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1. AIRPORT ZONING BOARD—4563.03(B) R. C.—MORE THAN ONE COUNTY—ZONING BOARD IS SINGLE ENTITY.
2. LEGAL ADVISOR TO SUCH BOARD IS AS PROVIDED BY 4563.03(A) R. C.
3. AIRPORT ZONING BOARD OF MORE THAN ONE COUNTY MAY ABIDE BY ADVICE OF EITHER COUNTY PROSECUTING ATTORNEY; IN ABSENCE OF AGREEMENT ANY OR ALL MAY BE CALLED UPON FOR ADVICE.
4. IN LITIGATION THE BOARD IS REPRESENTED BY PROSECUTING ATTORNEY OF COUNTY WHEREIN AFFECTED REAL ESTATE IS SITUATED—4563.18 R. C.—4563.19 R. C.

SYLLABUS:

1. Where pursuant to the provisions of Section 4563.03 (B), Revised Code, an airport zoning board consists of the boards of county commissioners of more than one county, such airport zoning board is a single entity with a single chairman and performs its responsibilities under the applicable statutes as such.

2. Where an airport zoning board is composed of the legislative authority of a single political subdivision pursuant to the provisions of Section 4563.03 (A), Revised Code, the legal adviser of the political subdivision concerned is the legal adviser and representative of such airport zoning board.

3. Where an airport zoning board is composed of the county commissioners of more than one county, such board for purposes of receiving legal advice may agree to abide by the advice of any one of the county prosecuting attorneys concerned. In the absence of such an agreement any or all of the county prosecuting attorneys concerned may be called upon to furnish legal advice to the airport zoning board.

4. In the event of litigation involved in an appeal to the airport zoning board of appeals pursuant to Section 4563.18, Revised Code, or of a subsequent appeal to the court of common pleas pursuant to Section 4563.19, Revised Code, the airport zoning board should be represented by the prosecuting attorney of the county in which the affected real estate lies.

Columbus, Ohio, January 8, 1957

Hon. Samuel L. Devine, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

I am in receipt of your opinion relative to airport zoning wherein you propound the following questions:

1. Where pursuant to Section 4563.03 (B), Revised Code, an airport hazard area extends beyond the limits of a county, do the boards of county commissioners of the counties involved act collectively as a single airport zoning board and thus adopt airport zoning regulations applicable to the entire airport hazard area, or does each board of county commissioners act separately and adopt only the zoning regulations applicable to the hazard area located in its county.

2. In the event the airport zoning board is a single entity, who acts as attorney for such board.

In connection with your inquiry I quote Section 4563.03 (B), Revised Code, which provides as follows:

* * * "(B) When an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to

such airport is located outside the territorial limits of the political subdivision, the board of county commissioners of each county in which such airport or such airport hazard area may exist, shall constitute the airport zoning board, which shall have the same power to adopt, administer, and enforce airport zoning regulations as provided in division (A) of this section. The board shall elect its own chairman.”

Upon consideration of the foregoing statutory enactments I am in accord with your tentative conclusions as expressed in your letter of inquiry to the effect that the airport zoning board is a single entity and acts as such. It would appear that the statute itself removes any doubt or question of ambiguity in this regard.

With respect to your second question, it is appreciated that Sections 4563.01 et seq., make no specific provisions for legal counsel for a zoning board composed of county commissioners from more than one county. However, I am convinced that the legislators who are responsible for the promulgation of the airport zoning law did not intend that the zoning board in such instance should be bereft of legal counsel and representation. Clearly, under Section 4563.03 (A), supra, where the airport hazard areas are located within the territorial limits of a single political subdivision and the legislative authority of that division, ex officio, constitutes the airport zoning board, the same legal adviser who represents them in their capacity as legislative authority would be charged with the duty of representing them in their capacity as members of the zoning board. This, of course, would be the city attorney or city solicitor in the case of a municipality and the county prosecutor in the case of the county.

Where, however, two or more boards of county commissioners constitute the airport zoning board as a consequence of the operation of Section 4563.03 (B), supra, it would appear that a problem is presented which, if the airport zoning law is to be given practical effect, requires a practical solution. It must be remembered that an airport zoning board will look to legal counsel for two purposes, (1) for legal advice in connection with pending problems and (2) for legal representation in the event of litigation by way of appeals contemplated under Sections 4563.18 and 4563.19, Revised Code. In connection with the first enumerated purpose of requesting legal advice, it would appear that the zoning board could agree to accept, in the first instance, the counsel of any of the county prosecutors whose board of county commissioners is a component

part of the airport zoning board. On the other hand, in the absence of such agreement each board of county commissioners could look to its own adviser which would be its own county prosecutor. Although this latter procedure might, at first blush, appear impracticable, it must nevertheless be remembered that in the case of an irreconcilable conflict among the several prosecuting attorneys concerned the office of the Attorney General is in turn, available for advice upon proper request of any or all of the prosecuting attorneys concerned.

In connection with the actual representation of the board in the case of a litigation pursuant to an appeal, it would appear that the airport zoning law itself, while it may not dictate, at least suggests an equally practical solution.

Thus Section 4563.19, Revised Code, in referring to appeals to the Court of Common Pleas, states as follows:

“Any person aggrieved, or any taxpayer, or any legislative authority, or any airport zoning board affected by any order of the airport zoning board of appeals may appeal within 30 days to the court of common pleas *of the county in which the affected real estate lies* and upon appeal thereof a trial de novo shall be had.”
(Emphasis added.)

With this section in mind, it would appear that the legal representation of the airport zoning board in connection with an appeal, both to the zoning board of appeals and thence, if necessary, to the court of common pleas, would be the proper responsibility of the prosecuting attorney of the county affected wherein the real estate lies.

Accordingly and in specific answer to your inquiry, it is my opinion that:

1. Where pursuant to the provisions of Section 4563.03, (B), Revised Code, an airport zoning board consists of the boards of county commissioners of more than one county, such airport zoning board is a single entity with a single chairman and performs its responsibilities under the applicable statutes as such.

2. Where an airport zoning board is composed of the legislative authority of a single political subdivision pursuant to the provisions of Section 4563.03 (A), Revised Code, the legal adviser of the political subdivision concerned is the legal adviser and representative of such airport zoning board.

3. Where an airport zoning board is composed of the county commissioners of more than one county, such board for purposes of receiving legal advice may agree to abide by the advice of any one of the county prosecuting attorneys concerned. In the absence of such an agreement any or all of the county prosecuting attorneys concerned may be called upon to furnish legal advice to the airport zoning board.

4. In the event of litigation involved in an appeal to the airport zoning board of appeals pursuant to Section 4563.18, Revised Code, or of a subsequent appeal to the court of common pleas pursuant to Section 4563.19, Revised Code, the airport zoning board should be represented by the prosecuting attorney of the county in which the affected real estate lies.

Respectfully,

C. WILLIAM O'NEILL

Attorney General