



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 15, 1977

ATTORNEY GENERAL OPINION NO. 77-268

Mr. Donald D. Gregory
City Attorney
Post Office Box 345
Osborne, Kansas 67473

Re: Cities--Airports--Port Authority

Synopsis: A city is a public corporation as that term is used in K.S.A. 12-3406(h). Upon creation of a port authority under K.S.A. 12-3401 et seq., title to and control of an existing municipal airport does not pass automatically and by operation of law from the city to the authority. Lastly, the city is authorized to lease or sublease all or any part of its municipal airport to the port authority, under K.S.A. 3-116.

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Dear Mr. Gregory:

As city attorney for the City of Osborne, Kansas, you inquire concerning the establishment of a port authority pursuant to K.S.A. 12-3401 et seq. In particular, you inquire concerning the status of the existing municipal airport of the City of Osborne, upon the establishment of a port authority under this act.

K.S.A. 12-3406(b) provides in pertinent part thus:

"Nothing contained in K.S.A. 12-3401 to 12-3413 inclusive, shall authorize a port authority to take or disturb property or facilities belonging to any public corporation,

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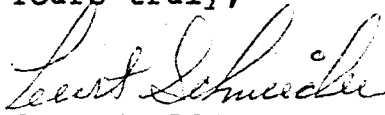
public utility, or common carrier, which property or facilities are necessary and convenient in the operation of such public corporation, public utility, or common carrier, unless provision is made for the restoration, relocating, or duplication of such property or facilities, or upon the election of such public corporation, public utility, or common carrier for the payment of compensation, if any, at the sole cost of the port authority" [Emphasis supplied.]

You inquire, first, whether a city is a public corporation. A public corporation is one created by the state for political purposes, to act as an agency or instrumentality of the state in the administration of civil government, such as a county, city, township or school district. See cases cited at 35 Words and Phrases, p. 120 et seq. A Kansas city is thus a public corporation within the meaning of the underscored term, supra.

Secondly, you ask whether, if the port authority were created, the Osborne municipal airport would automatically fall under its jurisdiction and control. I find no provision in the port authority act which provides or requires that upon creation of a port authority, that title to any existing port facilities located within its territorial limits passes by operation of law to the Authority. In my judgment, establishment of the authority does not vest either title to or control of the municipal airport in the Authority.

Lastly, you ask whether under K.S.A. 3-116, the city could appropriately execute a lease of its airport to the port authority. The cited statute authorizes the city to lease, assign or sublease all or any part of the municipal airport to one or more responsible "persons, associations or corporations" The port authority constitutes a public corporation or a quasi-municipal corporation, and is an eligible lessee of the airport from the city under K.S.A. 3-116, in my judgment.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj