

2391.

AIRPORT — NO EXISTING AUTHORITY FOR BOARD OF COUNTY COMMISSIONERS, DEFIANCE COUNTY, TO JOIN WITH CITY OF DEFIANCE TO ACQUIRE OR CONSTRUCT AIRPORT OR LANDING FIELD.

SYLLABUS:

*Under existing statutes the Board of County Commissioners of Defiance County may not join with the City of Defiance in the acquisition and construction of an airport or landing field.*

Columbus, Ohio, June 13, 1940.

Hon. Karl H. Weaner, Jr., Prosecuting Attorney,  
Defiance, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

“At the request of the Board of Commissioners of Defiance County I am herewith requesting your opinion on the following question:

“May the Board of County Commissioners join with the City of Defiance in acquiring and constructing an airport or landing field which will be located outside of the municipal corporation.”

It is too well settled to require the citation of authority that a board created by the Legislature, such as a board of county commissioners, possesses only such powers as have been expressly granted it by statute and in addition thereto such implied powers as are necessary to carry into effect those powers expressly granted. It would follow, therefore, that an answer to your inquiry would require an examination of the statutes containing the powers granted to boards of county commissioners with respect to the acquisition and construction of property for public purposes.

By force of Section 2433-2, General Code, a board of county commissioners is bestowed with the same authority in connection with airports and landing fields on territory within its jurisdiction as is conferred upon

municipalities under the provisions of Sections 3677 and 3939, General Code.

Said later sections, so far as they are pertinent to the question propounded, provide as follows:

Section 3677, General Code:

“\* \* \* \* \* \* \* \* \* \*”

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.”

Section 3939, General Code:

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

\* \* \* \* \* \* \* \* \* \*

(22) To purchase, lease or condemn land and/or air rights 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, waterways, electric, steam and interurban railroads, and to improve and equip the same with structures necessary or appropriate for such purposes.

\* \* \* \* \* \* \* \* \* \*

As pointed out above, boards of county commissioners possess the same powers with respect to airports and landing fields as do municipal corporations. It does not follow, however, in the absence of statutory authority, that by reason thereof the two may exercise said like powers jointly.

A former Attorney General was called upon to answer a question very similar to one which you have presented. His answer is contained in Opinion No. 2843, Opinions of the Attorney General for 1928, Volume IV, page 2562, the syllabus of which reads as follows:

“A county and a city may not legally enter into a joint ownership agreement with respect to that portion of a county home farm, not needed for public use, for the purpose of equipping and maintaining an airport.”

I have examined the 1928 opinion and concur with the reasoning and views expressed therein. It will be noted that said opinion was concerned with the acquisition and maintenance of an airport on a portion of a county home farm not needed for public use. That direct problem is not presented by your inquiry. However, a reading of that opinion reveals that the conclusion reached therein did not turn on and was not affected either by the fact that the property in question was owned by the county or that a county home was located thereon.

The 1928 opinion was rendered prior to the enactment of Section 2433-2, General Code. However, the existence of such a statute was considered by the then Attorney General and he was of the view it would not alter the conclusion reached in his opinion. At page 2563 of said opinion, we find the following observations pertinent to your inquiry:

“In view of the foregoing, I am of the opinion that the county clearly has no power to equip and maintain an airport. Even if such authority had been granted to county commissioners by a statute similar to that portion of Section 3939, General Code, above quoted, applying to municipalities, I do not believe the county would have the power, by virtue of such a grant, to enter into a joint ownership agreement with a municipality for the equipping and maintaining of such an airport.

In an opinion of the Attorney General, being No. 1641, dated November 5, 1920, reported in *Opinions, Attorney General, 1920, Vol. II*, page 1065, it was held that the statutes of Ohio did not authorize the purchase of fire apparatus by the township trustees and the council of a village within a township. This was held to be true even though the trustees, by Section 3298-54, were granted specific authority to purchase such fire apparatus for their own use. We find the following discussion in that opinion which is pertinent here:

‘H. B. 332, above referred to, makes no provision for joint action by a township and a village in the matter of the purchase of fire apparatus, and I am unable to find any statutory provision whatever for such joint action. It does not, of course, follow that whatever can be done by public boards or officers singly, can as a matter of law be done by them in conjunction with each other. That such an arrangement might in many cases conduce to convenience and economy of public funds may be conceded, but these considerations do not, of course, atone for the lack of statutory authority.’”

In line with the foregoing, it would appear that the 1928 opinion is applicable to the instant question. The fact that the proposed site for the airport or landing field is situated outside the limits of the municipal corporation in question does not in any wise alter the views herein expressed.

Since the rendition of the opinions above cited, the 91st General Assembly passed Amended Senate Bill No. 112, effective July 17, 1935, which was incorporated into the Ohio General Code as Sections 2450-1 to 2450-6, both inclusive. Section 2450-2, General Code, which is more closely associated with the problem at hand than are the other sections of said Senate Bill, provides as follows:

“The board of county commissioners of any county may enter into an agreement or agreements with the legislative authority of any city, village, school district, library district, health district, park district, or other taxing district or with the board of county commissioners of any other county as legislative authority thereof, and such legislative authorities shall have power to enter into such agreements with the board of county commissioners, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power or powers, to perform any function or functions, or to render any service or services, in behalf of the contracting subdivision or of its legislative authority, which such contracting subdivision or its legislative authority is authorized to exercise, perform or render. Upon the execution of such agreement and within the limitations prescribed by it, the board of county commissioners shall have and may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which by such agreement they undertake to perform or render, and all powers necessary or incidental thereto, as amply as such powers may be possessed and exercised by the contracting subdivision directly. In the absence in such agreement of provisions determining by what officer, office, department, agency, or authority the powers and duties of the board of county commissioners in accordance with such agreement shall be exercised or performed, the board of county commissioners shall from time to time determine and assign the same. Nothing in this act nor in any agreement by it authorized shall be construed to suspend the possession by a contracting subdivision of any power or function exercised or performed by the board of county commissioners in pursuance of such agreement. Nor shall the county commissioners by virtue of any agreement entered into under the authority of this section be deemed to have acquired any power to levy taxes within and in behalf of a contracting subdivision.”

A careful reading of this section reveals that under its terms agreements may be entered into by the boards of county commissioners and the legislative authorities of other subdivisions authorizing the commissioners to exercise

any powers, perform any functions or render any services in behalf of the contracting subdivisions, which such contracting subdivision is authorized to exercise, perform or render.

As set out earlier in this opinion, both a municipal corporation and a board of county commissioners have the power to acquire and construct an airport or landing field. By agreement in conformity with Sections 2450-1 to 2450-6, both inclusive, Ohio General Code, it would be permissible for the County Commissioners of Defiance County to exercise said power in behalf of the City of Defiance. Those sections, however, do in no wise permit joint operation or exercise of powers belonging to each of the contracting parties.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that under existing statutes the Board of County Commissioners of Defiance County may not join with the City of Defiance in the acquisition and construction of an airport or landing field.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.