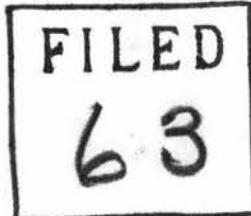


MUNICIPAL  
AIRPORTS:

If the State of Missouri acquires the Jefferson City Memorial Airport under the provision of the proposed law ~~above set forth~~ the State will take the property subject to the existing ninety-nine year lease.



February 28, 1951

3-5-51

Honorable H. H. Mobley  
Director  
Missouri Division of Resources and Development  
Jefferson City, Missouri

Dear Mr. Mobley:

We have your recent letter requesting an opinion of this Department with which letter you transmit a copy of a proposed bill to be introduced in the Legislature and also a copy of a lease heretofore entered into by the City of Jefferson and Raymond Brummet doing business as the Brummet Aircraft Company.

Your letter is as follows:

"At the request of Senator Edward V. Long the attached proposed legislation has been prepared. It authorizes the Division of Resources and Development to acquire, improve and operate in the name of, and on behalf of, the State of Missouri the airport now owned by the City of Jefferson, Missouri.

"Before the bill can be introduced Senator Long desires an opinion on the following question regarding a lease (copy attached) by the City of Jefferson and Raymond Brummet, doing business as the Brummet Aircraft Company.

"1. If the State of Missouri acquires the Jefferson City Memorial Airport under the provisions of the proposed law will the attached lease be binding on the State of Missouri?"

We requote your specific question which you want us to answer in our opinion as follows:

"1. If the State of Missouri acquires the Jefferson City Memorial Airport under the provisions of the proposed law will the attached lease be binding on the State of Missouri?"

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As a prerequisite to the discussion of said question we quote what we consider the relevant portion of the said proposed bill and also what seems to us to be the relevant part of the lease in question. The relevant portions of the bill seem to us to be the title thereof and sections 1, 2 and 5, and section 7, subdivision 1. The quoted portions of the bill are as follows:

"AN ACT

"Authorizing the division of resources and development of the department of business administration to acquire, operate, maintain, improve and enlarge the airport known as the 'Jefferson City, Missouri Memorial Airport'.

"Section 1. When used in this act the term 'division' shall mean the division of resources and development of the department of business and administration.

"Section 2. The division is hereby authorized, on behalf of, and in the name of the state, to, by purchase or gift, acquire the property known as the 'Jefferson City, Missouri Memorial Airport', and to plan, construct, own, operate, lease, equip, regulate and maintain the same together with the improvements thereon, including buildings, air navigation facilities and all other facilities necessary for the servicing of aircraft and for the accomodation of air travelers.

\* \* \* \* \*

"Section 5. 1. In operating the said airport the division may enter into leases and other arrangements for a term not exceeding ten years with any persons, firm or corporation for:

"(1) granting the privilege of using or improving such airport or any portion or facility thereof or space therein for commercial purposes;

"(2) conferring the privilege of supplying goods, commodities, things, service or facilities at such airport; or

"(3) making available services to be furnished by the division or its agents at such airport.

"2. In each such case the commission may establish the terms and conditions and fix the charges, rentals

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or fees for the privileges or services, which shall be reasonable and be established with due regard to the property and improvements used and the expenses of operation to the state.

\* \* \* \* \*

"Section 7. 1. The division may perform such acts, issue and amend such orders, and make, promulgate and amend such reasonable general or special rules, regulations and procedures, and establish such minimum standards as it shall deem necessary to carry out the provisions of this act and to perform its duties hereunder."

Our examination of the copy of the aforesaid lease to the Brummet Aircraft Company convinces us that the only portion of said lease which is relevant to a consideration of the question presented is the following language found in the first paragraph of the last page thereof:

"\* \* \* This lease shall be subordinate to the provisions of any existing or future agreement between Lessor or the United States or State of Missouri relative to the operation or maintenance of the airport, the execution of which has been required as a condition precedent to the expenditure of Federal funds or which has been or will be required as a condition precedent to the expenditure of state funds for the development of the airport."

The lease in question is a ninety-nine year lease covering a period extending from June 1, 1944 to May 31, 2048, being from the City of Jefferson to Raymond Brummet, doing business as Brummet Aircraft Company and covers the land appearing in exhibit "A" recited to be attached thereto. However, a copy of said exhibit is not attached to the copy of the lease before us but we are informed that it merely describes the portion of the airport land covered by the lease.

The lease grants the right to erect buildings on the leased property according to specifications in exhibit "B" thereto attached. The lease provided that the contemplated buildings shall be constructed within a reasonable time. It also provides for an annual rental of five cents per square foot for the property leased.

It seems to us that whatever were the purposes of this lease the provision thereof, hereinabove quoted is the only provision that need be discussed in arriving at a conclusion as to whether or not, in the

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event of the acquisition of the Jefferson City Municipal Airport by the State of Missouri pursuant to the provisions of the proposed act above quoted, the above-mentioned lease will be binding upon the State of Missouri.

We consider that we are warranted in assuming that the word "of" being the twelfth word of the above quoted portion of said lease should be construed to have been intended to be the word "or" for the reason that it is only under that construction that the sentence has meaning or makes sense and we believe that we are further warranted in assuming that the word "or" being the seventeenth word of the above quoted portion of said lease should be construed to have been intended to be the word "and" for the same reason and we point out that under these constructions of the respective words above mentioned the above quoted portion of said lease would read as follows: "This lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States or State of Missouri relative to the operation or maintenance of the airport, the execution of which has been required as a condition precedent to the expenditure of Federal funds or which has been or will be required as a condition precedent to the expenditure of state funds for the development of the airport."

From an examination of the aforesaid lease as a whole we are of the opinion that the lessee thereunder acquired rights which, assuming compliance with the provisions of the lease by the lessee, will endure unabated for ninety-nine years from the date thereof unless the deed accomplishing the transfer of title to the airport property from the City of Jefferson, the lessor in said lease, to the State of Missouri pursuant to the provisions of the proposed statute can be construed to be an agreement between the City of Jefferson and the State of Missouri relative to the operation or maintenance of the airport, the execution of which has been required as a condition precedent to the expenditure of state funds for the development of the airport.

We are of the opinion that such a deed could not be considered as such an agreement within the meaning of the above quoted subordination provision of the lease for the reason that leases like all other contracts must be construed in the light of the intention of the contracting parties at the time of entrance into the contract and we are of the opinion that at the time of the execution of the lease it was the intention of the City of Jefferson, the lessor, by inserting this subordination provision in the lease, to create a

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safeguard against the loss of a possible future federal or state grant which grant might be defeated by the failure to meet some requirement set forth by the act which provides for the grant upon compliance with which the said grant might be made contingent which requirement might be inconsistent with the operation of the lease and we are of the opinion that the lessee, Brummet Aircraft Company, acquiesced in the said provision by accepting the lease. In arriving at this opinion we take note of the fact that there have been within recent years numerous federal grants to municipalities conditioned upon various requirements, the fulfillment of which were conditions precedent to the obtaining of federal assistance and of the further fact that the State sometimes grants money to political subdivisions and specifies certain conditions precedent which failure to comply with will keep the political subdivisions in question from obtaining the assistance. An illustration is the grant of state aid to school districts contingent upon specified requirements.

We are of the further opinion that if such was the intention of the parties when they inserted said subordination provision in the lease the operation of that subordination provision is restricted to a set of circumstances under which an agreement is entered into by the City of Jefferson and the United States or by the City of Jefferson and the State of Missouri or by the City of Jefferson and some third party relative to maintenance and operation of the airport which agreement provides for things required as prerequisite to the obtaining of a federal or state grant. It therefore appears to us that the subordination provision of the last above quoted portion of the lease referred to will not be brought into operation by the acquisition of the Jefferson City Memorial Airport under the provisions of the proposed law.

CONCLUSION

We are accordingly of the opinion that if the State of Missouri acquires the Jefferson City Memorial Airport under the provision of the proposed law above set forth the State will take the property subject to the existing ninety-nine year lease.

Respectfully submitted,

SAMUEL M. WATSON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

SMW:mw