

OFFICIAL OPINION NO. 90-08, County airport board powers and responsibilities

January 18, 1990

Mr. Jeffry L. Bloomberg
Lawrence County State's Attorney
78-80 Sherman Street
Deadwood, South Dakota 57732

OFFICIAL OPINION NO. 90-08

County airport board powers and responsibilities

Dear Mr. Bloomberg:

You have requested an opinion from this office regarding the following factual situation:

FACTS:

Lawrence County has for a number of years owned and operated a county airport. The airport is governed by a county airport board which was established pursuant to county ordinance. Several questions have arisen regarding the operation of the airport board relative to state statutes.

Based upon the above facts, you have asked the following questions:

QUESTIONS:

1. Is a county airport board vested with the powers and responsibilities as set forth in SDCL ch. 50-6, City Airport Boards?
2. May a county airport board enter into and enforce county airport contracts in its own name or must these contracts be entered into and enforced by the county commission?

IN RE QUESTION NO. 1:

County ownership and operation of airports is authorized by SDCL ch. 50-7, Publicly Owned Airports. SDCL 50-7-2 gives counties the specific authority to own and operate airports. SDCL 50-7-2 reads in part as follows:

The board of county commissioners of any county in this state is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within the limits of such counties, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such county.

Question 1 asks whether county airport boards also have the authority that is given to the city airport boards in SDCL ch. 50-6. SDCL 50-6-1 clearly provides that "[a]ll cities may by ordinance create an airport board." Reference must be made to SDCL 50-7-1, however, which states as follows:

Whenever in this chapter the terms 'cities and towns,' 'cities or towns' or 'cities, towns' are used the same shall be deemed to include organized townships and organized counties and like power and authority is hereby conferred upon organized townships and organized counties as now exists in cities and towns. (Emphasis added.)

SDCL 50-7-1 clearly limits the interchange of the use of the terms county and city to "this chapter," meaning SDCL ch. 50-7. The interchange in the use of terms was not meant to apply to SDCL ch. 50-6. Therefore, I am of the opinion that SDCL ch. 50-6, City Airport Boards, does not apply to county airport boards.

IN RE QUESTION NO. 2:

Your second question asks whether the county airport board can enter into contracts on its own accord concerning the airport, or must the county commission enter into such contracts.

The authority for the establishment of a county airport board can be found in SDCL 50-7-13, which reads as follows:

The governing body of a city, town or county which has established an airport or landing field and acquired, leased, or set apart real property for such purpose may vest jurisdiction for the construction, improvement, equipment, maintenance, and operation thereof, in any suitable officer, board, or body of such city, town, or county, and providing further a city or town is authorized to create by ordinance a board whose sole purpose shall be to improve, regulate and supervise the operation and management of air facilities. (Emphasis added.)

SDCL 50-7-13 allows county governments to grant broad powers to county airport boards. These powers concern the "construction, improvement, equipment, maintenance, and operation" of the airport. As a general rule, a governing body not only possesses the authority specifically conferred upon it, but also the powers that are necessary to carry into effect the authority granted. See, e.g., *Sioux Falls Municipal Employees Association v. City of Sioux Falls*, 89 S.D. 298, ___, 233 N.W.2d 306, 309 (1975). If a county government uses its discretion and grants such authority to the county airport board, the county airport board necessarily must have the power to enter into contracts to carry out the authority granted to it. The power to contract is essential to the duties conferred upon a county airport board. Therefore, a county airport board may enter into contracts concerning the county airport if the proper authority was given to it by the board of county commissioners.

Respectfully submitted,

ROGER A. TELLINGHUISEN
ATTORNEY GENERAL

RAT/db