

2493

BOARD OF TOWNSHIP TRUSTEES WITHOUT AUTHORITY  
TO ACQUIRE REAL ESTATE TO ESTABLISH AN AIRPORT—  
§4563, R.C.

## SYLLABUS:

A board of township trustees is without authority under Chapter 4563., Revised Code, or any other provision of law, to acquire real estate to establish an airport.

Columbus, Ohio, August 29, 1961

Hon. Robert Webb, Prosecuting Attorney  
Ashtabula County, Jefferson, Ohio

Dear Sir:

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

“Paragraph A of Sec. 4563.12 of the Revised Code defines ‘Airports’. It also provides, in part, that an Airport is publicly owned if it 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*.

“Paragraph D of this section provides that ‘political subdivisions’ means any municipal corporation, *township*, or county.

“From these provisions of the Code, it would appear that the Legislature contemplates that a township might become the owner of an Airport.

“Will you please advise under what circumstances a township may acquire property for the purpose of establishing an Airport. We would like specifically to know whether or not a township might issue its Bonds for the purpose of procuring funds for the purpose of establishing an airport. If so, would it be necessary that the electors of the township vote upon the question either of issuing the bonds, or of the establishment of an airport. Assuming that they have funds in the General Fund which are not appropriated for other purposes, would the township trustees be authorized in expending such funds for the purpose of establishing an airport? Can township trustees appropriate land upon which an airport is to be established?

Section 4563.01, Revised Code, provides in part :

“As used in sections 4563.01 to 4563.21, inclusive, of the Revised Code:

“(A) ‘Airport’ means 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 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 not less than seventy per cent of the area shown by such designs and plans to constitute the total area has been acquired. 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 other governmental body, public agency, or public corporation, or any combination thereof.”

“\* \* \* \* \* \* \* \* \*

“(D) ‘Political subdivision’ means any municipal corporation, township, or county.

“\* \* \* \* \* \* \* \* \*”

Section 4563.03, Revised Code, creates an airport zoning board to control the use of property around publicly owned airports. Section 4563.05, Revised Code, provides for the organization of an airport zoning commission. Section 4563.06, Revised Code, provides for the adoption of airport zoning regulations. Section 4563.08, Revised Code, provides for the formulation of airport hazard areas. Section 4563.14, Revised Code, sets forth the powers of the board. Section 4563.19, Revised Code, creates

a right to appeal from an order of an airport zoning board. Section 4563.20, Revised Code, provides for enforcement of zoning regulations adopted by the airport zoning board.

Thus, Chapter 4563., Revised Code, provides that airports owned by “political subdivisions” are publicly owned and provides for the control by the zoning board of land located in the vicinity. Also, it is apparent that should a board of township trustees have authority to erect, acquire, construct and maintain an airport, the provisions of that chapter might be utilized to regulate adjoining property in the interest of public safety. The mere fact, however, that a township is included in the definition of a “political subdivision” as set forth in Section 4563.01 (D), Revised Code, does not confer authority upon the township trustees to acquire property to construct an airport. As noted, Chapter 4563., Revised Code, deals only with the regulation of land adjoining publicly owned airports and does not either directly or indirectly purport to confer authority upon a board of township trustees to acquire or maintain an airport.

Therefore, the question of whether the township trustees may acquire real estate for an airport must be resolved by considering the powers directly conferred upon the township trustees by statute.

I note that Section 717.01 (V), Revised Code, specifically authorizes municipal corporations to acquire property for and maintain an airport. I further note that Section 307.20, Revised Code, confers the same authority upon boards of county commissioners. In this request it is of importance to note that Section 4561.06, Revised Code, authorizes the department of commerce to assist county or municipal authorities by rendering technical assistance in regard to the construction of airports. There is no like provision in regard to township trustees.

It is a well established principle that boards of township trustees have only such powers as are expressly conferred by statute or are necessarily implied from express powers. *Yorkavitz v. Township Trustees*, 166 Ohio St., 349; Opinion No. 1232, Opinions of the Attorney General for 1957, page 638.

Section 505.26, Revised Code, dealing with the powers of a board of township trustees, provides:

“The board of township trustees may purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a township hall, a township park, and bridges and viaducts over

streets, streams, railroads, or other places where an overhead roadway or footway is necessary, and such board may acquire sites for any of such improvements.”

The above provision contains no authority for a board of township trustees to acquire land for airport purposes, and I am unable to find any other provision of law granting such authority. Nor do I believe that such may be implied as necessary for such a board to carry out its duties provided by law.

Accordingly, it is my opinion and you are advised that a board of township trustees is without authority under Chapter 4563., Revised Code, or any other provision of law, to acquire real estate to establish an airport.

Respectfully,  
MARK McELROY  
Attorney General