal corporations or other governmental subdivisions for public purposes or to privately owned electric light and power companies or natural gas companies or telephone or telegraph companies for purposes of rendering their several public utilities services, or to corporations not for profit for hospital or charitable purposes, including among other such purposes memorial structures and underground structures, poles, piers, towers, wires, pipe lines, underground cables, and manholes, on or in lands owned by the county where such lease, right, or easement is not deemed by the board to be inconsistent with the need of such land for public use by the county. Any such lease, right, or easement granted to a municipal corporation or other governmental subdivision, or to privately owned electric light and power companies or natural gas companies or telephone or telegraph companies for purposes of rendering their several public utilities services, or to corporations not for profit for hospital or charitable purposes, may be for such length of time, upon such terms, for such purposes, and may provide for such renewals thereof as the board deems for the best interests of the public. In case of the sale of such

real estate not used for county purposes, and in case of a lease of real estate used or to be used for the purpose of airports, landing fields, or air navigational facilities, and in case of such a grant of lease, right, or easement to a municipal corporation or other governmental division, or to privately owned electric light and power companies or natural gas companies or telephone or telegraph companies for purposes of rendering their several public utilities services, or to corporations not for profit for hospital or charitable purposes, all or such part of the proceeds thereof as the board designates may be placed by the board in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites therefor."

As stated in your letter, the Civil Air Patrol was originally established in 1941 under an Act of the U. S. Congress as a private, non-profit corporation, but it is not incorporated under the laws of Ohio. Subsequently, in 1946, it was recognized by another act of Congress as a civilian auxiliary of the United States Air Force, whereby the Secretary of such Air Force was authorized to furnish it specified limited assistance and accept its services in connection with non-combat operations of the United States Air Force. The object and purposes of the Civil Air Patrol, as set forth in division (a) and (b) of Title 36, Section 202, U.S.C., and in Article V of its constitution are:

"To provide an organization to encourage and aid American citizens in the contribution of their efforts, services, and resources *in the development of aviation* and in the maintenance of air supremacy, and to encourage and develop by example the voluntary contribution of private citizens to the public welfare;

"To provide *aviation education and training* especially to its senior and cadet members; to encourage and foster *civil aviation* in local communities and to provide an organization of private citizens with adequate facilities to assist in meeting local and national emergencies." (Emphasis added)

In connection with its self-imposed duties, the Civil Air Patrol also aids in searches for lost persons, aircrafts, and vessels.

It thus appears that the Civil Air Patrol, while incorporated as a non-profit corporation under an act of Congress, is not an agency of the United States government, or of any of its departments, although, it might be observed, the question before me would not be resolved if it were, in view of Opinion No. 591, Opinions of the Attorney General for 1957, page 172, in which my immediate predecessor held, and I concur, that:

“The Department of the Army, United States of America, is not a governmental subdivision, within the purview of Sections 307.09 and 307.10 of the Revised Code, relating to granting by the county of leases of county land for a greater term than one year.”

The above section allows the lease of any real estate belonging to the county and not needed for public use, but states that no such lease shall be for a longer term than one year unless it is part of a lease-purchase agreement, in which case the lease may be for a period not exceeding twenty-five years. Immediately following that language, the following language appears:

“; except that in the case of real estate used or to be used for the purpose of airports, landing fields, or air navigational facilities, or parts thereof, belonging to the county, the term of the lease shall not exceed twenty years * * *.”

While it might be argued that the above language refers back to the words “lease-purchase agreement,” I am of the opinion that the use of the semicolon before such language indicates an intention that said language refers to a lease of real estate only. Further strengthening my belief in this regard is the fact that language as to leasing for airport purposes was inserted in the section on August 15, 1957, 127 Ohio Laws, 61, while the language pertaining to lease-purchase agreements was not made a part of the law until September 16, 1961, 127 Ohio Laws, 392, 393. Clearly, therefore, the board of county commissioners may lease real estate not needed for public use and used or to be used for the purpose of airports, landing fields, or air navigational facilities, for a term of not more than twenty years, and may renew such leases for similar terms of years.

Under the facts, the Civil Air Patrol will use the land in question to erect a building for its activities. As noted earlier, such activities are directly concerned with aviation and aviation training and would, therefore, be within the meaning of the “purpose of airports, landing fields, or air navigational facilities.”

I therefore answer your specific question in the affirmative.

Concluding, it is my opinion and you are advised that land used by the Civil Air Patrol for its authorized activities would be for the purpose of airports, landing fields, or air navigational facilities under Section 307.09, Revised Code, and a board of county commissioners may lease a portion

of the county airport land not needed for public use to said Civil Air Patrol for a period of not more than twenty years, and may renew such lease for a similar period.

Respectfully,
MARK McELROY
Attorney General