

Opinion No. 35.

**Counties — Airports — Sale of Airport
Property—Sale and Exchange of
County Real Property.**

HELD: 1. The power to acquire and the power to sell county airport property is lodged in the county although an airport commission may be appointed and consulted relative to the exercise of such powers.

2. In the sale of such property the general law for the disposal of all county property must be followed and is applicable.

3. A county does not have the authority to exchange county airport property with a school district without first offering the property for sale in compliance with the provisions of Section 16-1009, R. C. M., 1947.

4. The board of county commissioners has the power to set aside a portion of an obsolete airport as a site for the county high school.

5. Funds realized from the sale of an abandoned county airport are trust funds for airport purposes and must be expended in compliance with the county budget law.

July 1, 1953.

Mr. John A. Forsythe
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Forsythe:

You have requested my opinion concerning the disposition of an airfield which is not needed for aeronautic purposes as a more suitable airfield has been acquired. You advise me that it has been proposed to use a portion of the obsolete airfield for the county high school and also as a site for the elementary school. Both the county high school and the school district have offered to exchange land of equal value for the school sites. You ask how the funds realized from the sale of the land received in exchange and the remainder of the airfield must be used. The county airport board has the control over both airports.

A county has the authority to acquire property for an airport, (Section 1-809, R. C. M., 1947) and regulate the use of the same. (Section 1-815, R. C. M., 1947.) The title to the real estate is in the county as it is the county which purchases the property, although, under the provisions of Section 1-814, R. C. M., 1947, the county may delegate to an airport board or commission prescribed powers relating to the establishment and operation of the airport. The power to dispose of the property acquired is in the county as Section 1-811 R. C. M., 1947, states in part:

“ . . . Every municipality may by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this Act. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state, or provisions of the charter of the municipality, governing the disposition of other property of the municipi-

ality, or agency of the state or federal government for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality.”

Seemingly there are conflicting provisions in the above quoted statute as to the manner of sale as disposal “in accordance with the laws of this state” and “in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality,” might be considered contradictory. However, in *Franzke v. Fergus County*, 76 Mont. 150, 245 Pac. 962, the court held that “disposition of the property as interests of the inhabitants require,” does not allow the county to conduct a sale without regard to fixed statutory procedure for sales of county property.

Section 16-1009, R. C. M., 1947, as amended by Chapter 30, Laws of 1953, states that “The board of county commissioners . . . shall have the power to sell any property real or personal, however acquired, belonging to the county and which is not necessary to the conduct of the county’s business or preservation of its property . . .” The manner of sale of property of the value in excess of \$100.00 is clearly defined and must be at public auction. Before offering the property for sale an appraisal of the value must be made by the board. If the property is not sold within one year after being first offered for sale, the board of county commissioners may exchange the real property for any lands of equal value. In other words, it is a condition precedent to the exchange of county lands that such lands must have been first offered for sale at public auction.

An exchange of property with School District Number One could not be made by the county without first having offered the real estate for sale in accordance with Section 16-1009, R. C. M., 1947. The case of *Franzke v. Fergus County*, supra, considered the manner of sale of county property and said that “The right of the legislature to say that such property may be sold only under the restrictions and in the manner indicated

by the statutes cannot be questioned." The court also held that Section 16-804, R. C. M., 1947, which grants the power to counties "To make such orders for the disposition or use of its property as the interest of its inhabitants require," must be read in conjunction with Section 16-1009, supra, and "Since the legislature has seen fit to indicate with particularity the essential steps necessary to be taken, and has prescribed the precise mode of procedure, the statute must be held to exclude any other." While the school district is located within the county, yet it is an independent legal entity, Section 75-1803, R. C. M., 1947.

A different situation is presented in regard to the use of a portion of the field for the county high school. As was observed above, a county, under Section 16-804, R. C. M., 1947, has the power "To make such orders for the disposition or use of its property as the interest of its inhabitants require." In *State ex rel. Henderson v. Dawson County*, 87 Mont. 122, 286 Pac. 125, the statute which authorized the establishment of county high schools was construed and the opinion held, "Under this Act it would seem the legislature intended to make such a high school a county institution in all essentials." The designation of a portion of the airfield for a county high school site would come within the authority given to the county by Section 16-804, supra.

The proceeds of the sale of the airport property are impressed with a trust as Section 1-817, R. C. M., 1947, provides:

"The revenues obtained by a municipality from the ownership, control or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, shall be deposited in a special fund to be designated the "..... Airport Fund," which revenues shall be appropriated solely to, and used by the municipality for, the purposes authorized by this Act."

As only a portion of the airport is to be sold, the county high school site having been retained by the county,

there will not be realized for the airport fund the total value of the abandoned airport.

The expenditure of the trust funds must be made by the county commissioners as a part of the regular county budget as is specified in Section 1-816, R. C. M., 1947, which reads:

"The governing body of any municipality having power to appropriate and raise money, is hereby authorized to appropriate, and to raise by taxation or otherwise sufficient moneys to carry out the provisions and purposes of this Act, within the limitations prescribed by law."

If the sale is consummated and the funds realized before the final adoption of the next budget, Section 16-1904, R. C. M., 1947, and items for the expenditure of the same included in the budget, the money may be expended if it is determined that such appropriations are advantageous at this time.

It is, therefore, my opinion:

1. The power to acquire and the power to sell county airport property is lodged in the county although an airport commission may be appointed and consulted relative to the exercise of such powers.

2. In the sale of such property the general law for the disposal of all county property must be followed and is applicable.

3. A county does not have the authority to exchange county airport property with a school district without first offering the property for sale in compliance with the provisions of Section 16-1009, R. C. M., 1947.

4. The board of county commissioners has the power to set aside a portion of an obsolete airport as a site for the county high school.

5. Funds realized from the sale of an abandoned county airport are trust funds for airport purposes and must be expended in compliance with the county budget law.