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ZONING—AIRPORT ZONING BOARD—ADOPTION OF ZONING REGULATIONS LIMITING OR REGULATING USES OF LAND CONSTITUTING AIRPORT HAZARDS.

SYLLABUS:

An airport zoning board has only that authority, in the first instance, to adopt zoning regulations to limit or restrict the uses of land which uses, by their nature, constitute airport hazards.

Columbus, Ohio, March 28, 1958

Hon. John S. Ballard, Prosecuting Attorney  
Summit County, Akron, Ohio

Dear Sir:

Your request for my opinion reads:

“The Board of Commissioners of Summit County and the Board of Commissioners of Stark County have jointly appointed an Airport Zoning Commission to prepare zoning regulations for the Akron-Canton Airport hazard area, an airport owned and controlled by the Boards of Commissioners of Stark and Summit Counties.

“The Chairman of the Airport Zoning Commission has requested an opinion with regard to the power and authority of the Airport Zoning Commission and the Airport Zoning Board to regulate the use of land in the airport hazard area.

“The Zoning Commission would, if it has the authority, like to regulate the use of land in the hazard area even though the prohibited use would not constitute an obstruction of the air space surrounding the airport and would not be a hazard to aircraft landing and taking off. For example, the Commission would like to restrict certain areas to agricultural use only; ban the use of certain areas for church or school purposes, and ban certain areas for use for theater and restaurant purposes.

I therefore, respectfully request your opinion on the following:

1. Does an airport zoning commission or board have the power and authority to restrict the use of land in the airport hazard area to a particular use, even though other uses to which the land might be put in the absence of

regulation, would not result in obstruction of the air space surrounding the airport and would not be a hazard to aircraft landing or taking off?

2. Does an airport zoning commission or board have the authority and power to regulate the use of land in the hazard area by banning the use of the particular area for school purposes?
3. Does an airport zoning commission or board have the power and authority to ban the use of land in the hazard area for church, theater, or restaurant purposes?
4. Does an airport zoning commission or board have the power and authority to regulate the density of population by lot area restrictions in the airport hazard area?"

Chapter 4563., Revised Code, pertaining to airport zoning became effective October 5, 1955. Section 4563.03, Revised Code, provides for the creation of airport zoning boards and empowers such boards to adopt, administer, and enforce airport zoning regulations which 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.”

The terms “airport hazard” and “airport hazard area” are defined in Section 4563.01, Revised Code, and I do not consider it necessary to quote those statutory definitions here.

The above quoted statutory authority of an airport zoning board to control, by zoning regulations, airport hazards in airport hazard areas is limited by Section 4563.07, Revised Code, which provides:

“All airport zoning regulations adopted under sections 4563.01 to 4563.21, inclusive, of the Revised Code shall be reasonable, and none shall impose any requirement or restriction which is not reasonably necessary to insure the safety of aircraft in landing and taking off and the safety of persons occupying or using the area and the security of property thereon. In determining what regulations are necessary, each political subdivision or airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the per cent of slope or grade customarily used in descent or ascent of the aircraft expected to use the airport with reference to their size, speed, and type, the nature of the terrain within the

airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put or is adaptable.”

It is my opinion that Section 4563.03, *supra*, is the only grant of authority of an airport zoning board to adopt airport zoning regulations. Inherent in that grant of authority is a territorial limitation on the jurisdiction of the airport zoning board as well as a substantive limitation on the subject matter to which an airport zoning regulation may be properly applicable. The territorial jurisdiction of an airport zoning board is within the boundaries of an airport hazard area.

Within such territorial jurisdiction an airport zoning board may “regulate and restrict land uses which \* \* \* constitute airport hazards” with the further qualifications that the airport zoning regulation adopted to effect such permissive objective must meet the test of reasonableness and be “reasonably necessary to insure the safety of aircraft in landing and taking off and the safety of persons occupying or using the area and the security of property thereon” as provided in Section 4563.07, Revised Code.

I must, therefore, conclude that an airport zoning board has only that authority, in the first instance, to adopt zoning regulations to limit or restrict the uses of land which uses, by their nature, constitute airport hazards. This conclusion requires me to answer each of your enumerated questions in the negative and obviates the necessity of answering each such question separately.

Respectfully,

WILLIAM SAXBE

Attorney General