

SYLLABUS:

1. An airport zoning board established pursuant to Chapter 4563, Revised Code, may enact airport hazard zoning regulations in connection with a wholly military airport facility. (Opinion No. 2763, Opinions of the Attorney General for 1958, presently of no effect due to statutory changes).

2. There may be more than one airport zoning authority in effect in one county at one time provided there is more than one airport facility and airport hazard area comprising multi-county areas.

3. Multi-county based airport zoning boards are required to act as a single entity and individual counties of such an area have no authority to enact airport zoning regulations independently under Chapter 4563, Revised Code.

4. County Commissioners who are required by statute to participate on a multi-county based airport zoning board have a clear legal duty to so participate.

Columbus, Ohio, August 13, 1963

Hon. Warren H. Chase
Director
Department of Commerce
Ohio Departments Building
Columbus, Ohio

Dear Sir:

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

"In preparation for preliminary evaluation of airport hazard zoning for the Springfield, Ohio Municipal Airport affecting Greene, Clark, Miami and Montgomery Counties, the Division of Aviation, Department of Commerce, has been confronted with certain questions concerning the scope and intent of the Airport Hazard Zoning sections of the Revised Code of Ohio. The pertinent sections of the code are 4563.01 through 4563.21.

"Your determination of the following questions will permit our Aviation Division to complete preliminary studies and submit them to the Regional Planning Commission for their consideration. Similar situations have arisen in the past, however, there was no need to request clarification on these points as the questions were not asked.

"1. May an airport zoning board effect airport haz-

ard zoning in connection with a military airport facility? (Ref. 4563.01 (a) R.C. Would the term 'publicly owned' include a wholly military establishment and subject it to Airport Hazard Zoning, i.e., Wright-Patterson Air Force Base?)

"2. May more than one airport zoning authority be in effect in any county at one time? (Ref. 4563.03 (b) R.C. and 4563.06 R.C. May a zoning authority made up of county commissioners of Clark and Greene counties enact zoning for Springfield Airport and a second authority made up of Clark, Greene, Miami and Montgomery counties enact Airport Zoning for the Dayton Municipal Airport?)

"3. May a County enact a zoning resolution on the portion of an airport hazard area within the territorial limits of that county if the airport facility lies in an adjacent county and the adjacent county does not want to participate in such zoning? Could land use zoning adequately satisfy such problems? Conversely, may a county adequately enact a zoning resolution on airport hazard zoning when sizeable portions of the designated hazard area are outside said county when the airport is within (that is, zoning only the portion of the hazard area within the county and ignoring the portions of the area over adjacent counties that do not participate) ?

"4. May the commissioners of a county be required to participate in such zoning by court order or other means initiated by interested and affected adjacent counties or by citizens who feel Airport Hazard Zoning is required for the public good?"

Chapter 4563, Revised Code, pertaining to airport zoning became effective in 1955. The syllabus of Opinion No. 2673, Opinions of the Attorney General for 1958, stated the following:

"The provisions of Chapter 4563., Revised Code, relating to airport zoning, are applicable only to those airports owned and controlled by a political subdivision as that term is defined in Section 4563.01, Revised Code, these being the only airports for which an airport zoning board is provided in Section 4563.03, Revised Code; and the provisions of this chapter have no application to airports owned and controlled by the United States, the State of Ohio, or by the Ohio State University."

My conclusion was based on an interpretation of Sections 4563.01 (A) and 4563.03, Revised Code. State and federally owned airports were included within the term "airports" as defined in

Section 4563.01 (A), Revised Code. However, I concluded that due to the following pertinent language in Section 4563.03 (A), Revised Code, (which provided for the establishment of airport zoning boards), "when an airport is owned or controlled by a political subdivision * * *" that it was only in such case that provision was made for the establishment and operation of an airport zoning board.

In 1959, the legislature amended Section 4563.03 (A), Revised Code, and liberalized the restrictive effect of this section. The pertinent change was the substitution of the words "publicly owned" for "owned or controlled by a political subdivision." "Publicly owned" is defined in Section 4563.01 (A), Revised Code, as follows:

"(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 political subdivision of this state or any other state, or any other governmental body, public agency, or public corporation, or any combination thereof.*

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(Emphasis added)

Accordingly, my previous opinion is no longer effective under the present wording of the statutes. A wholly military establishment would come within the terms of the governing statutes. An airport zoning board may effect airport hazard zoning in connection with such a military airport facility.

Section 4563.03 (A), (B), Revised Code, provides as follows:

"(A) When an airport is publicly owned and all airport hazard areas appertaining to such airport are located inside the territorial limits of one political subdivision, the

legislative authority of the political subdivision shall constitute the airport zoning board. Such legislative authority, acting as the airport zoning board, may adopt, administer, and enforce airport zoning regulations for such airport hazard area. Airport zoning regulations may divide an airport hazard area into zones, and, within such zones, regulate and restrict land uses which by their nature constitute airport hazards, and regulate and restrict the height to which structures may be erected or objects of nature growth may be allowed to grow. An obstruction of air space in an airport hazard area rising to a height not in excess of forty feet above the established elevation of the airport, or three feet for each one hundred feet or fraction thereof its location is distant from the nearest point in the perimeter of the airport, whichever is greater, shall be prima facie reasonable.

“(B) When an airport is publicly owned and any airport hazard area appertaining to such airport is located in more than one 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.”

It is clear from the language of the statute that the only legislative body or bodies authorized to constitute an “airport zoning board” in multi-county areas are the various boards of county commissioners who comprise the airport or airport hazard area. Therefore, there cannot be more than one airport zoning authority in effect in regard to the same airport or hazard area in a single county at a particular time.

However, the same board of county commissioners shall serve as an integral part of any airport zoning board of as many different airports or airport hazard areas as come within the jurisdiction of their respective counties. Thus, the same county commissioners may be serving on two or more airport zoning boards comprised of county commissioners of various, but different counties as in your example of the Springfield and Dayton Airports.

In this connection, I call your attention to the first syllabus of Opinion No. 7579, Opinions of the Attorney General for 1956:

“1. Where pursuant to the provisions of Section 4563.03 (B), Revised Code, an airport zoning board con-

sists 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.”

In regard to your third question, my previous reference to Section 4563.03 (B), Revised Code, and the first syllabus of Opinion No. 7579, Opinions of the Attorney General for 1956, state the governing law and interpretation thereof. Where a portion of the airport hazard area is situated within the territorial limits of one county and the airport facility is within the territorial limits of an adjacent county, the former county has no authority to independently enact airport zoning resolutions even though the latter county refuses to participate. The airport hazard area appertaining to the airport facility constitutes a single jurisdictional area. The only airport zoning board authorized, by statute, to act is the single entity composed of the county commissioners comprising said area. Likewise, a particular county, or counties, has no authority to independently enact airport hazard zoning when portions of the hazard area are outside said county, even though the airport facility is within its territorial limits. The fact that certain necessary members of the collectively comprised board refuse to participate cannot bestow statutory authority to act not provided for by the legislature.

In regard to your inquiry as to whether land use zoning could adequately satisfy such a problem when there exists a failure of cooperation, I am of the opinion that this question is too speculative in nature. An answer to it should be deferred until a particular and certain fact pattern arises. I might point out that Section 4563.04, Revised Code, specifically provides for a resolution of the problem, where there is a conflict of zoning regulations enacted pursuant to Chapter 4563, Revised Code, and any other zoning resolutions applicable to the same area.

I come now to your fourth inquiry, and that is whether reluctant and uncooperative commissioners of a particular county can be required to participate on a multi-county based airport zoning board. Section 4563.03 (B), Revised Code, imposes a mandatory and clear legal duty on the necessary parties of such a board to act and a refusal to act would constitute a dereliction of duty.

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“* * * 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. * * *”

(Emphasis added)

Therefore, it is my opinion and you are advised that:

1. An airport zoning board established pursuant to Chapter 4563, Revised Code, may enact airport hazard zoning regulations in connection with a wholly military airport facility. (Opinion No. 2763, Opinions of the Attorney General for 1958, presently of no effect due to statutory changes).

2. There may be more than one airport zoning authority in effect in one county at one time provided there is more than one airport facility and airport hazard area comprising multi-county areas.

3. Multi-county based airport zoning boards are required to act as a single entity and individual counties of such an area have no authority to enact airport zoning regulations independently under Chapter 4563, Revised Code.

4. County Commissioners who are required by statute to participate on a multi-county based airport zoning board have a clear legal duty to so participate.

Respectfully,
WILLIAM B. SAXBE
Attorney General