

different rate of interest higher than the bid which was in fact accepted. Opinions of Attorney General, 1927, Vol. III, 2076, 2378, 2380.

In this particular case, it is significant that the successful bidder was not high bidder in any one of the other three issues and that the successful bidder was the only one who submitted a bid at other than the advertised interest rate.

I am of the opinion, therefore, that in this case, the acceptance of a bid based upon a different rate of interest than specified in the advertisement, there being no provision in said advertisement that bids might be submitted based upon a different rate of interest, is void. I am, therefore, compelled to advise you not to purchase the above issue of bonds.

Respectfully,
GILBERT BETTMAN,
Attorney General.

94.

MUNICIPALITY—AIRPORT—HOW AND WHERE LAND MAY BE ACQUIRED—CONDITIONS.

SYLLABUS:

A municipality may acquire the fee simple to lands outside of the municipality and outside of the county in which the municipality is located, either by gift, purchase or condemnation, for the purpose of establishing a municipal airport. The situation of the land, of course, must be such as to make it reasonably convenient to the municipality. This would be a question of fact in each case and the judgment of the municipality would be final in the absence of fraud or abuse of discretion.

COLUMBUS, OHIO, February 15, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“We are in receipt of a letter from Mr. Edward Lamb, Assistant Director of Law, city of Toledo, Ohio, which reads:

‘We are desirous of determining the possibility of acquiring an airport for the city of Toledo. The ownership of this proposed site is located seven (7) miles outside of the municipality of Toledo and in another county. The holding company which now has title has offered the proposed site to the city of Toledo, and the question arises as to the possibility of ownership by the city of Toledo.

If you could have the Attorney General forward an opinion to me through yourself, I would greatly appreciate it.’

This being a matter of general interest, the Bureau will greatly appreciate your opinion respecting the power of a municipal corporation to accept or purchase a tract of land for the purpose of constructing a municipal airport, which land is not situate in the county.”

Section 3939 of the General Code, in so far as pertinent, provides as follows:

"Each municipal corporation in addition to other powers conferred by law shall have power:

(22) To purchase or condemn land necessary for landing fields, either within or without the limits of a municipality, for aircraft and transportation terminals and uses associated therewith or incident thereto, and the right of way for connections with highways, electric, steam and interurban railroads, and to improve and equip the same with structures necessary or appropriate for such purposes."

Like authority for condemnation is also specifically conferred in Section 3677 of the General Code, which, so far as pertinent, is as follows:

"Municipal corporations shall have special power to appropriate, enter upon and hold real estate within their corporate limits. Such power shall be exercised for the purposes, and in the manner provided in this chapter

* * * * *

15. For establishing landing fields either within or without the limits of a municipality for air craft and transportation terminals, with power to impose restrictions on all or any part thereof and leasing such part thereof as may be desired for purposes associated with or incident to such aircraft landing and transportation terminals, including the right to appropriate a right of way for highways, electric, steam and interurban railroads leading from said landing field to the main highways or the main line of such steam, electric or interurban railroads, as may be desired; all of which are hereby declared to be public purposes."

You will observe that there is an inconsistency between the first and last portions of the section in that the first refers to the right to appropriate land within the corporate limits, while the 15th subdivision clearly refers to the establishment of landing fields either within or without the limits of a municipality. Subdivision 15 is a recent addition to the section and it is clearly the intention of the Legislature to authorize appropriation proceedings to be brought for landing fields outside of the municipal limits. Accordingly, I have no difficulty in concluding that the inconsistency must be resolved in favor of the power to appropriate beyond the limits of the municipality for this purpose. This conclusion is substantiated by the fact that other subdivisions of the section, which I have not quoted, also provide for appropriation outside of the limits of a municipality and these sections have always been construed as granting this power in spite of the apparent limitation contained in the first portion of the section.

In the light of these specific provisions of the Code, it is clear that a municipality has the right to acquire, either by purchase or condemnation, land necessary for landing fields or airports, either within or without the municipal limits.

My predecessor, in Opinion No. 3097, dated January 5, 1929, addressed to you, held that a municipal corporation may not lease land outside of its corporate limits for the purpose of providing a landing field for air craft, but clearly recognized the right to acquire by purchase or condemnation the fee simple of land outside of the municipality for such purpose. If the right exists to purchase, there can be no doubt as to the right to acquire title by way of gift.

Since your inquiry is limited to either purchase or gift, the conclusion must be reached that the municipality has the power to acquire an airport in either one of the methods suggested, unless that right be negated by reason of the fact that the tract of land under consideration lies outside of the county in which the municipality

is situated. The sections of the Code from which I have quoted give broad authority as to land either within or without the municipality. Land located in another county manifestly is outside of the municipality and clearly comes within this definition, unless there be some specific or implied restriction qualifying this definition. So far as I have been able to find, there is no specific provision of the Code negating this right, and, likewise, there is no provision from which the conclusion may be drawn that the Legislature intended to impose this limitation upon the plain meaning of the phrase "without the limits of the municipality."

I am accordingly of the opinion that a municipality may acquire the fee simple to lands outside of the municipality and outside of the county in which the municipality is located, either by gift, purchase or condemnation, for the purpose of establishing a municipal airport. The situation of the land, of course, must be such as to make it reasonably convenient to the municipality. This would be a question of fact in each case and the judgment of the municipality would be final in the absence of fraud or abuse of discretion.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

95.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
 DUTIES AS RESIDENT DIVISION DEPUTY DIRECTOR—HARVEY F.
 BROWN.

COLUMBUS, OHIO, February 15, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration, the official bond of Harvey F. Brown, for the faithful performance of his duties as Resident Division Deputy Director in Division No. 11.

This bond is given in accordance with the requirements of Section 1183 of the General Code, and to it is attached a certificate of the Surety Company to the effect that the person signing said bond in behalf of said company is authorized to sign official bonds of the nature and for the amount therein involved, binding upon said company. Likewise, there is evidence submitted that the said Surety Company is authorized to transact the business of fidelity and surety insurance in this state.

Finding said bond in proper legal form and properly executed, I have noted my approval thereon and am returning the same to you.

Respectfully,
 GILBERT BETTMAN,
Attorney General.