

OPINION
61-9

September 20, 1961 (OPINION)

AIRPORTS

RE: Disposition of County Airport Funds - Priority

Re: Dickey and Edgeley Request for County Airport Funds

This is in reply to your inquiry in regard to allocation of airport funds, i.e., that portion of the aircraft registration and aircraft spraying fees turned back to the county treasurer pursuant to chapter 2-05 of the North Dakota Century Code, and from thence distributed to municipalities operating airports.

You inform us that prior to this year there has been no allocation of these funds and that same have accumulated in the hands of the county treasurer. On 17 July 1961 your county auditor was presented with applications and request for same from both the city of Edgeley and the village of Dickey in LaMoure County. You checked with the State Aeronautics Commission for information concerning the status of these two airports and received its reply that at this time both airports were qualified. It appears that at the present time the village of Dickey feels that they have priority on these funds.

You call our attention to the provisions of section 2-05-11 of the North Dakota Century Code which provides insofar as here applicable:

". . . . 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 publicly owned and operated airport within said county, that the said moneys shall be prorated between said public airports on the same ratio that the assessed value of each municipality operating an airport shall bear to the total assessed value of all municipalities operating airports within said county; and if there are no publicly owned or operated airports in said county, said remittances so paid to the county treasurer shall be held and retained by said treasurer in a separate fund to be used in the future for airport purposes."

Looking to this portion of the statutory provision we find the object to justify receipt of such funds is variously specified as:

"municipality operating an airport," "publicly owned and operated airport," "public airports."

You also call our attention to section 2-05-18 of the North Dakota Century Code which provides in so far as here applicable in regard to spraying fees:

". . . . One-half of the proceeds shall be transferred to the county treasurer from the general fund upon voucher of the

commission, to be divided equally to approved publicly owned or operated airfields in said county, and such funds are hereby appropriated from the general fund for such purposes"

Words and Phrases, Volume 3, page 128 gives us the following definitions of the word "airport":

"An 'airport' within meaning of statute authorizing cities to maintain airports includes all land, buildings, structures or other improvements, necessary or convenient in the establishment and operation of an airport. . . . Moore v. Gordon, Tex. Civ. App. 122 S.W.2d. 239, 242."

"'Airports' are landing and taking off places for airplanes which traverse air instead of land, and are essentially and primarily an incident to transportation facilities maintained by city. City of Mobile v. Lartique, 127 So. 257, 260, 23 Ala. App. 479."

"An 'airport' with its beacons, leading fields, runways, and hangars is analogous to a harbor with its lights, wharves, and docks; the one is the landing place and haven of ships that navigate the water, the other of those that navigate the air. Coleman v. City of Oakland, 295 P. 59, 61, 110 Cal. App. 715."

The facts furnished in regard to the village of Dickey's airport and the date of its establishment are as follows:

The village of Dickey's lease for an airport was dated 1 December 1960.

There are no aircraft located or stationed at the Dickey airport due to the fact that construction is not fully completed.

The proposed site was brought to the attention of the State Aeronautics Commission in the fall of 1960. The state airplane with the director of the State Aeronautics Commission and his assistant landed at such site for inspection on or about 10 November 1960.

In February of 1961 the state commission was advised by an official of the village of Dickey that material had been acquired for construction of the landing strip, day markers and a windsock.

On 9 January 1961 the state commission requested that the location of the airport be printed on U.S. Aeronautical Charts.

As of the date 5 September 1961 we note the commission's letter indicates that construction has not been completed but that the airport landing strip is a safe landing facility.

The facts furnished in regard to the city of Edgeley's airport and the date of its establishment are as follows:

The city of Edgeley's lease for an airport was dated 1 May

1961.

The city of Edgeley's airport has several planes and hangars located on it and is at present fully operating.

The State Aeronautics Commission was advised by an official of the city of Edgeley on or about 15 April 1961 that the city had decided to lease a new airstrip which had been built one mile west of Edgeley on the south side of Highway No. 13.

In the later part of April, 1961, a representative of the State Aeronautics Commission flew to Edgeley and inspected the airport. The State Aeronautics Commission then approved the new Edgeley airport.

On 24 April 1961 the facility was also approved by the Federal Aviation Agency.

The city of Edgeley signed a lease for approximately five acres for the Edgeley Municipal Airport on 1 May 1961. The same has been reviewed by the State Aeronautics Commission and found to be satisfactory.

The question of how the funds are to be distributed would thus appear to be dependent on the effective date of the establishment of an "airport" within the meaning of the above-quoted portions of the statute. We have noted the reference to "publicly owned and operated airports." However, we do not believe that this would justify an interpretation of same to the effect that the site itself must be owned by the municipality. We would prefer the view that the facility as a whole, whether on land owned by the municipality or other land available for the purpose, is the "airport." Also, we believe we must recognize that there are probably additional facilities such as hangars, marking equipment, lights, etc., that would be an efficient addition to any existent airport, and that the mere fact that all planned construction and equipment is not completed as of a given date would not prevent use of the facility as an airport as of such date. The right of the city to maintain an airport facility would, we believe, be dependent to some extent on their right to possession of the necessary land upon which airplanes would be permitted by virtue of the city's control thereof to land and take off therefrom. Until such lease had been entered into, even though it might be possible to land and take off from the premises, same would not be "municipally owned and operated," or publicly owned and operated" until such time as the city had possessory rights therein by virtue of a lease or otherwise. Also, of course, we believe some designation of the premises as a place where airplanes are permitted to land and take off is necessary prior to determination that same is an airport. Likewise, we believe that it must be physically possible for airplanes to land and take off from the facilities available, and that same are used for such purpose before we can recognize same as an airport.

However, from information submitted we presume that such is the case with both "airports" here concerned.

In a previous opinion of this office to the Director of the State

Aeronautics Commission of date 1 May 1953 we noted that the money distributed is part of the fees collected for annual aircraft licenses, that by administrative interpretation of the statute these licenses have been made renewable as of January 1, of each year, and on such basis we concluded that the municipal airport must have been operating as such during the time of distribution of funds (i.e., presumably at time of receipt thereof) in order to share in the money returned to the county from such license fees.

From the facts given herein it would appear that the Edgeley airstrip had been "built" as of 15 April 1961. There may therefore have been airport facilities available as of that time, however, municipal control of same was not assumed until the date the lease was entered into, i.e. 1 May 1961. It, therefore, was not in our opinion a "publicly owned and operated" airport at Edgeley prior to that date. Construction of the Dickey facilities still has not been completed, however, on the basis of information submitted, i.e., that the state airplane landed there on 10 November 1960, it would appear that such facility was usable as an airport as of such date, and insofar as the lease was entered into in December of 1960 we must assume that such facility was "publicly owned and operated" as of such date.

On this basis, it is our opinion that funds available for distribution up to the date 1 May 1961 are properly distributable only to the village of Dickey, insofar as up to that date the village of Dickey was the only municipality in the county having a "publicly owned and operated" airport. Funds becoming available for distribution subsequent to that date would be distributable on the basis indicated in your letter, i.e., registration fees on the basis of assessed valuation of the municipalities, and spraying fees on the basis of an equal distribution.

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