

MAINE STATE LEGISLATURE

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January 31, 1946

John E. Willey, Chairman
Maine Aeronautics Commission
702 Press Herald Building
Portland 3, Maine

Dear John:

I have your letter of January 24th. The assumption that I made that the airports were to be devoted to a public use was implicit in the questions propounded. It was not injected by me. The inquiry was whether the legislature could appropriate money for the purchase of airports or to aid municipalities in the purchase and improvement of airports. Public funds, of course, could not be appropriated to promote private enterprises, hence the appropriation could only be made for a public purpose.

I do not think that the facts contained in the questions posed in this letter in any way detract from the main objective of a public use.

"To constitute 'public use' all persons must have equal right to use (the) utility and it must be in common and on the same terms, however few in number avail themselves of it." (167 N.E.860)

"Essential feature of 'public use' is that it is not confined to privileges individuals but open to the indefinite public." (158 A. 869)

None of the facts stated in the questions would deprive the general public using the airways of the use of these facilities on an equal basis. The mere fact that towns might lease portions thereof for the exclusive sale of fuel oil, etc., or to make repairs would not deprive the general public from the use of the facility as a landing field or a place to stop to refuel or for repairs. In fact, the statute authorizes, as I read it, the power and right in towns to lease the entire operation of the field; but the rights of the general public must be preserved. Chap. 21, Sec. 22.

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Furthermore, Section 18 of the same Chapter declares these airports to be governmental agencies and entitled to the same immunities as an agency of the State. Section 19 declares that all such airports "are acquired, owned, leased, controlled, or occupied for public uses".

Questions 5 and 6 do not present a legal problem. That towns may efficiently operate at a profit and others not so efficiently at loss is something that either the Commission or the legislature must solve. But the assertion by you that "One must bear in mind that once the municipalities own these airports the property then belongs to the municipalities and subject to the control of their citizens" in Question 6, is too broad. Municipalities are mere subdivisions and agencies of the state and derive their powers from the legislature and may exercise only such powers as are delegated to them by the legislature. It has already declared airports to be "governmental agencies" so that its citizens would not have the sole control although the town operated and owned the airport. The legislature never gives up the right to amend or revise the delegated powers to a municipality.

I was sorry to learn of your illness, but I understand that you have recovered in part and I shall be glad to see you at any time to discuss this matter.

With kind regards, I remain

Sincerely yours,

Abraham Breitbard
Deputy Attorney General

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