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B-60032 September 9, 1946

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The Honorable, The Secretary of Commerce.

My dear Mr. Secretary:

I have your letter of August 19, 1946, as follows:

"Section 4 of the Federal Airport Act, (Public Law 377, 79th Congress, approved May 13, 1946) provides that the Administrator of Civil Aeronautics is authorized, within the limits of available appropriations made therefor by the Congress, to make grants of funds to sponsors for airport development. The term 'airport development' is defined in Section 2(a)(3) as meaning."

"'(A) any work involved in constructing, improving, or repairing a public airport or portion thereof, including the construction, alternation, and repair of airport administrative buildings and the removal, lowering, relocation, and marking and lighting of airport hazards, and (B) any acquisition of land or of any interest therein, or of any casement through or other interest in air space, which is necessary to permit any such work or to remove or mitigate, or prevent or limit the establishment of, airport hazards * * *."

Other portions of the Act provide in detail for the submission and approval of projects, and for the payment of the United States share of the cost of such projects t their sponsors.

"Some questions has arisen as to whether or not the Government may properly contribute, from appropriations made under the provisions of the Federal Airport Act, to the expense of the acquisition of land for an airport where no work is to be done upon the site at that time under the Federal-Aid Airport Program, and the land is not necessary to remove or mitigate, or prevent or limit the establishment of airport hazards. An expression of your views on this question would be appreciated."

"Assuming that a contribution for such expenses is permissible it is also requested that you advise whether or not, in your opinion, the Government may grant funds to sponsors for the purpose of assisting them in the purchase of existing privately-owned airports. Applications will no doubt be made for grants of this nature in cases where it is expected that there will be an approved Federal project for the performance of work on the field, in cases where the only work contemplated will be done by the sponsor, and in cases where there is no immediate expectation that further improvements will be made by either agency."

"According to the above-quoted definition, any acquisition of land is to be considered 'airport development' if it is necessary either (1) 'to remove or mitigate, or prevent or limit the establishment of, airport hazards', or (2) 'to permit any such work', meaning 'any work involved in constructing , improving, or repairing a public airport or portion thereof.' The question which has arisen is whether the words 'such work' in this definition should be interpreted as meaning work to be performed under the same project as that under which the land is acquired, or whether such words are used merely to indicate that the land acquisition must be necessary to permit the land to be improved or developed for airport purposes, whether it ever is actually so improved or not. The latter construction is greatly to be preferred from an administrative standpoint. However, we feel that we should have your opinion as to its correctness before regulations are issued to this effect."

"In explanation of our preference for this construction, it is pointed out that, if it is not possible for the Government to make grants for the purchase of airports and of land upon which such airports are to be developed, without reference to whether or not construction work is to be done on such airports and land with Federal aid, the administration of the Federal-Aid Airport Program will be handicapped, and considerable difficulty will be experienced in attaining the objective Congress appears to have had in mind in enacting the Federal Airport Act."

"In many instances the purchase of the necessary land will constitute by far the largest portion of the expense necessary for the development of an airport. This will particularly true of airports serving communities located in the midst of level terrain, where land values are high and the necessary grading and soil conditioning can be accomplished by the local road-building or highway authorities, without the use of Federal funds for construction or similar work. In some such instances it may be possible to establish an airport, usable by light aircraft, simply by purchasing the necessary land, without performing any other work in the premises."

"Moreover, it is expected that there will be many cases in which the prospective project sponsor will be able to furnish the sponsor's share of the funds required to meet the cost of acquiring land necessary for development of a needed airport (usually 75% of the total cost) but would not be able to pay its share of the cost of improving such land during the same year (usually 50%, according to the Act). In such cases, unless a project could be approved only for the land acquisition, to be followed in other years by projects for its development as an airport, it would be impossible for the prospective sponsor to acquire the site until a subsequent year."

Adequate airport sites in many communities are few in number and particularly in metropolitan areas, are fast being subdivided or devoted to other purposes. Unless such sites can be acquired in the near future, it is expected that many will be lost to civil aviation.

"In many cases the greatest assistance that can be given toward the development of adequate airport facilities will be to help in the purchase of sufficient land for a complete installation of the full size necessary to provide for the aeronautical needs of the community, and leave to the future the gradual accomplishment of such items as grading, drainage, construction work with every purchase of land, the amount of land which can be bought in each case will be reduced in proportion. This additional land will have to be bought at a later

date, probably at prices substantially higher than those prevailing before the establishment of the airport."

"Also, if the Act is construed to prohibit the grand of Federal funds for the purpose of aiding in the acquisition of existing airports, it will result in the construction of many municipally-owned airports in direct competition with already existing privately-owned airports which, although inadequate and unsafe, would probably continue in operation. This construction in some cases would undoubtedly be more expensive to both the sponsor and the Government than would the acquisition and improvement of the existing privately-owned airport. It would seem to be more to the Government's interest to participate financially in the acquisition of the existing privately-owned airport in such cases that it would be for the sponsor to construct a new airport under the program."

"Regulations are now being drafted to carry out the provision of the Federal Airport Act, which it is desired to publish within the near future. As the questions discussed above must be decided before these regulations can be promulgated, their early consideration by your office would be appreciated."

That the funds to be contributed by the Government to sponsors under the Federal Airport Act may represent its share of the cost of land or interest therein for the development of public airports is evident from section 2(a)(6) of the act, 60 Stat. 170, in which the term "project costs" is defined as including the cost of "acquisitions of land or interests therein." However, as indicated in your letter, the doubt as to the propriety of granting funds for the acquisition of land in the case where no work is to be performed thereon, arises by reason of the inclusion, in the definition of "airport development," of land acquisitions "necessary to permit any such work."

The primary purpose of the Federal Airport Act is, as stated in section 4 thereof, "the establishment of a Nation-wide system of public airports adequate to meet the present and future needs of civil aeronautics"; and, in order to accomplish that purpose, the Administrator of Civil Aeronautics is authorized under said section "to make grants of funds to sponsors."

It is our course, a cardinal principle of statutory construction that the terms of a statute should be so construed as to effectuate the legislative intent. The specific power conferred in section 4 of the act is the power "to make grants of funds"; and although the purposes for which a grant properly may be made necessarily are limited by the language appearing in the act, there would appear to be no doubt that the Congress contemplated that the extent of the Administrator's authority in this request and any question as to whether the object of a grant in a particular case comes within his statutory power to make a grant of funds "for airport development" would be viewed in the light of the controlling intent of the Congress to provide for a system of public airports adequate to meet the needs of civil aeronautics.

While, as hereinabove indicated, the terms of section 2(a)(3) of the act 66 Stat. 179, would appear to limit the acquisition of land referred to therein to the necessary to permit of work incident to the construction, improvement, or repair of a public airport, I find nothing in the proceedings attendant upon the enactment of the statute here involved indicative of a legislative intention to condition a grant of funds covering the acquisition of land upon the immediate performance of construction or repair work thereon. An examination of said proceedings discloses that the proponents of the public airport program pointed

out that the increased employment would be one of the benefits to be derived therefrom, but I think there can be no doubt that the statute in no sense was designed as a vehicle for providing work relief. Consequently, it is inconceivable that the Congress intended that the Untied States and the legal public agencies should be compelled to contribute funds to finance construction or improvements in cases such as outlined in your letter, where the establishment of a public airport under the program does not require such work. To so construe the language of the statute obviously would result in a denial of public airport facilities to the areas affected under such circumstances and would, in my opinion, substantially defeat the basic legislative purpose intended to be achieved.

Accordingly, and in view of the representations contained in your letter, there is believed to be a substantial basis for holding that the Government legally may contribute from available appropriations to the cost of acquisition of land for an airport, or to the purchase of an existing privately owned airport, whether or not repairs or improvements thereon are to be made immediately, provided, of course, that in either case the sites acquired are purchased in contemplation of their use as public airports within the meaning of the act of May 13, 1946.

Respectfully,

Comptroller General of the United States