



STATE OF KANSAS

## Office of the Attorney General

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Curt T. Schneider  
Attorney General

October 21, 1975

ATTORNEY GENERAL OPINION NO. 75- 402

Mr. John Shirley  
Scott City Attorney  
325 Main Street  
Scott City, Kansas 67871

Re: Cities--Airports--Lease of Property

Synopsis: Property owned by a city as a municipal airport pursuant to K.S.A. 3-113 *et seq.* may be leased only for those purposes "directly or incidentally and necessarily required for the successful and proper operation" of such airport, and may not be leased for independent commercial ventures unrelated to aviation purposes of the airport, although such property may be sold if no longer required for the purposes for which it was originally acquired.

\* \* \*

Dear Mr. Shirley:

You advise that the governing body of the City of Scott City, Kansas, has been requested to consider leasing a ten acre tract located on property owned by the city, for a period of ninety nine years, the lessees having an option to renew the lease for a like period thereafter. The tract is located on the corner of a quarter section of land which was purchased by the city in 1944 as an aviation site. The property was acquired under the authority of K.S.A. 3-113 *et seq.* A part of that enactment, K.S.A. 3-116, states in pertinent part as follows:

"The governing body . . . may lease, assign or sublease the whole or any part of such airport or municipal field for aviation

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purposes, to one or more responsible persons . . . *for any purpose directly or incidentally and necessarily required for the successful and proper operation of such property* upon such terms as shall insure the impartial operation thereof, and rendition of services and conveniences thereon, on an equal basis to all users of said airport or municipal field for aviation purposes . . . ." [Emphasis supplied.]

You advise that the private individuals wishing to lease this ten-acre tract seek to do so in order to build, maintain and operate a restaurant-private club-motel-convention center thereon.

The question arises whether the lease of this property for the described proposed purpose is for a purpose which is "directly or incidentally and necessarily required for the successful and proper operation of such property."

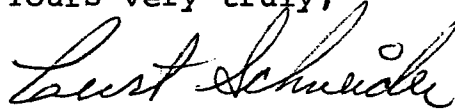
In my judgment, the purpose for which the property is proposed to be leased is entirely unrelated to the successful and proper operation of the airport. The tract proposed to be leased may be desirable for the lessees' purposes because of its commercial desirability, and that desirability may or may not stem from physical proximity to the airport operation itself. However, aside from the commercial purposes of the proposed lessees, the proposed project has no relation to airport operations itself, and in my judgment, K.S.A. 3-116 requires that leases of airport property thereunder be for purposes "directly or incidentally and necessarily required for the successful and proper operation of the airport," and not for collateral and independent commercial ventures.

In light of the foregoing, you raise the further question whether the city may declare the tract no longer required for the purposes for which it was acquired, and dispose of the tract by sale to the individuals interested in the property as described above. Except as specifically provided otherwise by K.S.A. 3-113 *et seq.*, the city governing body has the same rights, powers, duties and responsibilities toward municipal airport property as toward other property of the city. The general powers of the city under K.S.A. 1974 Supp. 12-101 include the power to "[s]ell and convey any real or personal estate owned by the city. . . ." Thus, although the power of the city to lease airport property is restricted by K.S.A. 3-116, its power to convey the property is

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granted by K.S.A. 1974 Supp. 12-101, and if the property is no longer required for the purposes for which it was required, the city may dispose of it by sale.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj