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SYLLABUS:

1. Under Section 307.20, Revised Code, a board of county commissioners may construct and operate as part of an air navigation facility those facilities which it determines are necessary to provide for the comfort and accommodation of air travelers at a county airport.

2. Pursuant to the provisions of Section 307.20, Revised Code, a board of county commissioners may lease land acquired by said board for a county airport to a private party for the construction and operation by such party of facilities necessary to provide for the comfort and accommodation of air travelers at such county airport.

Columbus, Ohio, January 9, 1963

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

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

“Does the law permit the Board of County Commissioners to develop either by direct contract or by means of a Lessee-Developer, motels (to include a Cocktail Bar, Barber Shop, Tobacco Stand, Toilets (Pay), Restaurant, Parking Lot, Golf Courses and miscellaneous recreation, on county-owned airports?”

I assume that the words "direct contract" in your request refer to a situation where the county would construct the particular facilities and operate them itself.

The board of county commissioners is empowered to establish an airport by the provisions of Section 307.20, Revised Code, which section reads as follows:

"The board of county commissioners, in addition to its other powers, shall have the same authority subject to the same limitations, with respect to airports, landing fields, and other air navigation facilities as is conferred upon municipal corporations by Sections 719.01 and 717.01 of the Revised Code.

"'Airport,' 'landing field', and 'air navigation facility', as defined in section 4561.01 of the Revised Code, apply to this section."

An "air navigation facility" is defined by Section 4561.01, Revised Code, referred to in the above quote, as follows:

* * * * *

"(E) 'Air navigation facility' means any facility used, available for use, or designed for use in aid of navigation of aircraft, including airports, landing fields, facilities for the servicing of aircraft or for the comfort and accommodation of air travelers, and any structures, mechanisms, lights, beacons, marks, communicating systems or other instrumentalities or devices used or useful as an aid to the safe taking off, navigation, and landing of aircraft, or to the safe and efficient operation or maintenance of an airport or landing field, and any combination of such facilities."

Sections 717.01 and 719.01, Revised Code, referred to in Section 307.20, *supra*, permit a municipality to acquire lands and to establish, maintain, and operate thereon. Section 719.01, Revised Code, reads, in part, as follows:

"Any municipal corporation may appropriate, enter upon, and hold real estate within its corporate limits:

* * * * *

"(O) For establishing airports, landing fields, or other air navigation facilities, either within or without the limits of a municipal corporation for aircraft and transportation terminals, with power to impose restrictions on any part thereof and leasing

such part thereof as is desired for purposes associated with or incident to such airports, landing fields, or other air navigation facilities and transportation terminals, including the right to appropriate a right of way for highways, electric, steam, and interurban railroads leading from such airport or landing field to the main highways or the main line of such steam, electric, or interurban railroads, as are desired ; all of which are hereby declared to be public purposes.

“* * * * *”

Section 717.01, Revised Code, reads, in part, as follows :

“Each municipal corporation may :

“* * * * *”

“(V) Acquire by purchase, gift, devise, bequest, lease, condemnation proceedings, or otherwise, real or personal property, and thereon and thereof to establish, construct, enlarge, improve, equip, maintain, and operate airports, landing fields, or other air navigation facilities, either within or without the limits of a municipal corporation, and acquire by purchase, gift, devise, lease, or condemnation proceedings rights of way for connections with highways, waterways, and electric, steam, and interurban railroads, and improves and equip such facilities with structures necessary to appropriate for such purposes ; no municipal corporation may take or disturb property or facilities belonging to any public utility or to a common carrier engaged in interstate commerce, which property or facilities are required for the proper and convenient operation of such utility or carrier, unless provision is made for the restoration, relocation, or duplication of such property or facilities elsewhere at the sole cost of the municipal corporation ;

“* * * * *”

The constitutionality of the provisions now found in Section 307.20, *supra*, were fully discharged in *State ex rel., Helsel v. Board of County Commissioners, et al.*, 37 O.O. 58, affirmed 83 Ohio App. 388, dismissed for want of debatable question, 149 Ohio St., 583. The *Helsel* case, *supra*, points out that the operation of an airport by a municipality is a public utility and is subject to all laws dealing therewith, *State ex rel., Chandler v. Jackson, et al.*, 121 Ohio St., 186.

From the foregoing, it seems perfectly clear that a board of county commissioners has the power to acquire and operate an airport, landing field and other air navigation facility, and that an air navigation facility includes an airport, landing field, and facilities for the comfort and accommodation of air travelers. Accordingly, if the items enumerated in

your request, with respect to the airport in question, are to be provided for the comfort and accommodation of air travelers, and if such facilities may be otherwise lawfully maintained, i.e., cocktail bar, pay toilets, etc., then the board of county commissioners could acquire land, construct and operate such facilities for such purpose. Whether the comfort and accommodations of air travelers at the airport in question require or will be served by the facilities described in your request, is a question of fact to be determined by the board of county commissioners. Before exercising the powers granted in Section 307.20, *supra*, such question must be so answered in the affirmative. Such determination by the board of county commissioners, unless determined to be illegal, fraudulent, or a gross abuse of discretion, would be final. 14 Ohio Jurisprudence 2d, 242, Counties, Section 57.

Coming now to the second part of your question dealing with the power of the board of county commissioners to provide the facilities mentioned by means of a "Lessee-Developer," I presume that said board would, under such arrangement, acquire the needed land and lease it to a private party who, by the terms of the lease agreement, would be required to provide the required accommodations, including the construction and furnishing of necessary building for a specific term of years and in accordance with the specifications enumerated in said lease agreement.

In considering this question, I am limited by the basic proposition that a board of county commissioners is possessed of only those powers granted by the General Assembly and those necessarily implied therefrom, and that, as stated at 14 Ohio Jurisprudence 2d, 260, Counties, Section 83:

"Statutes which confer authority upon county commissioners are delegations of power by the state, which reserves to itself all power not thus delegated and are, therefore, to be strictly construed in favor of the state and against the board. * * *"

While Section 307.20, *supra*, speaks in terms of authority had by municipal corporations, said authority is, by the language of said statute, limited to that found in Sections 719.01 and 717.01, Revised Code. The so-called home-rule powers granted by the people of Ohio to municipal corporations, found in Article XVIII of the Ohio Constitution, are in no way conferred by the General Assembly upon the boards of county commissioners by Section 307.20, *supra*. Thus, while as stated in the *Helsel* and *Chandler* cases, *supra*, the operation of an airport by a board of

county commissioners would be a public utility, the powers of a board of county commissioners in such operations are limited to those granted by statute, and such board is without the broad home-rule powers of a municipality, including those powers dealing with public utilities found in Sections 4 and 5 of Article XVIII, Ohio Constitution. Accordingly, if a board of county commissioners has the necessary power to lease, such power must be found in the statutes of this state.

Division (V) of Section 717.01, *supra*, when strictly construed, does not grant power to lease property owned by a board of county commissioners to a private party for an air navigation facility. Said statutory language deals with an operation of such a facility by the board of county commissioners.

Section 719.01, Revised Code, is part of the chapter of the Revised Code which deals with appropriation of property by a municipal corporation. Division (N) of said Section 719.01, *supra*, however, appears to deal both with the power to appropriate and the power to restrict and lease, by stating, "with power to impose restrictions on any part thereof and leasing such part thereof as is desired for purposes associated with or incident to such . . . air navigation facilities." It could be argued that said language grants power to a county (municipality) to take property as a lessee, but not to grant an interest in property as a lessor; however, such a construction is, I believe, not warranted by the language used by the General Assembly. The word "thereof" is found in two places in said clause. Certainly, when used with regard to the power to impose restrictions, it refers to property held for airport purposes, as there is no other property to which it could refer. Similarly, with respect to leasing property, the property to be leased must be property which is acquired for airport purposes.

Thus, considering the power of a board of county commissioners under Sections 307.20, 719.01, and 717.01, Revised Code, I am of the opinion that such a board has the power to lease property acquired by it pursuant to said statutes to a private party for the construction thereon of those things which come within the meaning of the term, "air navigation facility" as defined by Section 4561.01, Revised Code.

In keeping with the policy of this office, I have not considered herein the constitutionality of any so-called "lessee-developer" agreement, but merely point out the prohibition found in Section 6 of Article VIII, Ohio

Constitution, which precludes a county from loaning its credit to a private corporation or association.

In accordance with the foregoing, and in specific answer to your inquiry, I am of the opinion and you are advised:

1. Under Section 307.20, Revised Code, a board of county commissioners may construct and operate as part of an air navigation facility those facilities which it determines are necessary to provide for the comfort and accommodation of air travelers at a county airport.

2. Pursuant to the provisions of Section 307.20, Revised Code, a board of county commissioners may lease land acquired by said board for a county airport to a private party for the construction and operation by such party of facilities necessary to provide for the comfort and accommodation of air travelers at such county airport.

Respectfully,

MARK McELROY

Attorney General