

Opinion No. 69

AIRPORTS; Attorneys, joint board may hire—COUNTY ATTORNEYS; Deputies, may act as attorney for joint airport board—COUNTY ATTORNEYS, Duties, not required to advise joint airport board—CITIES AND TOWNS; City Attorneys, not required to advise airport board—Section 1-821, RCM, 1947—Section 11-3623, RCM, 1947—Section 16-3101, RCM, 1947—Section 16-2409, RCM, 1947—Section 25-201, RCM, 1947

- Held: 1. Neither the city attorney nor the county attorney is required to act as attorney for a joint city-county airport board.**
- 2. A city-county joint airport board may employ an attorney.**
- 3. A city-county joint airport board may employ as its attorney an attorney who is also employed by the county as a special bond and tax counsel and as a special deputy county attorney on a part-time basis.**

December 15, 1960

Mr. John C. Harrison
Lewis and Clark County Attorney
Helena, Montana

Dear Mr. Harrison:

You have requested my opinion on the following questions:

1. May a city-county joint airport board employ an attorney?
2. May a city-county joint airport board employ as its attorney an attorney who is also employed by the county as special bond and tax counsel and as a special deputy county attorney on a part-time basis?

Joint airport boards are authorized by Section 1-821, Revised Codes of Montana, 1947. This section confers on a joint airport board extremely broad powers. Among these powers is the power to acquire land, Section 1-821(c), RCM, 1947; and the power to contract (22 Report and Official Opinions of the Attorney General 105). A joint airport board is also empowered to ". . . exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, . . ."

To properly exercise these powers, it is obvious that the assistance of competent legal counsel is imperative. As McQuillin points out:

"The power to employ legal counsel whenever and wherever, in the discretion of the corporate authorities, it is necessary for the corporation to be so represented for the preservation and protection of its interests, is necessarily implied, in order to enable the corporation to effect the purposes of its creation and to execute faithfully the trust committed to it." 10 McQuillin, **Municipal Corporations** 201 (1950).

The multitude of complex legal problems which may arise in the acquisition of land and airspace easements for the construction of an airport indicate not only that a joint airport board may retain an attorney but seem positively to demand that they do so.

Neither the city attorney nor the county attorney is required to act as attorney for a joint city-county airport board. Section 11-3623, RCM, 1947, required the city attorney to act as legal advisor for his municipality and for its officers and department. A joint city-county airport board is an independent legal entity and is not a department of the city. (See 21 Report and Official Opinion of the Attorney General 221.) Thus a city attorney has no duty to act as attorney for a joint city-county airport board.

The duties of county attorneys are set out in the Montana statutes. In the absence of a statute requiring, either expressly or by implication, that the county attorney advise a joint city-county airport board, the county attorney has no such duty. (See 19 Report and Official Opinions of the Attorney General 423.) The county attorney is required to give opinions upon request to county, district and townships officers. (Section 16-3101, RCM, 1947.) As indicated above a joint city-county airport board is an independent legal entity. Thus, the officers of such a board are not county officers and the county attorney need not advise them. Since there is no statute intimating that the county attorney has such a duty, it is my opinion that the county attorney is not required to render legal assistance to a joint city-county airport board.

Since we have already seen that the assistance of legal counsel is essential to the proper operation of a joint city-county board and since neither the city attorney nor the county attorney is required to render such assistance, it is my opinion that a city-county joint airport board may employ an attorney.

In answer to your second question, I find no constitutional or statutory provision which would prohibit a part-time deputy county attorney from accepting employment as attorney for a joint city-county airport board. Neither a deputy county attorney nor an attorney for a joint airport are public officers because both hold their position at the will of their superiors. (*Adami v. County of Lewis and Clark*, 114 Mont. 555, 138 Pac. (2d) 969.) Thus the question of incompatibility does not arise. (67 C.J.S. 136.)

Section 16-2409, RCM, 1947, provides in part that:

“. . . no compensation or salary must be allowed any deputy except as provided in this code.”

Section 25-201, RCM, 1947, provides:

“No county officer shall receive for his own use, any fees, penalties or emoluments of any kind, except the salary as provided by law, for any official service rendered by him, but all fees, penalties and emoluments of every kind must be collected by him for the sole use of the county and must be accounted for and paid to the county treasurer as provided by Section 25-203 of this code and shall be credited to the general fund of the county.”

Attorney General Bottomly ruled, in 19 Report and Official Opinions of the Attorney General 143, that these sections do not prevent a county employee from receiving compensation for employment outside of and in addition to his official employment for the county.

The only other question which need be considered is whether such employment might violate Canon 6 of the Canons of Professional Ethics, which prohibits a lawyer from representing conflicting interests. That canon defines conflicting interests as follows:

"within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

I cannot foresee that such a conflict would arise in the case of an attorney employed as bond and tax counsel to the county and also employed as attorney for a city-county joint airport board.

In summary, I find no constitutional, statutory, or ethical objection to such dual appointment. It is therefore my opinion that a city-county joint airport board may employ as its attorney an attorney who is also employed by the county as a special bond and tax counsel and as a special deputy county attorney on a part-time basis.

Very truly yours,
FORREST H. ANDERSON
Attorney General