

The instant case is a much stronger case than was the Allgeyer case above mentioned for the reason that the contracting parties, together with the property, were within the jurisdiction of New York when the contract was made. It was therefore a New York contract and not an Ohio contract and no countersigning of the policy in Ohio would be necessary to make it a valid contract.

It is, therefore, my opinion that under the provision of the fourteenth amendment of the Federal Constitution as interpreted in the Allgeyer Case, 165 U. S. 578, a resident of Ohio who bought an automobile in this state and journeyed to New York City and there obtained insurance on his automobile, was not transacting any insurance business in Ohio and was therefore not violating any of the insurance laws of this state in so doing.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3097.

MUNICIPALITY—AIRPORT—LEASE OF LANDS OUTSIDE CORPORATION LIMITS ILLEGAL.

SYLLABUS:

A municipal corporation may not lease lands outside its corporate limits for the purpose of providing a landing field for aircraft.

COLUMBUS, OHIO, January 5, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 3939, General Code, Item 22, as amended, 112 O. L. 379, authorizes municipal corporations to purchase or condemn land within or without the corporation limits for landing field for aircraft, etc.

Section 3615, General Code, authorizes municipal corporations to acquire property by purchase or lease for any municipal purpose authorized by law.

Question: May a municipal corporation lease lands outside of the corporate limits for the purpose of providing landing field for aircraft?”

The General Code of Ohio now contains two statutes specifically dealing with municipal airports. The first is Section 3677, General Code, which, in so far as it is pertinent, reads as follows:

“APPROPRIATION OF PROPERTY.

* * *

Municipal corporations shall have special power to appropriate, enter upon and hold real estate within their corporate limits. Such power shall be exercised for the purposes, and in the manner provided in this chapter.

* * *

(15) For establishing landing fields either within or without the limits of a municipality for air craft and transportation terminals, with power to impose restrictions on all or any part thereof and leasing such

part thereof as may be desired for purposes associated with or incident to such aircraft landing and transportation terminals, including the right to appropriate a right of way for highways, electric, steam and interurban railroads leading from said landing field to the main highways or the main line of such steam, electric or interurban railroads, as may be desired: all of which are hereby declared to be public purposes."

Said item (15) was added to the other provisions of the section in 1925 (111 O. L. 49).

The second section dealing with municipal airports was amended to include such provision in 1927, being Section 3939, General Code, (112 O. L. 379). This is one of the sections concerning which you inquire and so far as pertinent to your inquiry, reads as follows:

"Each municipal corporation in addition to other powers conferred by law shall have power:

* * *

(22) To purchase or condemn land necessary for landing fields, either within or without the limits of a municipality, for aircraft and transportation terminals and uses associated therewith or incident thereto, and the right of way for connections with highways, electric, steam and interurban railroads, and to improve and equip the same with structures necessary or appropriate for such purposes."

This amended section constitutes a part of the Uniform Bond Act and prior to its adoption therein began with the following language:

"When it deems it necessary, the council of a municipal corporation * * * may issue and sell bonds * * * for any of the following specific purposes."

The amendment of the opening language of said section was for the evident purpose of making applicable the provisions of Section 2293-2, General Code, which reads as follows:

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. * * *"

From the above quoted parts of Sections 3677 and 3939, General Code, it is fully apparent that the Legislature has expressed as clearly as possible, its grant of authority to municipal corporations to acquire and improve landing fields either within or without their corporate limits and to borrow money for such purposes. In the first section (3677), the language used is "to appropriate, enter upon and hold real estate;" and in the second section (3939) it is "to purchase and condemn land". I see no particular significance in this diversity. Both statutes contemplate the acquisition of fee simple title. Certainly there is no express authority to acquire merely a leasehold. I have recently stated, in an opinion to you in another matter, (No. 3049 dated December 21, 1928) that:

"I have found no authority which would justify the conclusion that the word 'purchase' ever includes the words 'lease' or 'rent'."

That opinion is to the effect that, although Section 4391, General Code, confers specific authority upon the council of a village to *purchase* fire engines and other apparatus for the extinguishment of fires, it does not grant authority for the renting or leasing of such apparatus. I also stated therein that I am unwilling to hold that the home rule amendment to the Constitution, Article XVIII, Section 7, contains a direct grant of such authority to lease based upon the interpretations placed thereon by the Ohio Supreme Court.

We therefore find no authority in the two sections, dealing particularly with municipal airports, for the acquisition of leaseholds on real estate for landing fields. There are, however, two statutes which grant general power to municipal corporations to acquire property by lease. One of these is Section 3615, General Code, which reads as follows:

“Each municipal corporation shall be a body politic and corporate, which shall have perpetual succession, may use a common seal, sue and be sued, and acquire property by purchase, gift, devise, appropriation, lease, or lease with the privilege of purchase, for any municipal purpose authorized by law, and hold, manage and control it and make any and all rules and regulations, by ordinance or resolution, that may be required to carry out fully all the provisions of any conveyance, deed or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property.”

The only limitation upon the power conferred in this section is that the property acquired by the methods set forth therein shall be for “any municipal purpose”. Irrespective of the language appearing at the end of the hereinbefore quoted portion of Section 3677, “all of which are hereby declared to be public purposes”, the enactment of Sections 3677 and 3939, *supra*, constitute a clear legislative declaration that municipally owned landing fields are deemed to be for municipal purposes.

The other section conferring general power upon municipal corporations to acquire real estate by lease is Section 3631, General Code, which reads as follows:

“To hold and improve public grounds, parks, park entrances, free recreation centers and boulevards, and to protect and preserve them. To acquire by purchase, lease, or lease with privilege of purchase, gift, devise, condemnation or otherwise and to hold real estate or any interest therein and other property for the use of the corporation and to sell or lease it, or to donate the same by deed in fee simple to the State of Ohio as a site for the erection of an armory.”

The limitation in this section is that the property or interest therein shall be acquired “for the use of the corporation”, which is certainly no greater restriction than that contained in Section 3615, *viz.*, “for a municipal purpose”. It would seem therefore that municipal corporations had power under these two general sections, to acquire public landing fields by lease, purchase or condemnation prior to the enactment of the special provisions relating thereto. The enactment of item (22) of Section 3939, *supra*, was rendered necessary, as we have heretofore noted, to authorize the issuance of bonds to purchase air fields. The reason for the adoption of item (15) in Section 3677 may also be found by investigation of the history of the various sections composing the Ohio Municipal Code.

Section 3615, General Code, was included as Section 7, and Section 3631 as Section 26 of the original codification adopted in 1922 (96 O. L. 21, 25). Both were essentially in their present form with the exception of the power to "lease", or "lease with the privilege of purchase", which language was inserted in both sections by amendment in 1911 (102 O. L. 40, 153) while these two sections contained general power to appropriate property and condemn real estate respectively, and appeared under the title of "General Powers", Section 3677, General Code, also appeared as Section 10 under the title of "Special Powers in said original codification.

Sections 3678 to 3697, inclusive, prescribing the procedure for the appropriation of property, also appeared in substantially their present form. Section 11 of the Act then provided, as Section 3678, General Code, now provides that:

"In the appropriation of property for any of the purposes named in the preceding section, the corporation may, when reasonably necessary, acquire property outside the limits of the corporation. * * *

It appears therefore that said item (15) was added to Section 3677, General Code, as a declaration of the public character of air transportation stations for the exercise of the power of eminent domain.

The foregoing investigation discloses this situation: The two special grants of power (Sections 3677 and 3939, General Code) do not include any power to lease landing fields, while the two general grants (sections 3615 and 3631, General Code) contain power to lease property and real estate, which I think very properly includes landing fields, but are silent as to the exercise of such power outside the municipal boundaries. The general rule is that a municipal corporation can exercise its corporate powers only within its corporate limits, without express authority of the Legislature, (43 C. J. 255, *Cleve. v. Painter*, 18 O. D. 815, 817;) and such authority is not conferred by a general grant of power to "purchase, hold and convey such property, real and personal, as may be necessary for its public uses and purposes." The Legislature may, however, confer such power by necessary implication, 43 C. J. 1327.

I am unable to find such an implied grant contained in any of the four sections under consideration: or in any combination of them. It is true that there may be no valid reason why municipalities should be authorized to acquire fee simple title to landing fields within or without their limits, and be authorized to lease such fields only within their limits. It is my opinion, however, that this does not satisfy the requirements of a grant by necessary implication. To so hold would be to add language to Sections 3615 or 3631 which would authorize municipalities to lease outside their corporate limits not only landing fields, but all other kinds of property which they are now empowered to lease inside their boundaries. Both of these general statutes have long been upon the statute books of Ohio. They and their associated sections have come through a series of amendments, several of which have dealt with the exercise of extra-territorial powers of municipalities. If the Legislature has ever intended an extension of the power of municipalities to lease property in this respect, it has signally failed to give any expression to such intention.

You are therefore advised that a municipal corporation may not lease lands outside its corporate limits for the purpose of providing a landing field for aircraft.

Respectfully,
EDWARD C. TURNER,
Attorney General.