

Opinion No. 64

Aeronautics—Airports—Joint Airport Board—Counties—Cities.

Held: A joint airport board may sign an agreement with the federal government pertaining to development of airport projects on behalf of its constituent public agencies and bind its constituent public agencies thereby, provided it does not exceed any of the limitations placed upon it by sub-section (d) of Section 14 of Chapter 288, Laws of 1947, and provided it does not attempt to obligate its constituent public agencies beyond the terms of their agreement executed pursuant to sub-section (b) of Section 14, Chapter 288, Laws of 1947.

September 9, 1947

Mr. Frank Wiley, Director
Montana Aeronautics Commission
Helena, Montana

Dear Mr. Wiley:

You have inquired whether a joint airport board may sign an agreement with the federal government pertaining to development of airport projects and whether a joint board which signs such an agreement and accepts federal moneys binds the municipalities which it represents.

Chapter 288, Laws of 1947, is the Municipal Airports Act of Montana and provides the authority for municipalities to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports, air navigation facilities, and airport hazards. Paragraph (d) of Section 1 of Chapter 288 defines 'municipality' broadly:

"(d) 'Municipality' means any county, city, village or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve and operate airports and other air navigation facilities."

Section 7 of Chapter 288 authorizes delegation by a municipality of its authority to an officer or board or other municipal agency, with the qualification the expense shall be responsibility of the municipality:

"Any authority vested by this act in a municipality or in the governing body thereof, for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing of airports or other air navigation facilities established, owned or controlled, or to be established, owned or controlled by the municipality may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers and duties shall be prescribed in the resolution; provided, however, that the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection and policing shall be a responsibility of the municipality."

Section 14 of Chapter 288, relating to joint operation, employs the term "public agency" and defines it to include municipality, any agency of the state government and of the United States and any municipality, political subdivision and agency of another state. Section 14 provides, in part:

"(a) . . . All powers, privileges and authority granted to any municipality by this act may be exercised and enjoyed jointly with any public agency of this state, and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise of enjoyment . . .

"(b) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Concurrent action by ordinance, resolution or otherwise of the governing bodies of the participating public agencies shall constitute joint action. Each such agreement shall specify its duration, the proportionate interest which each public agency shall have in the property, facilities and privileges involved, the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility, the proportion of the expenses of maintenance, operation, regulation and protection thereof to be borne by each, and such other terms as are required by the provisions of this section. The agreement may also provide for: amendments thereof, and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities and privileges, or any part thereof, ceasing to be used for the purposes provided by this act, or upon termination of the agreement; the distribution of the proceeds received upon any such disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

"(c) Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the

governing body of each participating public agency. The number to be appointed, their term and compensation, if any, shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled and operated, and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility or airport hazard, subject to the limitations of sub-section (d) of this section." (Emphasis mine).

Sub-section (d), which provides certain limitations on the actions of the joint board, does not provide any limitations on the joint board's making agreements with and accepting moneys from the federal government on behalf of its constituent public agencies.

The subject of federal aid is covered by Section 11 of Chapter 288:

"(a) . . . Every municipality is authorized to accept, receive, receipt for, disburse and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both to accomplish, in whole or in part, any of the purposes of this act. All federal moneys accepted under this section shall be accepted and expended by the municipality upon such terms and conditions as are prescribed by the United States and as are consistent with state law. . . Unless otherwise prescribed by the agency from which such moneys were received, the chief financial officer of the municipality shall, on its behalf deposit all moneys received pursuant to this section and shall keep them, in separate funds designated according to the purposes for which the moneys were made available, in trust for such purposes."

Sub-section (e) of Section 14 relates to the joint fund to be created and maintained for the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of the section. The legislature obviously intended the joint board should receive and expend federal moneys, for sub-section (e) contains this language:

" . . . Any federal, state or other contributions or loans . . . shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in sub-section (d) of this section."

The legislative intent seems clear; to authorize "public agencies" to cooperate and plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect and police airports, air navigation facilities and airport hazards jointly. For the obvious reason the legislative assembly could not anticipate the exact needs, requirements, and problems of each county, city, town and village in the state, the assembly left to the contracting "public agencies" some measure of discretion regarding the terms of the agreements they might enter, such as its duration the proportion of cost to be borne by each agency, disposal of property and distribution of proceeds upon termination, assumption or payment of any indebtedness arising from the joint venture and remaining unpaid upon termination. But—once created—the joint board functions with the full powers of its creators, limited only as provided in sub-section (d) of Section 14.

It is, therefore, my opinion a joint airport board may sign an agreement with the federal government pertaining to development of airport projects on behalf of its constituent public agencies and bind its constituent public agencies thereby, provided it does not exceed any of the limitations placed upon it by sub-section (d) of Section 14 of Chapter 288, Laws of 1947, and provided it does not attempt to obligate its constituent public agencies beyond the terms of their agreement executed pursuant to sub-

section (b) of Section 14, Chapter
288, Laws of 1947.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General