

OPINION NO. 70-064

Syllabus:

1. It is not unlawful for a board of county commissioners to retain title to real property provided by them for an airport under the jurisdiction of a regional airport authority.

2. A verbal agreement does not constitute an official act of a board of county commissioners upon which any document nunc pro tunc may be based.

3. Authority is provided by statute for a regional airport to be operated by a private air service, be it an individual or corporation.

To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio
By: Paul W. Brown, Attorney General, June 12, 1970

You have posed the following questions for my opinion:

"1. Is it proper for the County Commissioners to keep legal title to the airport property in their name, as that was the basis on which they made the original grant of money, that they would have title in their name?

"2. May the Huron County Board of County Commissioners enter into a written lease on a nunc pro tunc basis dating it back to the time when apparently they made a verbal agreement that the city of Norwalk was to operate said airport?

"3. May the City of Norwalk enter into a lease as it has done with a private air service to operate the airport; said City having apparently entered into an agreement with the Airport Authority to operate the airport?"

Section 308.06 (A) to (O), Revised Code, contains seventeen separate express grants of power to the board of trustees of a

regional airport authority. It is significant that sixteen of these are permissible or discretionary on the part of the board while the one grant reads, "* * * said regional airport authority: * * * (F) Shall have jurisdiction, control, possession, and supervision of all property, rights, easements, licenses, moneys, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to it; * * *."

Section 308.06 (H), Revised Code, provides authority and power to the airport authority to lease property as lessor or lessee and under proper contractual arrangements as is permitted by Section 308.06 (K), supra, according to the original understanding for sharing the cost of the airport, I see no reason why the board of county commissioners may not retain title to the real estate which constituted part of their contribution toward the airport.

With respect to your second question, I must advise you that the answer is clearly stated in Section 308.06 (F), Revised Code, irrespective of who holds title to the real estate involved. The agreement for participation in the advance or appropriation of money or property by the board of county commissioners for the operation of a regional airport authority is sufficient to place the board of trustees of the regional airport authority in control with possession, supervision and jurisdiction over such property or rights therein as has been delivered, transferred or assigned to it by reason of such formal action on the part of the board of county commissioners.

My predecessor stated in Opinion No. 56, Opinions of the Attorney General for 1966:

"I can perceive of no authority, however for the board of trustees to act 'through' the county commissioners save for the authority to contract with the county. Once created, the board of trustees of the regional airport authority acts as a separate entity in its own name."

It naturally follows that the board of trustees of the regional airport authority is the proper agency to contract for the operation of the airport, and not the board of county commissioners. See Section 308.06 (K), supra. Apparently this was done by a lease of the airport to the City of Norwalk in 1967, a copy of which accompanied your request for my opinion. If any action is to be had nunc pro tunc, it could only be by the board of county commissioners to transfer custody of the real estate to the airport board of trustees pursuant to Section 308.06 (F), supra, providing such previous action was taken by the commissioners and recorded pursuant to Section 305.10, Revised Code. I do not know of any reason that would require a formal transfer or lease of

county land to and for the use of a regional airport authority following action constituting an appropriation of the land for such use by the board of county commissioners.

The answer to your third question, relative to the City of Norwalk subletting to a private corporation a contract for the operation of the regional airport, must be found somewhere in the authority and power granted by the general assembly to these separate entities.

Pursuant to Section 308.14, Revised Code, a regional airport authority to contract appears to be without limitation. The section reads as follows:

"The board of trustees of a regional airport authority may enter into such contracts or other arrangements with the United States government or any department thereof, with the state government of this or other states, with counties, municipalities, townships, or other governmental agencies created by or under the authority of the laws of the state of Ohio or other states, with persons, with public corporations and private corporations as may be necessary or convenient for the making of surveys, investigations, or reports thereon and for the exercise of the powers granted by sections 308.01 to 308.17, inclusive, of the Revised Code." (Emphasis added.)

Speaking of the powers of the board of trustees of a regional airport authority, another statute complementary thereto and to be construed in pari materia with Section 308.14, supra, is Section 308.06 (K), Revised Code, which reads in pertinent part as follows:

"(K) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the acquisition, construction, maintenance, or operation of any airport or airport facility owned or to be owned and operated by it or owned or to be owned and operated by any such county or municipal corporation and the terms on which it shall be acquired, constructed, maintained, or operated, * * *" (Emphasis added.)

It appears, therefore, that the operation of regional airports may be let to private corporations or individual persons.

It is therefore my opinion and you are advised:

1. It is not unlawful for a board of county commissioners to

retain title to real property provided by them for an airport under the jurisdiction of a regional airport authority.

2. A verbal agreement does not constitute an official act of a board of county commissioners upon which any document nunc pro tunc may be based.

3. Authority is provided by statute for a regional airport to be operated by a private air service, be it an individual or corporation.