

1969 O. A. G.

OFFICIAL OPINION NO. 18

July 30, 1969

Mrs. Esther Berner, Director
Aeronautics Commission of Indiana
State Office Building
100 North Senate Avenue
Indianapolis, Indiana 46204

Dear Mrs. Berner:

You have asked for my opinion on whether in Indiana the cost of utilities relocation necessitated by airport expansion projects can legally be paid out of federally allocated funds appropriated for that purpose.

In my opinion, the answer is yes.

Under the Common Law, public utilities could not have been so paid in Indiana. But Acts of 1959, Ch. 15, Sec. 15, as found in Burns' (1964 Repl.), Section 14-1215 provide for such relocations in part as follows:

“* * * and to order and require any public utility or public service corporation or other corporation or person to remove or to install in underground conduits any and all wires, cables and power lines passing through or over any such airports or landing field or along the borders thereof or within such reasonable distance thereof as may be determined to be necessary for the safety of operations thereon, upon payment of such utility or other person of due compensation for the expense of such removal or reinstallation * * *”

Acts of 1959, Ch. 15, Sec. 33, as found in Burns' (1964 Repl.), Section 14-1233 further provides as follows:

“The airport authority district, acting by and through its board pursuant to chapter 114, Acts of 1947 [§ 14-326] and any amendment thereof, is authorized to accept, receive and receipt for federal moneys, and other moneys either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities, and sites therefore

OPINION 18

with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities.

“Subject to said chapter 114 of the Acts of 1947 [§ 14-326], such board shall have the sole and exclusive power 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 an airport.”

The portions of the statutes quoted, *supra*, are clearly in derogation of the Common Law and specifically apply to the Airport Authority District (Evansville). Further, these portions of the statutes operate prospectively and not retroactively. The Attorney General rendered an opinion, 1961 O. A. G., No. 44, p. 275, that they are constitutional.

In 49 F. C. A. Sections 1112 and 1113 covering allowable project costs, and payment, respectively, there are no provisions or directives that would prevent payment of the federal share of the relocation costs to the utilities involved. In fact, under the Federal Airport Development Act, the utilities should be paid the federal share of the utilities' relocation costs.