

OPINION NO. 66-048**Syllabus:**

1. A board of township trustees does not have the power to acquire, construct, maintain or operate any airport or airport facilities and therefore may not appropriate monies from its general fund to do so.

2. A board of township trustees may not enter into an agreement with a regional airport authority which would involve an appropriation of monies from its general fund for the acquisition, construction, maintenance, or operation of any airport or airport facilities.

To: Joseph E. Mahoney, Ashtabula County Pros. Atty., Jefferson, Ohio
By: William B. Saxbe, Attorney General, February 28, 1966

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

"Under authority granted in Chapter 308 of the Ohio Revised Code, the Board of County Commissioners of Ashtabula County created a Regional Airport Authority during the year 1965.

"Ohio Revised Code, Sec. 308.06, which became effective October 2, 1961, under paragraphs (J) and (K) provides as follows:

"(J) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the making of necessary surveys, appraisals, and examinations preliminary to the acquisition or construction of any airport or airport facility and the amount of the expense thereof to be paid by each such county or municipal corporation;

"(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, and the amount of the cost and expense thereof to be paid by each such county or municipal corporation;"

"Your opinion is requested as to whether a township may appropriate monies from its Gen-

eral Fund for the acquisition, construction, maintenance, or operation of any airport or airport facilities."

It is a well established principle in Ohio that boards of township trustees have only such powers as are expressly conferred by statute or are necessarily implied from express powers. See Trustees of New London Township v. Milner, et al., 26 Ohio St., 452, 456.

Section 505.26, Revised Code, reads as follows:

"The board of township trustees may purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a township hall, a township park, and bridges and viaducts over streets, streams, railroads, or other places where an overhead roadway or footway is necessary, and such board may acquire sites by lease or otherwise for any such improvements, including lands and buildings for recreational purposes.

"If sufficient space for township offices is not available, the board of township trustees may purchase, lease, or construct, and furnish, equip, and maintain office space. When such offices are to be provided by construction, a site upon which to erect such offices may be acquired by purchase, lease for twenty-five years or longer, or otherwise. The cost of providing such office space shall be paid out of funds in the township treasury. If sufficient funds are not available the board shall proceed as provided in sections 511.01 to 511.04, inclusive, of the Revised Code."

I find nothing in the foregoing or in other general powers, either direct or implied which relates to any power of a board of township trustees to appropriate moneys from its general fund for the acquisition, construction, maintenance, or operation of any airport or airport facilities.

In Opinion No. 2493, Opinions of the Attorney General for 1961, page 551, it was held by my predecessor that a board of township trustees is without authority under Chapter 4563, Revised Code, or any other provision of law, to acquire real estate to establish an airport.

The question therein was whether a board of township trustees could appropriate land upon which an airport was to be established. In Chapter 4563, supra, the definition of a publicly owned airport included one owned, operated or leased to "any political subdivision" of this state. It was contended that because the definition of "political subdivision" in this same chapter included "township", there was an implied authority for a township to own and operate an airport. The then Attorney General in Opinion No. 2493, supra, said at page 553:

"* * * The mere fact, however, that a township is included in the definition of a 'political subdivision' as set forth in Section 4563.01 (D), Revised Code, does not con-

fer authority upon the township trustee to acquire property to construct an airport. As noted, Chapter 4563, Revised Code, deals only with the regulation of land adjoining publicly owned airports and does not either directly or indirectly purport to confer authority upon a board of township trustees to acquire or maintain an airport."

I am in accord with the foregoing and it is my conclusion that a board of township trustees does not have the power to acquire, construct, maintain or operate an airport or airport facilities and therefore may not appropriate monies from its general fund to do so.

The import of your question, however, suggests that because of the creation of a regional airport authority in Ashtabula County, there may be authority for a township to cooperate or participate in the function of the regional airport authority to the extent of appropriating monies for the acquisition, construction, maintenance or operation of any airport or airport facilities. Because of my conclusion that there is neither direct nor implied authority in other statutes to provide for such functions, I would necessarily require a clear indication of legislative intent to do otherwise in the statutes which authorize the creation, and outline the powers of, a regional airport authority.

Subdivisions (J) and (K) of Section 308.06, Revised Code, which are quoted in your request, provide the extent to which the board of trustees of a regional airport authority is empowered to enter into agreements for action preliminary to and in execution of the acquisition, construction, maintenance, or operation of any airport or airport facility within the territorial boundaries of the airport authority.

I note that the legislature has provided for such agreements with the counties or any municipal corporations, or any combination thereof, but there is no provision for such agreements with a township. A township is not within the constitutional classification of municipal corporations. Section 1, Article XVIII, Ohio Constitution states as follows:

"Municipal corporations are hereby classified into cities and villages. * * *"

I would also invite your attention to the provisions of Amended House Bill 949 recently enacted by the 106th General Assembly. Included therein is the authority for the director of commerce to recommend to the controlling board that the state enter into a grant agreement for construction of airports within designated counties, with a county, municipality or airport authority. Here again the legislature has seen fit to exclude townships.

Accordingly it is my opinion that a board of township trustees does not have the power to acquire, construct, maintain or operate any airport or airport facilities and therefore may not appropriate monies from its general fund to do so.

It is further my opinion that a board of township trustees

may not enter into an agreement with a regional airport authority which would involve an appropriation of monies from its general fund for the acquisition, construction, maintenance, or operation of any airport or airport facilities.