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November 15, 1979

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ATTORNEY GENERAL OPINION NO. 79- 262

Mr. Stan Martin
City Attorney, Herington, Kansas
325 Broadway
Abilene, Kansas 67410

Re: Federal Jurisdiction--Surplus Property of Federal
Agencies--Public Airport Authority

Synopsis: A public airport authority which is duly created
by a city under the Surplus Property and Public
Airport Authority Act, K.S.A. 27-315 et seq., is
a separate and distinct corporation and may not
be dissolved except as provided for by the Act.

* * *

Dear Mr. Martin:

You have inquired of this office whether a public airport
authority established by the City of Herington pursuant to
K.S.A. 27-315 et seq. may be dissolved by means other than
those prescribed by statute. Specifically, you ask if the
City may, by charter ordinance, accomplish a dissolution
which is not provided for by K.S.A. 27-325.

As we understand it, the question involved here arose follow-
ing the passage of a charter ordinance by the City of Herington
which would have given the governing body of the City the
power to dissolve the Tri-County Public Airport Authority.
The Authority had been created by the City on June 27, 1978,
pursuant to and under the authority of K.S.A. 27-315 et seq.

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While the charter ordinance has since been repealed, in a supplemental letter you expressed a continuing desire to have the opinion of this office on whether such an ordinance would be possible under the statutory provisions now existing.

The Surplus Property and Public Airport Authority Act which appears at K.S.A. 27-315 et seq. was enacted in 1965 and has been amended several times since. While it is not necessary to discuss all of the Act's provisions in detail, the following points should be noted. First, any authority created under the terms of the Act is declared to be "separate and distinct" from the City which created it (K.S.A. 27-316), and to be a "body corporate and politic constituting a public corporation and a tax-supported institution" (K.S.A. 1978 Supp. 27-319). Such an authority has the power to sue and be sued, to have a corporate seal, to make bylaws governing its affairs, to acquire and dispose of property, to appoint officers and employees and to fix their compensation, and to contract with the creating city, the Federal government, the State of Kansas, and any other political subdivision thereof (K.S.A. 27-320). Such authority also may issue various types of bonds (K.S.A. 1978 Supp. 27-323), levy an annual tax which is collected like any other county-wide levy (K.S.A. 1978 Supp. 27-322), and exercise eminent domain powers (K.S.A. 27-321).

Despite the above, an authority created under the Act is subject in many respects to the city which brought it into being. Any tax levies or bond issues must be approved by the city before having any legal effect, and the records of the authority are open to the city or its agents (K.S.A. 27-324). Any bylaws adopted by an authority must be likewise approved, as must any exercise of an authority's eminent domain power. Directors of such authority are appointed by the governing body of the city, and may be removed for cause (K.S.A. 1978 Supp. 27-319). Finally, an authority itself may be dissolved by the city, subject to certain limitations set out in K.S.A. 27-325, including a provision that such authority has been allowed to exist for at least ten (10) years.

It was apparently to avoid this latter restriction that the City of Herington passed the charter ordinance which is the basis for your inquiry. By virtue of Article 12, §5(b) of the Kansas Constitution, cities in this state are empowered to determine their "local affairs and government." This may be accomplished either by the passage of local ordinances (as long as such legislation is not contrary to any act of the

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legislature), pursuant to Article 12, §5(b), or by a charter ordinance which can exempt the city from an act of the legislature (as long as the enactment is not uniformly applicable to all cities), pursuant to Article 12, §5(c)(1). It therefore remains to be determined whether the dissolution of a Public Airport Authority created pursuant to the Act is indeed a "local affair" in which the City may exercise its home-rule powers.

Clearly, in the exercise of its power of local self-government, a city may create such administrative agencies, departments, authorities and the like as it deems necessary to act for it in the discharge of its constitutional, statutory and corporate responsibilities. Any agency thus created is precisely that-- an agent of the city constituted and empowered to act on the city's behalf, and subject to dissolution at the pleasure of the city. In view of the various indicia of control which the city has over the Authority, this could arguably be the case here, despite the presence of K.S.A. 27-315 et seq.

However, there is definitely something greater here than a mere agency of the City of Herington. While it is true that the Authority came into existence following the action of the governing body of the City, the latter acted in accordance with procedures established by the state. While it took the action of the City to "trigger" the process, the underlying authority came from the legislature. This distinction was recognized in an analogous set of facts in State v. Urban Renewal Agency of Kansas City, 179 Kan. 435 (1956), where the Court stated:

"We think it clear that while the legislature cannot delegate its constitutional power to make a law, it can make a law which delegates the power to determine some fact or state of things upon which such law shall become operative. In other words, the legislature may enact general provisions but leave to those who are to act certain discretion in 'filling in the details,' so to speak, provided, of course, it fixes reasonable and definite standards which govern the exercise of such authority." (Emphasis added.) 179 Kan. at 440.

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We also note that this question has arisen in other jurisdictions, specifically in the context of the creation of public airport authorities. In the case of Lock v. City of Imperial, 182 Neb. 526, 155 N.W.2d 924 (1968), the Court was faced with a situation very analogous to the one here. The Nebraska legislature had empowered cities to create airport authorities, which would thereafter be bodies corporate and politic. Once created an authority could hold property, sue and be sued, issue bonds, levy taxes, appoint officers, and make contracts. While the creating city was able to appoint members of the authority's board and otherwise exercise various indicia of control, as is the case here, the Court had no difficulty in concluding that the authority was a municipal corporation in its own right, created by statute and exercising powers derived from the state and not the city, of which it was not merely another agency.

Much the same result was reached in Greensboro-High Point Airport Authority v. Johnson, 226 N.C. 1, 36 S.F.2d 807 (1946), where the Court recognized that the mere fact that an authority has been brought into existence by a city does not obscure the fact that it was the underlying act of the legislature which made such action possible. The Court went on to note:

"The powers given to such corporations are direct and legislative, and not conferred by municipal resolution unless the statute should so direct. They are, in fact, agents of the law. In so far as constitutional restrictions are concerned, the General Assembly may distribute the functions of a municipality as it may deem best, the only limitation being its own sound judgment in creating a unified and efficient government. By the exercise of the same sound judgment and legislative discretion, it may, as it has attempted here to do, create a more or less autonomous agency, giving to the municipality only such control as it may consider advisable where the particular functions to be performed involve great detail and complexity, and demand close attention and skilled personnel." (Emphasis added.) 36 S.E.2d at 809-810.

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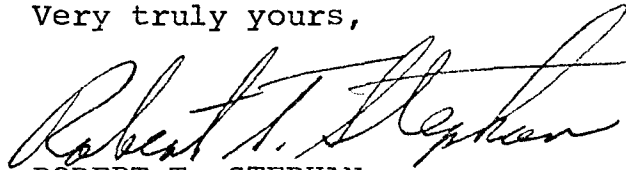
Additionally, Antieau's Local Government Law, Vol. 3A, Independent Local Government Entities, §30E.09, states:

"Even though brought into existence by municipal corporations and counties, airport authorities are independent corporate entities, rather than mere instrumentalities of the municipalities involved." (Emphasis added.)

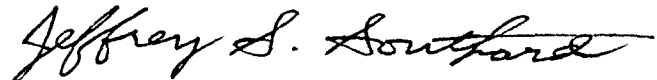
Given, then, that the Tri-County Airport Authority is an independent corporate entity established pursuant to the Act, may the City of Herington use its home-rule powers to dissolve it? In our opinion, it may not, for the Authority is now "an agent of the law," and may be dissolved only as provided for by the Act at K.S.A. 27-325. As this is the case, it becomes immaterial whether the Act itself is of uniform application, for, once created, the Authority is subject only to such control by the City as the latter is given by the Act. In short, the matter is no longer a "local affair" over which the City has power. While our conclusion might be different if the Authority had been established under the City's home rule powers, we need not decide that question under the facts presented here.

In conclusion, a public airport authority which is duly created by a city under the Surplus Property and Public Airport Authority Act, K.S.A. 27-315 et seq., is a separate and distinct corporation and may not be dissolved except as provided for by the Act.

Very truly yours,



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Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk