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book where the same are taxed a marginal note stating the date, amount, number of check and the clerk to whom such fees and costs were transmitted.”

Since docket fees have been paid with the filing of the action and are not among the costs collected by the county to which the cause was removed, the docket fees should remain in the county where the action was instituted.

7. The answer to this question is “no”.

8. The Act provides that the prepayment of the docket fee “shall not be required in * * * proceedings for the appointment of guardians.” My answer is, that prepayment of the docket fee is not required by the Act unless, subsequent to the appointment, other civil actions are instituted of an adversary character.

WOL: vb

OFFICIAL OPINION NO. 31

May 4, 1949.

Hon. C. F. Cornish, Director,
Aeronautics Commission of Indiana,
306 Board of Trade Building,
Indianapolis 4, Indiana.

Dear Sir:

I have your letter requesting an opinion from this office upon the following question:

“In the event that the governing body of a municipality of the State of Indiana has authorized the Board of Aviation Commissioners of such municipality by proper resolution or ordinance to undertake a specific airport development and to negotiate for federal aid in that connection, or has appropriated funds to said board for such development, would a Grant Agreement for federal aid under the Federal Airport Act (49 U. S. C. 1101 et seq.), between the United States and said municipality, executed on behalf of the municipality by the President or Vice President of the Board
of Aviation Commissioners solely on authority of a resolution of said board, have the same legal effect and standing and be equally as binding on the municipality in accordance with the terms thereof as a Grant Agreement executed on such authority and also the authority of a resolution of the governing body of the municipality?"

To answer this question it is necessary to consider portions of Chapter 109 of the Acts of 1949, which amended certain sections of the 1945 Airport Act (Chapter 190, Burns, Section 14-412 et seq., 1947 Supp.).

Section 2:

"That whenever the council of any municipality as now or hereafter defined by act of the General Assembly of the State of Indiana shall after the taking effect of this act adopt an ordinance, an act or a resolution in favor of the acquisition, improvement, operation or maintenance of an airport or landing field for such political subdivision under the provisions of this act, and declaring a necessity for the same, then on the date of the taking effect of such ordinance, act or resolution, there shall be hereby established as one of the executive departments of such municipality a department of aviation, which shall be under the control of a board of four members, to be known as the Board of Aviation Commissioners. * * *" (Our emphasis).

Section 3:

"That the board of aviation commissioners may adopt and use a seal. Such applications, assurances, contracts and other instruments as are necessary or proper in such board's performance of its duties and the exercise of its powers hereunder may be executed in its name or in the name of the municipality, as the case may be, by the President or Vice-President of such board and attested by its Secretary or Assistant Secretary, provided however that such board may by resolution prescribe any other form or method of execution. * * *"
“That the said board of aviation commissioners shall have as a part of its powers, full and exclusive power on behalf of such municipality: * * *”

Then follows a detailed enumeration of rather complete powers over the acquiring, construction, maintenance and regulation of municipal airports.

Section 8:

“That the acquiring, establishment, construction, improvement, equipment and maintenance and the control and operation of municipal airports and landing fields for aircraft under and pursuant to any of the provisions of this Act shall be deemed and are hereby declared to be a government function of general public necessity and benefit, and shall be for the use and general welfare of all the people of the state of Indiana, as well as of the people residing in any such municipality.” (Our emphasis).

Section 11:

“A municipality acting by and through its board of aviation commissioners pursuant to Chapter 114, Acts of 1947, is authorized to accept, receive, and receipt for federal monies, and other monies, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal monies, upon such airports and other air navigation facilities.

“Subject to said Chapter 114 of the Acts of 1947, such board shall have the sole and exclusive power on behalf of such municipality to submit to the proper State and Federal agencies, application or applications for grants of funds for airport development and to make or execute any and all representations, assurances and contracts, to enter into any and all covenants and agreements with any such State or Federal agency or
agencies relative to the development of a municipal airport." (Our emphasis).

Chapter 114 of the Acts of 1947, referred to in Section 11 above, is known as the "Channeling Act" and provides that no municipality shall directly accept, receive or disburse any funds under the Federal Airport Act but instead it shall designate the Director of the Aeronautics Commission of Indiana as its agent to do these acts in its behalf.

You will note that Section 11, above quoted, is the expression of our recent legislature upon the particular subject of a municipality applying for and receiving federal monies for an airport project. It seems to me that this language is clear, unambiguous, and unmistakable. It certainly is specific on the proposition as to what body, board or agency has been empowered by the legislature to act in these matters on behalf of a municipality.

The status and the scope of powers of municipal corporations generally are rather well defined.

"* * * Municipal corporations are creatures of the State. They possess such powers only as are granted by the legislature in express words and those necessarily implied and incidental to those expressly granted, and those indispensable to the declared objects and purposes of the corporation and to its continued achievements. * * *"

Dunn, Auditor et al. v. City of Indianapolis (1935), 208 Ind. 630;
East Chicago Co. v. City of East Chicago (1909), 171 Ind. 654.

However, in this connection we are not so much concerned over the power as we are in the manner in which such power can be exercised.

37 Am. Jr., Municipal Corporations, Section 46, states the general rule of the exercise of power as follows:

"* * * It is still the rule, however, that all powers granted to a municipal corporation are vested in the council unless expressly delegated to some other officer or body. * * *"
Later, in Section 117 recognition is given to the effect that if a power is expressly delegated to some other body than the council, then the municipality must act in this manner.

"The exercise by a municipality of power delegated to it by the legislature is the exercise of the power of the legislature. * * * If the charter or a statute prescribes the mode by which a particular act is to be done or power is to be performed, the prescribed mode must be followed. * * *"

Section 8 of the 1949 Act, quoted above, specifically declares the acquiring and maintenance of a municipal airport to be a governmental function. It is clear that when a municipality acts in its governmental capacity it acts as the agent of the state.

Department of Treasury v. City of Evansville (1945), 223 Ind. 435.

There is no doubt but that the legislature can specifically lay down the procedure for the exercise of powers concerning a governmental function by a municipality, and when such a method has been prescribed the following rule applies:

"* * * where the means by which a power granted shall be exercised are specified, no other or different means for the exercise of such power can be implied. And where a statute prescribes the mode of exercising a power, the mode prescribed must be followed. * * *
(Our emphasis).

State of Indiana, ex rel. Hulskamp v. McCormack (1916), 185 Ind. 302; State ex rel. Van Hoy, Treas. etc. v. Able, City Treas. (1931), 203 Ind. 44.

A somewhat similar situation to that at hand was discussed in the case of School City of Marion v. Forrest (1906), 168 Ind. 94, wherein the court used the following language in commenting upon the express delegation of power to library boards in an act which gave such boards rather complete control over libraries.

"* * * It may, with propriety, be said that a law providing for the organization and maintenance of
public libraries is a part of the educational system of the State, and that boards organized under the provisions of said act exercise the whole power of the municipality in respect to public libraries. * * *" (Our emphasis).

The court further quoted Thompson on Corporations to the effect that:

"In the machinery of municipal government the legislatures of states have frequently had occasion to create boards of officers for the performance of particular duties. The boards are not in general corporations, but are agents of the municipal corporation in the sense which makes the latter liable for their contracts and torts. * * *" (Our emphasis).

In applying the above authorities to the question presented in your letter, we have a board at the head of a department of municipal government directly created and authorized by the legislature to carry out certain powers relative to a governmental function for and on behalf of that municipality. I do not believe there is any doubt but that their acts properly taken pursuant to statute are the acts of the municipality and binding as such. Your question, therefore, is answered in the affirmative.

OFFICIAL OPINION NO. 32

May 5, 1949.

Mr. Otto F. Walls, Administrator,
State Department of Public Welfare,
141 South Meridian Street,
Indianapolis, Indiana,

Dear Mr. Walls:

I have your letter wherein you state the following:

"Arthur E. Wooden filled the position of Director of Public Welfare of Marion County, Indiana from April 15, 1944 to July 27, 1948.