



STATE OF KANSAS

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November 15, 1979

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ATTORNEY GENERAL OPINION NO. 79- 263

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

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

Synopsis: Under the terms of K.S.A. 1978 Supp. 27-319(b),
"transfer" of airport property from a city to
an airport authority involves the conveyance
of all right and title to the property. In
the case of realty, such transfer would be
achieved by conveyance of a deed, and not by
the creation of a lease.

Furthermore, such a transfer is not contingent
upon any findings of the Federal Aviation
Administration concerning the status of the
Authority as an appropriate recipient.

* * *

Dear Mr. Martin:

As city attorney of Herington, Kansas, you have requested the
opinion of this office on two questions which relate to the
Tri-County Public Airport Authority, an entity which was
created by the City of Herington pursuant to the provisions
of K.S.A. 27-315 et seq. Specifically, you inquire:

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1) Does K.S.A. 1978 Supp. 27-319(b) require that the transfer of real property from the city to the airport authority be by deed or would the provisions of this subsection be satisfied by lease?

2) Does K.S.A. 1978 Supp. 27-319(b) require the transfer of airport property, regardless of whether or not the airport authority has been approved as an appropriate recipient by the Federal Aviation Administration considering the provisions of K.S.A. 1978 Supp. 27-318(d)?

Your first question concerns the meaning of K.S.A. 1978 Supp. 27-319(b). That subsection, which was added to the statute in 1978, reads as follows:

"(b) Upon the creation of an authority hereunder, the governing body of the city shall transfer all property and any funds belonging to the city or to which the city may hereafter be entitled, which are to be used for or are necessary for the operation of a public airport, to the authority created hereunder."

In essence, you wish to have our opinion on the meaning of the term "transfer"--does it mean a divestment of title, or would something less be acceptable, i.e., a lease?

The recent vintage of this subsection leaves us with no prior court decisions or opinions of this office to look to for guidance. However, there are a number of well-recognized principles of statutory construction which are of some help. Foremost among these rules is the principle that, whenever possible, the legislative intent is to be derived from the language of the statute, and where the language used is plain and unambiguous and also appropriate to an obvious purpose, the intent of the legislature, as expressed by the words used, should prevail. Jackson County State Bank v. Williams, 1 Kan.App.2d 649 (1977), State v. V.F.W. Post No. 3722, 215 Kan. 693 (1974), Brinkmeyer v. City of Wichita, 223 Kan. 393 (1978), and City of Overland Park v. Nikias, 209 Kan. 643 (1972). In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may properly look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished, and the effect the statute may have under the various constructions

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suggested. State ex rel., v. City of Overland Park, 215 Kan. 700 (1974); State v. Luginbill, 223 Kan. 15 (1977). Finally, in ascertaining legislative intent and purpose, all parts of an act should be considered and construed together in pari materia. Kansas Commission on Civil Rights v. Howard, 218 Kan. 248 (1975), State, ex rel. Dix v. Bd. of Education, 215 Kan. 551 (1974).

The term "transfer" is not defined by the definitions section of the Surplus Property and Public Airport Authority Act, K.S.A. 1978 Supp. 27-318. However, it has been construed by Kansas courts, albeit in other contexts. In Elwood v. Soldiers' Compensation Board, 117 Kan. 753 (1925), the Court construed the word "assignment" as having a comprehensive meaning, and went on to state: "The word 'transfer' has a still wider meaning. It includes all transactions whereby property of one person becomes the property of another" This use of the term was also adopted by the Court in Fairlawn Plaza Development, Inc. v. Fleming Co., Inc., 210 Kan. 459 (1972). There it quoted the definition of "transfer" found in Webster's Third New International Dictionary (unabridged) at p. 2427: "[T]he conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift or other process." 210 Kan. at 464. Finally, we note that the word is defined in the Kansas Inheritance Tax Act, K.S.A. 1978 Supp. 79-1537 et seq., in terms denoting a change of title: "[T]he passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment" K.S.A. 1978 Supp. 79-1542(a).

Turning to the use of the term in context, we note that it refers to "all property and any funds belonging to the city." While it is conceivable that "property" could be leased, clearly "funds" could not be, but would have to be totally conveyed. In order for the term to be consistently used, the same meaning need be applied to "property" as well. In addition, while a lease would have the advantage of allowing the city to regain control after the term was ended, the same result is accomplished by K.S.A. 27-325. That statute allows the Authority to be dissolved after a period of ten years, with the city acquiring any property the Authority may have acquired during its existence. Additionally, there seems little doubt that the requirement is mandatory, not directory; otherwise the Airport Authority, even though a separate entity (as noted in our Opinion No. 79-262), could be effectively killed by the City. Such power would exceed the limited control given to the City by the terms of the Act.

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Therefore, in view of the above, we conclude that under the terms of K.S.A. 1978 Supp. 27-319(b), "transfer" or airport property from the city to the Airport Authority involves the conveyance of all right and title to the property. In the case of realty, such transfer would be achieved by conveyance of a deed, and not by the creation of a leasehold interest.

Your second inquiry concerns the necessity of making such a transfer, regardless of whether the FAA has approved the Airport Authority as an "appropriate recipient."

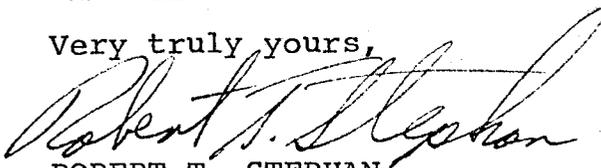
In examining the provisions of the Act, specifically K.S.A. 1978 Supp. 27-318(d), we find nothing there which empowers the FAA to make determinations of who is and is not an appropriate recipient of airport property. In pertinent part, the statute states:

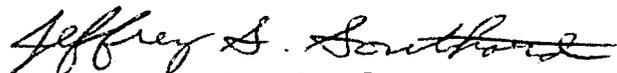
"'Public airport' means a public airport as defined in the federal airport act of 1946, as amended, and shall include such property which in the determination of the administrator of the federal aviation agency is essential, suitable or desirable for the development, improvement, operation or maintenance of such public airport or reasonably necessary to fulfill the immediate and foreseeable future requirements of such public airport"
(Emphasis added.)

From the above, it would appear that while the administrator of the FAA does have the authority to determine which property should be included in the area to be transferred, this does not extend to whether the Airport Authority is an appropriate recipient. While there may in fact be federal statutes or regulations which empower the administrator to do so, in the opinion of this office such authority is not granted by K.S.A. 1978 Supp. 27-318(d).

Thus, it is the opinion of this office that the transfer of property under K.S.A. 1978 Supp. 27-319(b) is not contingent upon a determination by the FAA that the Airport Authority is an "appropriate recipient," but is instead governed by the provisions of K.S.A. 27-315 et seq.

Very truly yours,


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