

CITIES: Cities of third-class may acquire land for airport without boundaries of said city and in another county. However, in the absence of specific legislation, said city cannot exercise police power for violations of regulations and laws on said airport.

AIRPORTS:

July 10, 1948

Honorable Hugh P. Williamson
Prosecuting Attorney
Callaway County
Fulton, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"I would like to have an opinion upon the following set of facts:

"Jefferson City, located in Cole County, has purchased land in Callaway County to be used as a Municipal Airport. Can Jefferson City policemen police this Jefferson City Airport located in Callaway County; can they make arrests on that airport property on violations of the law which occur there, and can they then take the person arrested into Cole County for trial."

It is well established that the General Assembly of this State has the power to pass legislation specifically authorizing cities to exercise police powers and regulations over land they acquire for airport or airport landing fields that lie outside the boundaries of said cities. However, a careful search fails to disclose wherein any general assembly of this State has specifically enacted such legislation, unless such authority can be found in the use of such words as "maintain, operate and regulate," as used in the statutes authorizing cities to construct and operate airports or landing fields outside the boundaries of said city, which we shall deal with later on in this opinion.

In Pearson v. Kansas City, 55 S.W. (2d) 485, 1. c. 491, the court said:

"There is also another feature of this case which distinguishes it from any of the other cases referred to herein.

That is: The police station and the elevator therein was entirely under the control of the police board, which was a state agency. State ex rel. Field v. Smith (Mo. Sup.) 49 S. W. (2d) 74; American Fire Alarm Co. v. Board of Police Commissioners, 285 Mo. 581, 227 S. W. 114. A municipal corporation has no inherent police power, but derives it solely from delegation by the state. 19 R.C.L. 800, Sec. 108; 43 C. J. 205, Sec. 204. 'The protection of life, liberty, and property, and the preservation of the public peace and order, in every part, division, and subdivision of the state, is a governmental duty, which devolves upon the state, and not upon its municipalities, any further than the state, in its sovereignty, may see fit to impose upon or delegate it to the municipalities.' State ex rel. Hawes v. Mason, 153 Mo. 23, loc. cit. 43, 54 S. W. 524, 529; see, also, State ex rel. Reynolds v. Jost, 265 Mo. 51, 175 S. W. 591, Ann. Cas. 1917D, 1102; Strother v. Kansas City, 283 Mo. 283, 223 S. W. 419; State ex rel. Board of Police Commissioners v. Beach, 325 Mo. 175, 28 S. W. (2d) 105. In this state, the Legislature had not seen fit to delegate completely to Kansas City the function of maintaining a police department, but had retained control thereof in the state by placing upon the Governor of the State the duty of appointing the police board which would have charge of such functions there. While the police board was in charge of the station, there was nothing the city could do about it. As said in 19 R. C. L. 1114, Sec. 394: 'The rights and powers of a municipality are subject to the will and control of the legislature, and it lies within the power of the legislature to take the control of some municipal department out of the hands of the municipality and turn it over to some board of state officers. When this has been done, upon rudimental principles of justice the municipality cannot be held

liable for the negligence of such officers, regardless of the nature of the function which they are administering.'"

Under Section 277, page 902-903, Volume 37, Am. Jur., the rule is laid down that police power of municipalities exists solely by virtue of legislation or constitutional grant, and reads:

"The prevailing view in this country is that the police power of municipalities exists solely by virtue of legislative or constitutional grant.

"In some American cases, particularly those dealing with such important police functions as protecting the public health or guarding the public safety from such dangers as fire hazards, there have from time to time appeared statements, intimations, and dicta that certain police powers are inherent in municipalities from the very fact of their organization. Many of these broad statements can be explained on the basis that the courts really had in mind implied powers, as the entire context of the opinions shows, and in the various jurisdictions where such broad statements concerning inherent municipal police powers have been made in certain opinions, the courts on numerous other occasions and in later opinions have reiterated the well-established American doctrine that municipal corporations have such police powers only as are expressly given or necessarily implied."

Cities derive their authority to construct and operate airports and landing fields under and by virtue of the following provisions: Section 15122, R.S. Mo. 1939, authorizes cities to acquire, maintain, operate and regulate, in whole or in part, alone or jointly, or concurrently with others, airports or landing fields within or without the limits of such cities, and reads:

"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."

Furthermore, Section 15124, R.S. Mo. 1939, declares such land acquired for airports or landing fields to be for a public purpose and as a matter of public necessity.

Section 15126, R.S. Mo. 1939, which is a part of the same article as are the foregoing provisions; namely, Article 3, Chapter 123, R.S. Mo. 1939, authorizes the legislative body of a city to construct and operate an airport or landing field, or said city may vest jurisdiction for the construction, improvement, equipment, maintenance and operation of such airport or landing field in some officer or board of the city, or may by franchise or contract authorize others to do same. It further authorizes the legislative body of the city to adopt regulations and establish fees or charges for the use of said airport or landing field, and reads:

"The local legislative body of a city, including cities under special charter, village, town or county which has established an airport or landing field and acquired, leased, or set apart real property for such purpose may construct, improve, equip, maintain, and operate the same, or may vest jurisdiction for the construction, improvement, equipment, maintenance, and operation thereof, in any suitable officer, board or body of such city, village, town or county, or may by franchise or contract authorize others, in whole or in part, to construct,

equip, maintain, and operate the same. The expense of such construction, improvement, equipment, maintenance and operation shall be a city, village, town or county charge, in whole or in part, as the case may be. The local legislative body of a city, village, town, or county may adopt regulations and establish fees or charges for the use of such airport or landing field."

The 62nd General Assembly repealed Section 15125, R.S. Mo. 1939, and enacted in lieu thereof a section known as Section 15125, which merely authorizes cities to acquire by purchase property for an airport or landing field. Subsequent thereto, the 63rd General Assembly passed a law, page 1315, Laws of Missouri 1945, authorizing cities, towns and counties to purchase sites and construct and operate airfields in such counties or near such cities and towns, and reads:

"In appreciation of the services of our gallant Armed Forces and to perpetuate the memory of their heroic achievements in the war against Germany, Japan and their Allies and to promote the advancement of aviation in the name of those who gave their lives as members of our gallant Armed Forces in the war against the aforesaid enemies, cities, towns and counties are hereby authorized to purchase sites and construct and operate air fields in such counties or near such cities and towns and to receive free technical advice from the Department of Resources and Development. Provided further that when any city, town or county in Missouri shall certify to the Governor that it has appropriated a specific sum for the aforesaid purpose and is ready to proceed with the purchase or construction of such air fields a like sum not

exceeding ten thousand dollars (\$10,000.00) shall be allotted to said city, town or county from the appropriation hereinafter made for such purpose but said sum shall be released to such city, town or county only after the Department of Resources and Development has certified to the Governor that in their judgment the air field in question is desirable and in the interest of the development of aviation and that the funds proposed are adequate to complete the project; and provided further that cities, towns or counties are hereby authorized to receive Federal grants in addition to all other grants or funds made available for such purpose under this act."

While there are some decisions in other states holding that police power in such cases may be implied, we believe Missouri does not follow such decisions. We find only one decision in this state wherein this question is discussed at any length, that is as to the municipality's exercising police powers over a municipal airport outside the boundaries of said municipality, and that is in *Chambers v. City of St. Louis*, 29 Mo. 543, l.c. 575, wherein the court held that, by the act authorizing a city to hold land beyond her limits for objects connected with the purposes of said corporation and necessary for her prosperity and welfare, it was intended that over such places she could exercise such police powers as would be required to make them answer the purposes for which they were designed. In so holding, the court said, l. c. 574:

"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."

In Volume 61, Am. Law Review, we find wherein a very exhaustive study has been made relative to this question, and reads in part:

"Where a city has legally acquired an outside source, it is, of course, subject to liability for negligence just as fully as if the whole water system were within the city's limits. In the nature of the case it must, also, compensate riparian

owners. But suppose a city has acquired water rights in some river, lake, or watershed, may it also exercise police jurisdiction therein to prevent pollution or the destruction of dams, mains, and other works? The statutes and charters in a number of cases seem to confer this power of police, but the decisions of the high state courts have little to say upon the subject. * * *

In the same Volume 61 of the Am. Law Review, pages 689-690, more is said of how far a municipality may exercise police power outside of said municipality, and reads:

"The boundaries of the city set down in its charter may then be said to define the territorial limits of its agency as a governmental agent of the state. It is perhaps for this reason that the courts are united in refusing to imply any power on the part of cities to exercise police powers beyond their limits. It is obvious that such power could not be implied without getting the courts into serious difficulties in trying to define the extent of the powers inferred. Should they extend for one mile, or two miles, or over the entire county or even farther? The safest course and the only proper one for the courts is to construe a city's police powers to be limited to its ordinary area unless the charter or laws clearly provide otherwise. Even the powers expressly granted to a city over adjacent areas are to be construed strictly so as to prevent cities from doing what the legislature has not authorized. Thus a power 'to direct the location of markets or slaughter-houses' for two miles beyond the city is not a power to prohibit such establishments in this entire zone."

Section 122, page 736-737, Vol. 37, Am. Jur., we find the general rule that municipalities have no extraterritorial police powers in the absence of some constitutional provision or statute granting that authority, and reads:

"The primary purpose of a municipal corporation is to contribute toward the welfare, health, happiness, and public interest of the inhabitants of such corporation, and not to further the interests of those residing outside its limits; therefore, the general rule is that municipal corporations have no extraterritorial powers, but their jurisdiction ends at the municipal boundaries and cannot, without specific legislative authority, extend beyond their geographical limits. The legislature may, however, confer jurisdiction upon municipal corporations for sanitary and police purposes, and for license regulation under the police power, over territory contiguous to the corporation. * * *"

Section 116, Volume 37, Am. Jur., in part, reads:

"As has been noted, municipal corporations possess and can exercise only such powers as are expressly conferred, or those necessarily or fairly implied from or incident to those expressly conferred, or those essential to the accomplishment of the declared objects and purposes of the corporation. * * * Power conferred upon a municipality to do all things that in the discretion of the governmental authority may seem necessary for the good order and welfare of the municipality grants only the right to exercise a discretion within the scope of the power conferred. The charter or statute by which the municipality is created is its organic act. Neither the corporation nor its officers can do any act, make any

contract, or incur any liability, not authorized thereby, or by the legislative act applicable thereto. All acts beyond the scope of the powers granted are void."

In view of the foregoing authorities and decisions, we are of the opinion that *Chambers v. City of St. Louis*, supra, wherein it was held that it was intended the city should exercise such police powers as would be necessary to carry out the purpose for which designed is more or less dictum and not sufficient authority for vesting in the authorities of Jefferson City, Missouri, police power over the airport or landing field located in Callaway County, Missouri. This was indicated in the note at the bottom of page 651, Vol. 61, Am. Law Review, hereinabove referred to. Said note stated that part of the foregoing decision referred to relative to the municipality's having implied police power is merely dictum.

Therefore, we shall examine the statutes which permit said municipality to acquire land outside the boundaries of said municipality for an airport or landing field to determine if there is any specific police power vested in said municipality under such act.

Section 15122, R.S. Mo. 1939, authorizes cities to operate and regulate airports and landing fields within or without the limits of said cities. Can we say that the Legislature, by using such words, intended the city should exercise police power over said airports or landing fields located outside of said city to the extent of making arrests for violating the laws of this state thereon and bring the offender back to the City of Jefferson to be charged and stand trial? While such words are sometimes broadly construed, we are inclined to answer the question in the negative in the absence of more specific legislation granting to said city specific police powers over said area.

"Regulate" has been defined in many ways, depending upon how it is used. In *Wilhoit v. City of Springfield*, 171 S.W. (2d) 95, 1.c. 100, the court in defining the word "regulate," as used in the motor vehicle act, subsection (b), Section 8395, said:

"Subsection 'b' of Section 8395, supra, provides: 'Municipalities may, by ordinance, make additional rules of the road or traffic regulations to meet their needs and traffic conditions; * * * regulate the parking of vehicles on the streets and prohibit or control left-hand turns of vehicles * * *. No ordinance shall be valid which contains provisions contrary to or in conflict with this article, except as herein provided.'

"Subsection 'b' delegates to the city the power to regulate the parking of vehicles on the streets. This grant of authority carries with it broad discretionary power and under the word 'regulate' the city may invoke all the reasonable and necessary police powers it may have in enforcing its control over the streets, and particularly with respect to the parking of vehicles. Roper v. Greenspon, supra; McGill v. City of St. Joseph, supra."

Also, in Marsh v. Bartlett, 121 S.W. (2d) 737, the court construed the constitutional amendment creating the Conservation Commission of this state and prescribing its duties (Section 16, Article XIV, Constitution of Missouri 1875), which amendment provided in part that the control, management, restoration, conservation and regulation of bird, fish, game, forestry and all wildlife resources of this state, including sanctuaries, refuges, reservations and all other property now owned or used for said purposes or hereafter acquired for said purposes and the acquisition and establishment of same and the administration of laws now or hereafter pertaining thereto shall be vested in a commission to be known as the Conservation Commission. The court, in construing the word "regulate," as used in said amendment, said, l. c. 744:

"It has been indicated above that the Conservation Commission has been granted the authority to control, regulate, etc., the matters committed to it. There was much discussion by counsel in their oral

arguments, and much appears in their brief, with reference to the meaning of the words definitive of that authority. In the aspect of the Amendment now under consideration there is no need to go into definition of the various terms. They take color and significance from the context.

"The term 'regulate' will be sufficient for the moment. It includes ordinarily the means to adjust, order, or govern by rule or established mode; direct or manage according to certain standards or rules. *Sluder v. St. Louis Transit Co.*, 189 Mo. 107, 88 S.W. 648, 5 L.R.A., N.S., 186. Regulation and legislation are not synonymous terms. In re *Northwestern Indiana Tel. Co.*, 201 Ind. 667, 171 N.E. 65, 70. Regulation is comprehensive enough to cover the exercise of authority over the whole subject to be regulated. *Southern R. Co. v. Russell*, 133 Va. 292, 112 S.E. 700, 703."

Likewise, the courts have construed the word "operate." However, under such construction, it does not appear to have as broad a meaning as the word "regulate." In *State ex rel. City of Chillicothe v. Wilder*, 98 S.W. 465, 200 Mo. 97, the court said, l.c. 106:

"* * * The word 'maintain' does not mean 'to provide or construct,' but to keep up and preserve, and the word 'operate' means to put into or continue in operation or activity. * * *"

In *State v. Erle*, 232 N.W. 279, 281, 210 Iowa 974, the court held the word "operate" means to act or control or to manage authoritatively, to conduct or manage the affairs of, to direct or to put into action, activity or operation, to supervise the work of, to work.

A review of the statutes will show that when the Legislature of this state intended for a city of third class to exercise police power over territory such municipality was authorized to acquire for specified purposes outside the geographical boundaries of said municipality, the Legislature did not merely leave the matter to be determined by implication or construction of such words as "operate" and "regulate," but specifically authorized said municipality to exercise police power over such acquired area.

We refer you to the following instances: Section 6953, Article 5, Chapter 38, R.S. Mo. 1939, provides that the council may make regulations and pass ordinances for prevention of the introduction of contagious diseases into the city and may make quarantine laws and enforce the same within five miles of said city; also, that the council may purchase or condemn and hold for the city, within or without the city limits, within ten miles therefrom, all the necessary land for hospital purposes, waterworks, sewer carriage and outfall, and erect, establish and regulate hospitals, workhouses, poor-houses, and provide for the government and support of same; and concludes that the police jurisdiction of the city shall extend over such lands and property to the same extent as over public cemeteries, as provided in this article. Section 6972 under Article 5, Chapter 38, R.S. Mo. 1939, provides that the council in third-class cities (such as Jefferson City, Missouri) may purchase within the city, or within three miles thereof, real estate for public cemetery purposes, and that the council may make rules and pass ordinances imposing penalties and fines, not exceeding \$100.00, regulating, protecting and governing city cemeteries, the owners of lots therein, visitors thereto, and punishing trespassers therein; and officers of said city shall have full jurisdiction and power in the enforcement of such rules and ordinances as though they related to the city itself. Section 7014, Article 5, Chapter 38, R.S. Mo. 1939, provides that for any purpose or purposes mentioned in preceding sections, the council shall have power to enact and make all necessary ordinances, rules and regulations, and they shall have power to enact and make all such ordinances and rules, not inconsistent with the laws of this state, as may be expedient for maintaining the peace and good government and welfare of the city, and all ordinances may be enforced by prescribing and inflicting upon its inhabitants, or other persons violating same, such fine not exceeding \$100.00 and such imprisonment, not exceeding three months, or by fine and imprisonment, as may be just for any offense,

recoverable with cost of suit, together with judgment of imprisonment, until fine or cost are paid or satisfied. Furthermore, Section 7015, R.S. Mo. 1939, a part of the same article, provides that any person who shall violate any of the provisions of this article, for the violation of which no punishment has been provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished according to law.

In view of such provisions, specifically vesting in such municipalities police power over such areas acquired by the municipalities, no one can question their authority in such cases as to having the right to pass ordinances and enforce such ordinances and regulations in the same manner as if such violations had been committed within the cities and not miles outside of said municipalities. It is not necessary to give any words used a strained construction to grant such municipalities police power over such areas outside the boundaries of said municipalities. However, that is not true in the instant case, where no such specific police powers are granted over said area outside the boundaries of said municipality. We are inclined to believe that the well established rule of statutory construction that the expression of one thing is exclusion of another is applicable in the instant case. (See State ex rel. Kansas City Power & Light Company v. Smith, 111 S.W. (2d) 513, 342 Mo. 75; Kroger Grocery & Baking Company v. City of St. Louis, 106 S.W. (2d) 435, 341 Mo. 62, 111 A.L.R. 589.) As we have shown, the Legislature has heretofore authorized such third-class cities to acquire land outside the cities for certain purposes, not airports or landing fields, and has vested in such cities police power over such areas, therefore by reason of the fact the Legislature has failed to specifically vest police power over airports and landing fields, we must conclude, under the foregoing rule, it did not intend to give such authority.

CONCLUSION

Therefore, it is the opinion of this department that, while the City of Jefferson City, a third-class city, is authorized to acquire land for airport or landing field outside of Jefferson City and located in Callaway County, so far

Hon. Hugh P. Williamson

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the Legislature has not delegated to said city power to pass ordinances for violations of regulations and laws committed on such airport or landing field, and until the Legislature does specifically delegate such authority to said city, it cannot exercise police power, make arrests in Callaway County, and bring the offenders to Jefferson City and charge them and require them to stand trial in said city.

Respectfully submitted,

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APPROVED:

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