

Note from the Attorney General's Office:

1958 Op. Att'y Gen. No. 58-2763 was overruled by 1963 Op. Att'y Gen. No. 63-449.

2763

ZONING—AIRPORTS—APPLICATION OF CHAPTER 4563., R.C.,
TO AIRPORTS OF UNITED STATES, STATE OF OHIO AND
OHIO STATE UNIVERSITY—§4563.03 R.C.—PROVISIONS NOT
APPLICABLE TO SUCH AIRPORTS.

SYLLABUS:

The provisions of Chapter 4563., Revised Code, relating to airport zoning, are applicable only to those airports owned and controlled by a political subdivision as that term is defined in Section 4563.01, Revised Code, these being the only airports for which an airport zoning board is provided in Section 4563.03, Revised Code; and the provisions of this chapter have no application to airports owned and controlled by the United States, the State of Ohio, or by the Ohio State University.

Columbus, Ohio, September 18, 1958

Hon. Samuel L. Devine, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“This office has recently received a request for an opinion as to the applicability of the provisions of Chapter 4563. of the Revised Code—Airport Zoning—to airports which are owned by the State of Ohio or by the United States. Examples of this type of airport are Don Scott Field, which is owned and operated by the Ohio State University, and Lockbourne Air Force Base, owned and operated by the United States Government.

“While the number of such state and federal airports located in the State of Ohio may limit the state-wide significance of the questions presented to us, the fact Don Scott Airport is owned by the State of Ohio and the interest of the state might therefore be affected by a ruling thereon prompts us to request your opinion on the questions before us. We would point out the confusion arises in part by reason of the definition of ‘publicly owned’ airport in section 4563.01 (A) and the definition of ‘political subdivision’ in section 4563.01 (D) of the Revised Code, and the use in the rest of the Chapter of the term ‘political subdivision’ rather than ‘publicly owned’.

“We addressed an inquiry to the author of the Bill who was unable to give us any specific reason for the use of these terms other than stating:

“ ‘Objection was raised to previous bills on the basis that zoning of this sort in connection with a privately owned airport would be giving something of value to the owners without consideration. For this reason we changed the bill to cover airports owned by political subdivisions. At the time we were thinking in terms of an airport owned by a county or a municipality. Frankly, I can recall no discussions concerning other publicly owned airports.’

“With this background, we respectfully request your opinion on the following specific questions :

“1. Is airport zoning under section 4563.01 et seq. of the Revised Code applicable to all publicly owned airports as defined in the last sentence of paragraph (A) of that section or is such zoning restricted to airports owned by a political subdivision as defined in paragraph (D) of that section?

“2. Can zoning regulations be adopted and enforced under Chapter 4563. of the Revised Code which would be applicable to Don Scott Airport, an airport owned and operated by the Ohio State University?

“3. Can similar regulations be adopted and enforced which would be applicable to Lockbourne Air Force Base, which is owned and operated by the United States Government?”

Chapter 4563., Revised Code, pertaining to airport zoning, became effective October 5, 1955. The purpose of this chapter is to provide authority for zoning to promote safety in the air space over areas adjoining airports. Such authority is granted to airport zoning boards by Section 4563.03, Revised Code, which reads in part as follows :

“(A) When an airport is owned or controlled by a political subdivision and all airport hazard areas appertaining to such airport are located inside the territorial limits of the political subdivision, the legislative authority of the political subdivision shall constitute the airport zoning board. Such legislative authority, acting as the airport zoning board, may adopt, administer, and enforce airport zoning regulations for such airport hazard area. Airport zoning regulations may divide an airport hazard area into zones, and, within such zones, regulate and restrict land uses which by their nature constitute airport hazards, and regulate and restrict the height to which structures may be erected or objects of natural growth may be allowed to grow. * * *

“(B) When an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of the political subdivision, the board of county commissioners of each county in

which such airport or such airport hazard area may exist, shall constitute the airport zoning board, which shall have the same power to adopt, administer, and enforce airport zoning regulations as provided in division (A) of this section. The board shall elect its own chairman.”

Section 4563.01 (A), Revised Code, defines an “airport” as :

“* * * (1) any area of land designed and set aside for the landing and taking off of aircraft, and for that purpose possessing one or more hard surfaced runways of a length of not less than three thousand five hundred feet, and designed for the storing, repair, and operation of aircraft, and utilized or to be utilized in the interest of the public for such purposes, *and* (2) any area of land designed for such purposes for which designs, plans, and specifications conforming to the above requirements have been approved by the Ohio aviation board and *for which a political subdivision has acquired not less than seventy per cent of the area shown by such designs and plans to constitute the total area.* An airport is ‘publicly owned’ if the portion thereof used for the landing and taking off of aircraft is owned, operated, leased to, or leased by the United States, any agency or department thereof, this state or any other state, or any political subdivision of this state or any other state, or any other governmental body, public agency, or public corporation. (Emphasis and parenthetical numbers added)

From this definition in Section 4563.01, Revised Code, it is clear that the limiting provision as to acquisition by a political subdivision is applicable only to those in the planning stage as described in the second portion of the definition. It clearly does not apply to those facilities already in existence as described in the initial portion of such definition. It follows, therefore, that state and federally owned airports are included within the term “airport” as defined in this section.

This conclusion is not dispositive of your query, however, for it will be noted in Section 4563.03, Revised Code, that it is only in the case of an airport “owned or controlled by a political subdivision” that provision is made for the establishment and operation of an airport zoning board. This necessarily leads to the conclusion that it is only as to such airports the act as a whole may apply.

The term “political subdivision” as used in this act is defined in Division (D) of Section 4563.01, Revised Code, as follows :

“* * * (D) ‘Political subdivision’ means any municipal corporation, township, or county of this state or any combination of two or more thereof. * * *”

It is at once evident that this term embraces neither the United States, the State of Ohio, nor Ohio State University.

Accordingly, it is my opinion that the provisions of Chapter 4563., Revised Code, relating to airport zoning, are applicable only to those airports owned and controlled by a political subdivision as that term is defined in Section 4563.01, Revised Code, these being the only airports for which an airport zoning board is provided in Section 4563.03, Revised Code; and the provisions of this chapter have no application to airports owned and controlled by the United States, the State of Ohio, or by the Ohio State University.

Respectfully,
WILLIAM SAXBE
Attorney General