

OFFICIAL OPINION NO. 81

August 2, 1945.

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

Dear Sir:

I have your letter of July 19th in which you make the following inquiry:

“Under the ‘Aeronautics Commission of Indiana Act’ of 1945, is the approval or consent of this Commission required before a municipality acquires additional land or facilities for the expansion of existing municipal airports?”

Among the powers vested in the Aeronautics Commission of Indiana by Section 8, Chapter 360, page 814, Acts of 1945, is found the following provision at page 823:

“It shall have the power to approve or disapprove all purchases made by any municipality of any land to be used by said municipality for the establishment of any airport or landing field, and the establishment by any municipality of any airport or landing field.
* * *”

No other provision is found in that Act with respect to the power of the Commission to approve or disapprove local acquisitions. Another paragraph in the same section, however, sets forth that;

“The commission may render advice in the acquisition, development, operation, or maintenance of airports owned, controlled or operated, or to be owned, controlled or operated, by municipalities in this state.”

The fair inference from those two pertinent paragraphs of the Act is that the approval or disapproval of the Commission is required at the time of the original establishment of an airport or landing field. After that its functions are purely ad-

visory in so far as development and enlargement are concerned.

The same conclusion is reached when we consider Chapter 360 in connection with the new municipal airport law (Chapter 190, page 363, Acts of 1945) passed at the same session of the legislature. In the latter Act Section 5 empowers the local board of aviation commissioners to acquire lands and establish municipal airports. A proviso is added to that section, however, as follows:

“* * * *Provided*; That no land shall be purchased by any municipality for the establishment of an airport or landing field and no airport or landing field shall be established by any municipality unless said action is approved by the Aeronautics Commission of Indiana.”

There, too, the only limitation is upon establishment.

Since the Commission is a statutory board it only possesses such powers as are expressly given by statute or necessarily implied to execute the express powers. There is no express power over improvement and expansion of existing airports or landing fields and every implication is against such a power.

See: New York Central R. Co. v. Public Service Commission, 191 Ind. 627, (1921);

Dept. of Insurance v. Church Members Relief Assn., 217 Ind. 58, (1940).

Only one question remains, which though rather technical, may be raised hereunder:

In Chapter 360 as well as in Chapter 190 the following definitions are found:

“The term ‘airport’ when used in this Act means any location either on land or water which is used for the landing and taking off of aircraft which provides for the shelter, supply or care of aircraft.

“* * *

“The term ‘landing field’ when used in this Act means any location either on land or water of such size and nature as to permit the landing or taking off

of aircraft with safety but which is not equipped with facilities for either the shelter, supply or care of aircraft."

It necessarily follows from those definitions that certain improvements such as the construction of a hangar on a landing field will place it in the airport class. Would that be the establishment of an airport within the provisions of Chapter 360 or Chapter 190? Upon reading those Acts it seems to have been the chief concern of the legislature to give the Commission supervision over the original location of a landing field or airport. After the location has been once established it does not seem reasonable to require approval of such an improvement upon a landing field simply because it then becomes an airport and not require approval of a similar improvement upon an existing airport.

I am therefore of the opinion that the approval or consent of the Commission is not required before a municipality acquires additional land or facilities for the expansion of existing airports or landing fields.

OFFICIAL OPINION NO. 82

August 4, 1945.

Hon. F. W. Van Antwerp, Chairman,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Sir:

I have your letter of July 18th in which you request my opinion on the following questions:

"1. In view of prior opinion of April 26, 1944, in which our authority to issue limited or restrictive licenses is indicated, and in view, further, of the fact that a license issued upon the restricted basis may be extended to a general one automatically by the increase of capital structure to \$50,000.00, what factors shall the Department take into consideration in making its