

2342.

AERONAUTICS, DIRECTOR OF — AVIATION MARKING—
SECTION 6310-44 G. C.—WHERE MUNICIPALITY FAILS TO
EFFECT MARKINGS, REIMBURSEMENT SHALL BE FROM
MUNICIPAL FUNDS—LEGISLATURE FAILED TO PROVIDE
FUNDS TO PAY FOR MARKING — DIRECTOR PREVENTED
FROM ENFORCING THE ACT.

SYLLABUS:

When municipalities fail to have marking for aviation purposes effected as required by Section 6310-44, General Code, the Director of Aeronautics is authorized to have same effected, and the act provides how he shall be reimbursed out of the funds of the municipality, but, as the Legislature has

failed to provide any funds out of which the director of aeronautics can pay for the marking he is thereby prevented from enforcing the act in this particular.

Columbus, Ohio, June 1, 1940.

Hon. Earle L. Johnson, Director of Aeronautics,
Wyandotte Building, Columbus, Ohio.

Dear Sir:

I have your letter of May 20, 1940, in which you request my opinion as to how you can force a municipality to be marked for aviation purposes as required by Section 6310-44, of the General Code, when such municipality has failed to comply with said act and sixty days have elapsed since you served notice requiring such marking as required by the act.

Section 6310-44, General Code, provides as follows:

"The legislative authority of each and every municipality in the state of Ohio shall cause said municipality to be marked for aeronautical purposes, and maintain such marking, subject to and in accordance with law and such rules and regulations as may from time to time be made by the director of aeronautics in that regard, the costs thereof to be paid from the general fund. In the event of a failure on the part of such legislative authority of any municipality so to act, and sixty days after notice requiring such marking or the maintenance thereof, duly served by the director of aeronautics upon the clerk of such municipality, said director of aeronautics may cause such markings to be effected or maintained, and charge the cost thereof to such municipality, which shall in no case exceed the amount of \$50.00 per marker. It shall then be the duty of the taxing authority of such municipality to include the cost thereof, in accordance with the duly certified statement of costs filed by the director of aeronautics with said body, and the auditor of the respective county, in the next succeeding budget of said municipality; and the budget commission of the county shall allow the same without deduction, and insert it in such budget in case it be omitted, and it shall then be the duty of such county auditor to withhold such amount from the first semi-annual tax collection and remit same to the said director of aeronautics."

Under the terms of the above section it is clear that upon the failure of the municipality to act, it becomes the duty of the Director of Aeronautics to cause the markings to be made, said Director later to be reimbursed by the withholding of tax funds to be paid over to the Director of

Aeronautics. Such section presupposes, of course, the payment of the cost of such markings by the Director of Aeronautics pending such reimbursement.

An examination of House Bill 674, 93rd General Assembly, the appropriation act for the current biennium, reveals, however, that your department lacks any appropriation for the purpose of causing such markings to be made; that act providing, as it does, only funds for personal services and maintenance of your department.

Therefore, without extended discussion, the conclusion is forced upon me that no funds having been provided by the legislature for that purpose, you are thereby unable to, and are prevented from, enforcing the provisions of Section 6310-44, General Code, providing for the marking of municipalities for aeronautical purposes.

Respectfully,

THOMAS J. HERBERT,
Attorney General.