

MUNICIPAL CORPORATIONS: Authority to acquire and control real property for the purpose of operating airports within and without the State of Missouri.

September 20, 1945



10/27

Mr. Hugh Denney, Director
Missouri State Department of
Resources and Development
Jefferson City, Missouri

Dear Sir:

Reference is made to your letter dated September 18, 1945, requesting an official opinion of this office, and reading as follows:

"We have been requested on several recent occasions for information on whether or not a city can purchase land across a river in another county or in another state for airport purposes. Of course we have been unable to answer this question, therefore, I would like an opinion from your office as to the legality of a town such as Hannibal or St. Louis buying land for airport purposes and operating an airport across the Mississippi River in Illinois.

"I would also like to have information on the jurisdiction of a city like Jefferson City over an airport developed across the Missouri River in Callaway County. There may be a number of such situations arise in the future and your opinion on this subject would be of great value in expediting airport development."

Your inquiry resolves itself into two components:

- (1) The authority of municipal corporations to acquire and operate airports outside their corporate limits but within the territorial boundary of the State of Missouri; and
- (2) The authority of municipal corporations to acquire and operate airports outside their corporate limits and without the territorial limits of the State of Missouri.

Certain general observations are equally applicable to both of the questions propounded. It is said that municipal corporations have the common law power to acquire and hold property for corporate purposes, the rule being stated thusly in "Municipal Corporations," 43 C. J., page 1326, from which we quote:

"Among the common-law powers of municipal corporations are the powers to grant and receive, and to purchase and hold property, real and personal, for themselves and successors. These powers are inherent, or, as phrased by Blackstone, 'necessarily and inseparably incident to every corporation;' but usually the charters of municipal corporations or the general statutes in express terms give them the power to hold, purchase, and convey such real and personal property as their purposes may require; and it has been said that generally a municipal corporation may only acquire and hold property according to the will of the legislature expressed in the statutes. * * * There is, however, no general power to acquire and hold real estate; but such power is confined to the purposes and necessities of the municipality. Within these limits the power may be exercised with freedom, and such title taken as is appropriate to the exercise of the power; and the nature of the tenure will depend upon the purpose for which the property is acquired and used."

That the authority of municipal corporations to acquire and hold real property for their corporate purposes has been granted by the Legislature was declared in the early case of *Chambers v. City of St. Louis*, 29 Mo. 543, l. c. 573:

"By the first section of the act concerning corporations, (R. C. 1845,) the incidents of all corporations are enumerated, one of which is 'to hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter.' The third section of the same act provides that 'in addition to the powers enumerated in the first section of this article, and to those expressly given in its charter, or in the act under which it is or shall be incorporated, no corporation shall possess or exercise any corporate powers except such as shall be necessary to the exercise of the powers so enumerated and given.' * * * *

"There is nothing in our statute concerning wills which prohibits corporations from taking by devise; so that, as to their capacity to take by devise, they stand on the same ground as natural persons. The section of the statute concerning corporations above cited, in which are enumerated the incidents which result from the creation of a body politic or corporate, must be regarded as a substitute for the incidental powers which by the common law were annexed to every corporation. A corporation can do no act which is not expressly or impliedly authorized by its charter, or by the act under which it is created. The City of St. Louis is authorized to hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in her charter. This is by the general law concerning corporations. No amount being fixed by her charter, she can hold as much as shall be necessary for the purposes for which she was created a body corporate. * * * *

"It is not denied but that the city, under her charter, could take all the lands devised to her within her limits, if the devise had been to her own use, uncoupled with the trust to which, by the terms of the devise, it was subjected. But it is maintained that, as to the lands outside of her limits, she could only take them for the specific purposes enumerated in the section to which reference has been made; and it is insisted that the enumeration of the particular purposes for which lands may be held beyond the limits of the city is an exclusion of all other purposes for which lands thus situated may be held. But the force of this argument is broken, when we consider that, independently of the powers conferred by the charter, the city had, under the section of the act concerning corporations above cited, a power to hold such lands, without regard to their locality, as may be necessary for the purposes of the corporation; and the third section of the same act declares that such power shall be in addition to any power that may be conferred by the charter. Statutes in *pari materia* are to be construed so that they may all stand. A repeal of the statute by implication is not favored in law. Lands held by the city beyond her limits would be held by her as by any individual proprietor, and her powers over them would only be commensurate with those enjoyed by private owners. But, by authorizing her to hold lands beyond her limits for objects intimately connected with the purposes of the corporation and highly necessary for her prosperity and welfare, it was intended that, over such places, she should exercise such police powers as would be required in order to make them answer the purposes for which they were designed." (Emphasis ours.)

That such authority may yet be exercised by municipal corporations under the reasoning embodied in the Chambers case, *supra*, appears from Section 4 of an act found in Laws of 1943,

page 416, subsection (d), which reads as follows:

"In order to carry out the purposes for which it is organized, each corporation shall have power:

* * * * *

"(d) To hold, purchase, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal or mixed, as shall be necessary or requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability belonging to the corporation; provided, however, that such corporation shall not hold any real estate for any period longer than six years except such as may be necessary for carrying on its legitimate business."

Narrowing the general rules down to the authority to acquire and hold real property for airport purposes, we find that by the provisions of Section 15122, R. S. Mo. 1939, specific authority has been granted to municipal corporations to do so. We quote said section:

"The local legislative body of any city, including cities under special charter, village or town in this state is hereby authorized to acquire, by purchase or gift, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate, in whole or in part, alone or jointly or concurrently with others, airports or landing fields for the use of airplanes and other aircraft either within or without the limits of such cities, villages, or towns, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such city, village, or town."

This authority was further extended to municipal corporations under special charter, under the provisions of an act found in Laws of 1943, Section 15125, page 326, which is similar in provisions to the section quoted above.

Further, the General Assembly has declared the acquisition, ownership and control of such real property by municipal corporations for the purposes mentioned to be a public purpose and a matter of public necessity. Such declaration is embodied in Section 15124, R. S. Mo. 1939, which reads as follows:

"Any lands acquired, owned, controlled or occupied by such cities, villages, towns or counties for the purposes enumerated in sections 15122 and 15123 hereof shall and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose and as a matter of public necessity, and such cities, villages, towns, or counties shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public necessity."

Even aside from the statutory authorization to acquire and control real property for airport purposes found in the sections mentioned above, namely, Sections 15122 and 15125, R. S. Mo. 1939, we believe the declaration that it is a public purpose and necessity, found in Section 15124, R. S. Mo. 1939, would be ample justification for municipal corporations doing so, particularly when viewed in the light of the opinion of the Supreme Court in *Hafner v. City of St. Louis*, 161 Mo. 34, l. c. 43, from which we quote:

"Though among the enumerated charter powers of the city, at that time in force, no express power is conferred upon the city of St. Louis to purchase, hold or receive land for wharf purposes beyond its corporate limits, and while it is true that the city, in that regard, must act within the express or implied authorization of its charter, by reading its charter powers in connection

with its general authority under the statute, 'to hold, purchase and convey such real and personal estate, as the purposes of the corporation shall require, not exceeding the amount limited by its charter,' and remembering that no express restriction is found in the city charter against the purchase of real estate for wharf purposes, it would seem that the city, under its general statutory power, could receive and hold such property, beyond its corporate limits, not prohibited by its charter, and essentially necessary for the purpose of carrying out one of its proper corporate functions and duties, as the establishment, construction and maintenance of a general wharf system along its river front, and by further bearing in mind the fact that in so doing, the beginning or termination of a perfect wharf system must of necessity involve a disregard of the exact corporation limits of the city, as at the particular time established. In our opinion the mere directory power of the charter, as to the right of the city to purchase, hold and receive real estate, outside of the corporate limits of the city, for particular designated purposes, should not be construed as an absolute limitation upon the general power conferred upon the city under section one of the statute concerning corporations above cited, to purchase and hold real estate wherever located, when it becomes necessary for the purposes of the corporation. The necessities of the city, under the statute, constitute ample warrant for the purchase of land wherever located, for other purposes than those designated in its charter. * * *
(Emphasis ours.)

With reference to your first question, we conclude that it is answered by the quoted decisions above and the specific authorization found in Sections 15122 and 15125, R. S. Mo. 1939, quoted supra. From these decisions and statutes, it is apparent that authority exists in municipal corporations to go beyond their corporate limits to acquire and control real

property for the purpose of operating thereon airport facilities. You have mentioned in your letter of inquiry the fact that such airports may be situated in a county other than that in which the municipal corporation is located. We do not consider this material, as it is a matter of common knowledge that in many instances municipal corporations are located in more than one county. We believe that the general rules quoted would obviate the necessity of giving any regard to the location of county lines.

With respect to the second question you have propounded, we direct your attention to the case of Langdon v. City of Walla Walla, 193 Pac. 1, 1. c. 3, from which we quote:

"We first inquire, Has the city of Walla Walla the power, in so far as its own organic law is concerned, to acquire property of the nature and for the purpose here in question, which is situated in the state of Oregon; that is, do the laws of this state grant to the city the privilege of acquiring such property in another state? In the enumeration of powers of cities of the second class, to which class Walla Walla belongs, we read in section 7612, Rem. Code, as follows:

"'44. Waterworks: To provide for the erection, purchase or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water. * * *'"

(You will note the authorization contained in this grant is almost identical with the authorization contained in Sections 15122 and 15125, R. S. Mo. 1939, relating to the matter under consideration.)

"And in section 8005, Rem. Code, the first section of the act relating to the acquiring of public utilities by cities under which the city is proceeding, we read:

"'Any incorporated city or town within the state be, and hereby is, authorized to con-

struct, condemn and purchase, purchase, acquire, add to, maintain, conduct and operate waterworks, within or without its limits. * * * ,

"In so far as this constitutes authority for the city acquiring and owning property of the nature here in question outside of the city's corporate limits, it manifestly is authority for the city acquiring and owning property so situated, in its proprietary, and not in its governmental, capacity. That is, authority to acquire and own such property just as any corporation, other than municipal, could exercise ownership over public utility property. We find nothing in the organic law of our cities suggesting that their governmental authority shall extend beyond their corporate limits, now, since a city's ownership and dominion over such property is of this nature, and the city is unqualifiedly authorized to acquire such property 'without' as well as 'within' its corporate limits, we are quite unable to see that the power of acquiring and owning such property is limited to property within our own state.

"The suggestion that, to allow a city of this state to acquire property of the nature here in question in another state would, in effect, be an assumption of extraterritorial jurisdiction, we think is wholly without force, in view of the fact that the city's ownership of such property situated outside its own territorial limits, whether within or without this state, is only the ownership and control over such property in the city's proprietary capacity. Such ownership does not, to our minds, suggest an assumption of extraterritorial governmental jurisdiction, either on the part of the state of Washington or of its cities, over property, situated in another state. If the laws of Oregon permit the city of Walla Walla to acquire and own within that state property of the nature and for the use here in question; which as we think will presently appear, though that is apart from this particular

inquiry, manifestly we must presume that the courts of Oregon will protect the property rights the city so permissively acquires in that state, the same as they will protect the property rights of any other similar ownership of property therein, and that, should such protection be refused by the Oregon courts, the courts of the United States will afford such protection.

"The state of Oregon may, of course, if it so choose, withhold from the cities of this state the right to acquire property in that state, just as it may withhold such right from any other foreign corporation, but that does not argue that this state has not given to its cities such power of acquisition and ownership of property as will enable them to acquire property in Oregon by consent of that state. This, we think, is as far as we need go in our inquiry touching the power of the city of Walla Walla under its organic law; that is, under the laws of this state which brought the city into being, and gave to it the powers specified in the statutes above quoted from. We conclude, then, that the city of Walla Walla does possess in its proprietary capacity the power to acquire and own in the state of Oregon, so far as it may be necessary for it to acquire such power from the state of Washington. Whether or not and to what extent the city may be able to exercise such power in the state of Oregon is, of course, a question to be decided under the laws and Constitution of that state. * * * "

We have been unable to locate an exactly similar case in the appellate court decisions of the State of Missouri, but the case of Haeussler v. St. Louis, 205 Mo. 656, l. c. 585, 688, contains similar reasoning:

"Another and further contention is that the city cannot make this needed public improvement because one end of the bridge and the approach or approaches thereto will be in the

State of Illinois. As has been already noted, there is no question as to right of the city to construct a bridge, one portion of which shall be beyond its own corporate limits. Nor is there any question that for a proper public municipal purpose it may acquire and hold property beyond its own corporate limits. But the question here is, can it for this public purpose acquire and own land in Illinois and construct and maintain a public bridge over a navigable stream, one end of which must of necessity be in a foreign State? We think so. * * *

* * * * The municipal corporation had the right to go beyond its corporate limits and acquire property for this public municipal purpose, and Congress simply says, that with our power over interstate commerce, by land as well as by water, you can extend or make your public highway over a navigable stream, and do what we can do, i. e., take private property therefor, compensating the owner as provided by law.

"Under the views expressed by Justice Gray, supra, it is not even necessary to obtain the consent of the State of Illinois. This view is sound in our judgment. * * * "

You will note that under the facts in that case the authority had been granted by an act of Congress, rather than by the General Assembly of the State of Illinois, for the City of St. Louis to acquire such real property. With this exception, the reasoning with respect to the power of the municipal corporation is identical.

The opinion in the Haeussler case was not concurred in by the full court. However, as appears from the record of the Supreme Court, the opinion, written by Graves, J., was concurred in by Lamm, J.; Gantt, C. J., concurred in the result and all of the opinion except paragraph five, which is the portion quoted supra, and as to that paragraph expressed no opinion; Valliant and Fox, JJ., concurred in the result and all of the opinion except paragraph five, to which they dissented; Woodson, J., dissented in toto.

However, the effect of the opinion has been followed in a subsequent case decided by the Circuit Court of Appeals of the Seventh Circuit. This case, entitled *Latinette v. City of St. Louis*, is reported in 201 Fed. 676, and in which the following appears:

"That Missouri by her statutes and decisions (*Haeussler v. St. Louis*, 205 Mo. 656, 103 S. W. 1034) had authorized St. Louis to build and maintain the bridge in question, together with the necessary approaches, and for that purpose to buy or appropriate lands in Missouri, to buy lands in Illinois, and to accept a federal grant of right to appropriate lands in Illinois, seems to be settled beyond controversy."

Inasmuch as the decision in the *Haeussler* case has received the sanction of this Federal Court, we are constrained to follow the same reasoning as being applicable to the present question.

CONCLUSION

In the premises, we are of the opinion:

(1) That municipal corporations have the authority to acquire and control real property for the purpose of operating airport facilities located either within or without their corporate limits and within the State of Missouri, without regard to whether or not such real property is located within the same county as such municipal corporation.

(2) That municipal corporations have the authority to acquire and control real property for the purpose of operating airport facilities located outside the territorial limits of the State of Missouri, subject to the laws and Constitution of the state wherein such real property be situate.

Respectfully submitted,

APPROVED:

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