

1967 O. A. G.

and the board of county commissioners of cities and counties maintaining the department.”

Thus, the same 1965 General Assembly that in one act authorized the creation of the multiple governmental unit health board being considered herein, in a different act specifically withdrew from a different form of multiple governmental health board the power to set salaries not subject to review. The Legislature was clearly aware both of the general grant of powers and of the limits they wished to impose on that grant.

To summarize, it is my opinion that a multiple county health board is a legal board even if one of the counties involved has failed or is unable to appoint all its authorized members and is able to conduct its business whenever a majority of the authorized membership is in attendance. It is my further opinion that such a board may set the salaries of its officers and employees, and that the salaries so set may not be decreased by the county council of any of the participating counties.

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OFFICIAL OPINION NO. 48

December 19, 1967

**INDIANAPOLIS AIRPORT AUTHORITY—As Having Taxing  
Power Where Secondary Airport is not Located  
Within Jurisdictional Boundaries.**

Opinion Requested by Mr. Robert J. Winter, Director, State  
Aeronautics Commission.

This is in response to your request for an opinion on the question of whether statutory authority exists for two counties to share taxes (personal property taxes) derived from

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aircraft based on an airport in one county where the unit which owns and operates the airport is located in another county. From your letter and that of Chalmer Schlosser, Jr., attorney for the Indianapolis Airport Authority, it is my understanding that said authority proposes to establish an instrumented secondary airport to be located east of the City of Indianapolis. Several proposed locations, both within and without Marion County, are under consideration.

One of the serious concerns of having such secondary airport located outside of Marion County is the necessary operational revenue and the fact that tax revenues (generated primarily by the levy of taxes upon aircraft based at an airport outside of Marion County) would go to the county in which such airport is located. Representatives of Hancock County and the City of Greenfield are interested in the location of such secondary airport (by the Indianapolis Airport Authority) in said county since Hancock County and the City of Greenfield would benefit immeasurably from the location of such facility in said county, even to the possibility of precluding the necessity of establishing a municipal airport of their own. Because of the benefits which would be received by such county and city, Hancock County and City of Greenfield officials are now agreeable to some plan or contract whereby the Indianapolis Airport Authority would receive some revenue from Hancock County equivalent to a certain percentage or share of the tax revenues derived from the aircraft which would be located upon such second airport in Hancock County. The question thus resolves itself into that of whether there is authority for some such arrangement.

The Act which governs the Indianapolis Airport Authority is the Acts 1961, ch. 283, as found in Burns §§ 14-1301 through 14-1336. The powers section of that Act is § 13 as found in Burns § 14-1313. Numerical paragraphs 7, 17 and 24 of said section 13 are important in the consideration of your question and provide as follows:

“7. To acquire property, real, personal or mixed, by deed, purchase, lease, condemnation or otherwise and dispose of the same for use or in connection with or for administrative purposes of the airport; to re-

ceive gifts, donations, bequests and public trusts *and to agree to conditions and terms accompanying the same* and bind the authority district to carry them out; to receive federal or state aid and administer the same; to erect such buildings or structures as may be needed to administer and carry out the provisions of this act.

“17. To acquire, establish, construct, improve, equip, maintain, control, lease and regulate municipal airports and landing fields and other air navigation facilities, for the use of airplanes and other aircraft, *either within or without the jurisdictional limits of such district*; and to erect, install, construct and maintain at such airport or airports, facilities for the servicing of aircraft and for the comfort and accommodation of air travelers and the public. No land shall be purchased by any airport authority district for the establishment of an airport or landing field and no airport or landing field shall be established by any such district unless prior to said action or acquisition of such land, approval of said action or acquisition of such land is granted by the aeronautics commission of Indiana.

“24. *To negotiate and execute any and all contracts of sale or purchase, lease, or contracts for personal services, materials, supplies, or equipment, or any other transaction, business or otherwise, relative to any airport under the board's control and operation.* Provided, however, that whenever such board determines to sell any part or whole of aviation lands, buildings or improvements now owned by such district, such sale shall be in accordance with the laws of this state. Whenever personal property under the control of the board valued in excess of five hundred dollars is to be sold, such board shall sell to the highest and best bidder after due publication of notice of such sale. (Emphasis added.)

From paragraph 7, *supra*, it will be seen that the acquisition power of the Indianapolis Airport Authority is extreme-

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ly broad and that it is authorized to agree to various conditions and terms accompanying the holding of property acquired by it and to bind the authority to carry out such conditions and terms.

Paragraph 17, *supra*, specifically authorizes the Indianapolis Airport Authority to acquire, establish, construct, improve, maintain, control, lease and regulate airports and landing fields "either within or without the jurisdictional limits of such district," which means, in effect, such fields may be acquired and operated outside of Marion County.

Paragraph 24, *supra*, authorizes the Indianapolis Airport Authority to negotiate and execute any and all contracts or any other transaction, business or otherwise, "*relative to any airport under the board's control and operation.*" (Emphasis added.)

With respect to the authority of the officials of Hancock County to enter into some such arrangement, reference is made to § 31 of Acts 1961, ch. 283, as found in Burns § 14-1331, which provides as follows:

*"Power of any other municipality to assist the district. Whenever the council of any municipality determines that the public interest of the municipality will be served by assisting any other municipality or the district created pursuant to this act in executing the powers and authority granted by this act, such first mentioned municipality is expressly authorized and empowered to furnish such assistance by gift, or lease with or without rental, of real property, by donation, lease with or without rental, or loan, of personal property, and by the appropriation of moneys which may be provided for by taxation or the issuance of bonds in the same manner as funds might be provided for the same purpose if the municipality were exercising the powers heretofore granted in its own behalf."* (Emphasis added.)

(Hancock County would be within the applicable definition of "municipality.")

From the above provision, it is clear that the officials of Hancock County and particularly the county council of said county would have the authority to cooperate and furnish assistance to the Indianapolis Airport Authority, even to the extent of appropriating monies which may be provided for by taxation or by the issuance of bonds to provide funds in the same manner as might be provided for the same purpose, if Hancock County were exercising the powers granted to operate such airport in its own behalf.

The question then resolves into one of whether such an arrangement may be made by contract which would bind the parties for any given period of years. In my opinion, the application of the "Interlocal Cooperation Act," Acts 1957, ch. 118, as found in Burns §§ 53-1101 through 53-1107, would provide an instrument by which such a contract could be executed. By reason of section 3 of that Act, as found in Burns § 53-1103, it applies to any "public agency" which means "any city, town, county *or other political subdivision of this state*; any agency of the State of Indiana or of the United States; and any political subdivision of another state." (Emphasis added.) Applying the standards set forth in 1964 O.A.G., p. 218, the Indianapolis Airport Authority would qualify as a political subdivision of the State of Indiana, and, of course, Hancock County would also qualify as a public agency within the meaning of Burns § 53-1103, *supra*. Thus, each party would be qualified to act as a contracting party under any such contract as is authorized by said Interlocal Cooperation Act. Section 4 of said Interlocal Cooperation Act, as found in Burns § 53-1104 authorizes any public agency to exercise jointly with any other public agency any power which each has or could exercise singly. From the foregoing quotations from the Act applying to the Indianapolis Airport Authority, it is clear that both said authority and Hancock County have the power individually to perform the particular act which would be required of it in any such arrangement. Pursuant to section 4 of said Interlocal Cooperation Act, any such agreement must be submitted to the Attorney General of Indiana for his approval and in addition thereto, pursuant to section 6 of said Act,

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such agreement would have to be submitted to the Aeronautics Commission of Indiana for its approval.

The precise mechanics for the collection of such tax by the officials of Hancock County should be the subject of further consideration by all the parties involved, since there may be more than one method by which such tax may be levied and collected.

Another question raised by your letter is whether the result desired could be accomplished by having the Indianapolis Airport Authority annex the secondary airport. While the Act applicable to the Indianapolis Airport Authority does specifically provide authority for the annexation of lands to itself, this would not apply with respect to lands which are outside of the territorial boundaries of the district, which are the boundaries of Marion County.

Paragraph 26 of Burns §14-1313 provides for annexation of lands. However, the title to said Act, Acts 1961, ch. 283, expressly provides that it is:

“AN ACT authorizing the creation of airport authority districts *consisting of cities of the first class and the counties wherein such cities are situated. . . .*”  
(Emphasis added.)

Also, section 2 of Acts 1961, ch. 283 as found in Burns §14-1302 provides for the creation of a district such as the Indianapolis Airport Authority by action of the council of any city of the first class and the council of any county in which such city of the first class is situate. Said section further provides that upon such action having been taken, there shall be established an airport authority district “for the area conterminous with the jurisdictional boundaries of the council or councils adopting and enacting such ordinance, act or resolution.” In this case, the boundaries of the Indianapolis Airport Authority are the same as those of Marion County, and under this statute cannot be extended beyond those of Marion County.

The airport, if located in Hancock County, could not be annexed into the Indianapolis Airport Authority district and

could not become subject to its taxing power for the reason that it would be situated outside of the jurisdictional boundaries of the City of Indianapolis, and Marion County. Thus, this latter suggestion, concerning the annexation of an airport located outside of Marion County, would not solve the problem of saving some of the tax revenues from aircraft located at such airport located outside of Marion County for use by the Indianapolis Airport Authority.

I trust the foregoing may be of some assistance to those concerned in providing general guide lines and pointing out the general authority for further action should this course be desired. Moreover, as a further consideration for such a tax sharing plan, would be the fact that such an airport (if located in Hancock County) would be operated by the Indianapolis Airport Authority from operating revenues from such airport and it would only be logical that the portion of the tax transferred to the Indianapolis Airport Authority should be used to supplement such operating revenues for the operation of the airport in Hancock County. If such an interlocal cooperation contract is decided upon by the Indianapolis Airport Authority and the officials of Hancock County, this office will be happy to render such assistance as requested in furnishing further advice with respect to the details of any such contract, the legality thereof and such other advice as may be requested.