

OPINION
61-12

July 26, 1961 (OPINION)

AIRPORTS

RE: Municipal Airports - Disposition of Aircraft Registration Fees

This is in reply to your request for an opinion on the construction of section 2-05-11 of the North Dakota Century Code in connection with the following facts:

Heretofore there have existed no municipal or publicly owned or operated airports, in Hettinger County. The Village of Regent has now created the Municipal Airport Authority of the Village of Regent, pursuant to Chapter 2-06, the Airport Authorities Act, and has contracted to purchase an airport site, which site has been approved by the State Aeronautics Commission. Regent Municipal Airport Authority has now made formal application to the County Treasurer requesting all funds in his hands that have accumulated from such remittances received from the Senate since heretofore none of such funds have ever been paid out. Regent Authority asks for the payment to them of all funds as it is the only public or municipal Authority in the County."

The section in question (2-05-11) among other things provides that the registration fees shall be deposited in the general fund of the state. It further provides that:

. . . . Seventy-five percent of each registration fee so collected by the commission shall be returned upon voucher of the commission from the general fund and such funds are hereby appropriated from the general fund, to the treasurer of the county of the registrant's residence or if the registrant is not a resident of North Dakota then to the treasurer of the county in which is located the airport at which the registrant's aircraft is based and the county treasurer shall pay such remittances over to the municipality operating an airport within said county; provided that if there is more than one publicly owned and operated airport within said county, that the said moneys shall be prorated between public airports"

From this statutory provision we must conclude that the county treasurer is required to pay over the registration fees to the municipality operating an airport. From the facts submitted, it appears that only one airport is presently in existence. At least only one municipality has created a Municipal Airport Authority. Thus, until other municipalities in the county create Municipal Airport Authority or operate airports, the moneys presently in the hands of the county treasurer are to be paid to the municipality having an airport.

There remains one technical phase to be disposed of which you

referred to in your letter, and that is whether or not the creation of a Municipal Airport Authority satisfies the term "operating an airport." The Airport Authority may be created under chapter 2-06. Section 2-06-05 thereof provides among other things that upon a proper showing that the municipality has adopted a resolution creating the Municipal Airport Authority, that such resolution shall be deemed to have established such Authority with powers as provided in chapter 2-06. The powers of the Authority are set out in section 2-06-07 which includes among other things the power to plan, acquire, develop, construct, purchase, maintain, and equip airports and air navigation facilities. Thus, by the creation of the Airport Authority, it would appear that the Airport Authority is presumably operating an airport.

We observe that the statutes relating to aeronautics do not define what constitutes operating an airport, nor are we able to find the minimum requirements of an airport. An airport under chapter 2-04 is defined as meaning any area of land or water designed or set aside for the landing or taking off of aircraft and utilized or to be utilized in the interest of the public for such purposes. This, we believe, lends strong support to the conclusion that upon creating an Airport Authority, it is presumed that the village or municipality is "operating an airport," for our purposes here.

It is therefore, our opinion that under the facts recited herein that the county treasurer is required by law to pay over or transfer the moneys now held by him to the Municipal Airport Authority of the village of Regent. The county treasurer is not required, nor is he authorized, to withhold any of the funds so received under section 2-05-11 for possible creation of other municipal airports within the county. When other municipal airports are established within the county, he is then required to make distribution in a prorated manner in accordance with section 2-05-11.

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