

STATE DEPARTMENT OF
RESOURCES & DEVELOPMENT:

Department does not have sufficient statutory authority to enable it to act in the capacity of an Airport Agency within the meaning of H. R. 5024.

March 14, 1945

3-17



Mr. Frank Ridgway
State Department of Resources and Development
State Office Building
Jefferson City, Missouri

Dear Sir:

We have your request for an opinion of recent date, the pertinent part of which request reads as follows:

"In conjunction with the introduction of Randolph Bill #5024 to the Commission at the next meeting, I am wondering if it would not be a good idea to get a ruling from the Attorney-General on the authority in House Bill #502 for the Commission to act as the State Airport Agency towards administering the affairs of H. R. #5024."

At the outset we shall endeavor to make some observations relative to Article XI, Laws of Missouri, 1943, page 978. (See also Mo. Sta. Ann.)

Section 15393.1 reads as follows:

"There is hereby created a department of the State of Missouri to be known as the State Department of Resources and Development, which may hereafter be referred to as the department, and which shall be created for the general purpose of advancing the economic welfare of the people through programs and activities to develop in a proper manner the state's natural resources and industrial opportunities pertaining to commerce, agriculture, mining, forestry, transportation, recreation, aviation and other matters intended to foster and develop gainful employment and the pursuit of happiness of all who now are or who may hereafter be residents of this state."

It will be noted from the reading of the above section that the general purpose of the creation of the department was for "advancing the economic welfare of the people through programs and activities * * * and develop gainful

employment and the pursuit of happiness of all who now are or who may hereafter be residents of this state."

The duties of the Commission are set forth in Section 15393.7 and without encumbering, this opinion by copying the entire eight paragraphs, we wish to point out that the following paragraphs begin as follows:

Paragraph (a): "Investigate, assemble, develop and study * * * the industrial opportunities and possibilities of the State of Missouri * * * ."

Paragraph (b): "Formulate and adopt a plan or plans * * * ."

Paragraph (c): "Encourage the location of new industrial enterprises in the state * * * ."

Paragraph (d): "Investigate, * * * * markets for Missouri products, * * * ."

Paragraph (e): "Encourage the development of recreational areas in the state, * * * ."

Paragraph (f): "Encourage the formation of local and sectional development committees * * * * to encourage the location of industries * * * ."

We quote Paragraph (g) in full as it is pertinent to the request made in your letter:

"Encourage the development of the aeronautical resources of the state and aid in an educational program related to aviation."

We also quote Paragraph (h) in full:

"Do such other and further related acts as shall, in the judgment of the commission, be necessary and proper to carry out the purposes for which the commission is created."

We have, in a meager way, set forth some of the language contained in the several duties in sub-division 7 of Section 15393, supra, to show that it was undoubtedly the purpose of the Legislature in the creation of this department that the department should concern itself with the task of surveying and formulating, for example, the aeronautical resources of the state rather than the actual construction of air fields.

As we understand your opinion request, you desire to know whether or not, in our opinion, your department would have the right under sub-section (g) of paragraph 7 of Section 15393, supra, to be considered a state airport agency as that term is defined in Paragraph I of H. R. 5024 now pending in the Congress of the United States.

Paragraph I reads as follows:

"'State airport agency' means any department, commission, board, or official of a State government which in the opinion of the Administrator has adequate powers and is suitably equipped and organized to satisfy the requirements of the Administrator for participation in the Federal-aid airport program herein authorized."

We also quote commencing at line 6 of Paragraph (b) of Section 7 of the proposed act down to the end of the paragraph and also from line 19 through line 23 of sub-section (c) of Section 7 of the proposed act.

"Unless and until a project is so approved either as originally proposed or as subsequently revised, the United States shall not pay, or be obligated to pay, any portion of any construction costs which may have been incurred by the State airport agency in the preparation and submittal of the project application or otherwise, and all such costs shall be the sole responsibility of the State airport agency. If and when a project is approved by the Administrator, however, such approval shall be deemed a contractual obligation of the United States for the payment of its proportional share of all the construction costs of the project."

"The Secretary of the Treasury shall thereupon set aside the share of the United States, payable under this Act on account of such project, which shall not exceed 50 per centum of the total estimated construction costs thereof: * * *"

It will be noted from the reading of these partial insertions that the act contemplates that the State Airport Agency shall formulate plans and specifications of the airport which they intend to construct and shall actually construct such airport with state money with the provision, however, that if the plans and specifications and construction meet with the approval of the federal administrator, and further providing it comes within the provisions of the monies allotted to the State of Missouri under Section 6, then the United States government will (if this bill becomes a law) defray fifty per cent of the cost of construction.

From the reading of H. R. 5024, which, because of its length, we do not attempt to copy into this opinion, it is our view that the Legislature, when they created the Department of Resources and Development, never contemplated that the department should have the power to launch upon an enterprise on behalf of the state of an "Airport Agency" as that term is defined in H. R. 5024, supra.

We are mindful, however, that the federal proposed act in the definition has a provision that the Administrator shall have discretion to determine whether or not a department has adequate power and is suitably equipped and organized to satisfy the requirement of the Act. Of course, on a question of discretion of the Administrator, it is impossible for our department to anticipate with any degree of certainty what he may or may not conclude with reference to the State Department of Resources and Development.

CONCLUSION

It is the opinion of this department that the State Department of Resources and Development does not have sufficient power under the law to be considered a State

Mr. Frank Ridgway

-5-

March 14, 1945

Airport Agency within the meaning of H. R. 5024 (a proposed bill to provide federal aid to the states for the development, construction, improvement and repair of public airports in the United States and for other purposes).

Respectfully submitted,

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APPROVED:

J. E. TAYLOR,
Attorney General