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INTERGOVERNMENTAL COOPERATION:
Composition of Administrative
Board To Operate County Airport
Cooperatively Between County of
Effingham and City of Effingham

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Dear Mr. Bower:

I have your letter concerning the intergovernmental contract that the county of Effingham and the city of Effingham are negotiating to operate the Effingham County Memorial Airport. You ask the following question:

Since the Effingham County Memorial Airport Commission's membership, both as to the number of members and the qualification of members, is governed by section 44 of the County Airports Act (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 148), can either factor (number of members or qualifications) be changed through an intergovernmental agreement? For instance, can the County of Effingham relinquish one of the "County Board Member"

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seats and give that to a representative of the city? Also, could a "City of Effingham" representative be a member of the city council, since the statute says the "non-county board members" cannot be elected or appointed government officials?

It is my opinion that as long as the airport is operated solely under the County Airports Act there is no authority for the county to change the composition or qualifications of the members of the County Airport Commission. However, as discussed below, a joint board could be established to operate the airport.

The county is presently operating the airport under the County Airports Act (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 104 et seq.) A municipality has authority to operate an airport under sections 11-103-1 et seq. of the Municipal Code (Ill. Rev. Stat. 1975, ch. 24, par. 11-103-1). Authority for these two units of local government to operate the airport on a joint basis is found in article VII, section 10 of the Illinois Constitution and in the Intergovernmental Cooperation Act. Ill. Rev. Stat. 1975, ch. 127, par. 741 et seq.

Section 10 of article VII provides in part as follows:

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"(a) Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance.
* * *

(b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions.

(c) The State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities."

The Intergovernmental Cooperation Act provides in part as follows:

"§ 3. Intergovernmental agreements. Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise or enjoyment.

§ 4. Appropriations, furnishing of property, personnel and services. Any public agency entering into an agreement pursuant to this Act may appropriate funds and may sell, lease, give, authorize the receipt of grants, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

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§ 5. Intergovernmental contracts. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties." (Emphasis added.)

The committee proposing the constitutional article clearly intended to provide maximum local authority and flexibility to cooperate without prior legislative permission. (See VII Record of Proceedings 1747 through 1752, and also the booklet published by the Department of Local Governmental Affairs entitled "Intergovernmental Cooperation in Illinois", pages 265 through 272.) The Intergovernmental Cooperation Act is similarly broad. I have previously so advised. (See opinions No. S-684 and S-1217.) Both are designed to encourage intergovernmental cooperation.

Based on the above authority, it is my opinion that pursuant to an intergovernmental agreement or contract the county and the city may establish a joint administrative board to operate the airport and determine the number, qualifications and method of selection of the members. The Constitution specifically provides that units of local government may

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transfer their powers and the Act provides that joint boards may be established to administer intergovernmental activities.

There may be some concern that because the County Airports Act provides a specific manner in which a county may operate an airport that it is prohibited by law from entering into the proposed agreement. However, there is no express or implied prohibition against this type of intergovernmental cooperation in the Act; nor is there any prohibition against engaging in a particular activity as discussed in opinion No. S-1029, issued January 7, 1976. In general, joint operation of public airports is the public policy of Illinois. See section 2 of "AN ACT in relation to the establishment * * * of airports"(Ill. Rev. Stat. 1975, ch. 15 1/2, par. 85), section 68 of the County Airports Act (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 172) and section 11-103-10 of the Municipal Code (Ill. Rev. Stat. 1975, ch. 24, par. 11-103-10).

Furthermore, sections 18 and 73 of the County Airports Act (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 122 and 177) specifically provide a direct answer to this concern. Under section 73, the Act is to be construed as conferring powers in addition to and not a limitation on the power of a county

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to operate an airport:

"§ 73. The provisions of this Act shall be cumulative and shall be considered as conferring additional power on counties and as additions to and not as limitations upon the power of counties to acquire, construct, operate and maintain airports, the levying of taxes, issuance of general bonds and revenue bonds."

Counties have general authority under "AN ACT to empower counties to acquire * * * airports and landing fields, etc." (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 69 et seq.) to operate an airport. No airport commission or other special body is required to operate the airport under this Act. In addition, section 18 of the County Airports Act provides in part that:

" * * * Every county operating under this Act in order to secure greater working efficiency may convey the property acquired for airport purposes, or any part thereof, or any interest therein to any other county or municipality adjacent thereto for public airport purposes upon such terms and conditions as the respective governing bodies shall agree by a two-thirds vote of all members of each of such governing bodies. * * * "

Therefore, the county may enter into an agreement with the city of Effingham for joint operation of the airport.

It is also my opinion that city council members and members of the airport commission or county board may serve on the joint board, unless specifically prohibited by law.

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Article VII, section 10(b) of the Illinois Constitution provides as follows:

"

* * *

(b) Officers and employees of units of local government and school districts may participate in intergovernmental activities authorized by their units of government without relinquishing their offices or positions.

* * *

"

Report of the Illinois Constitutional Convention in its explanation of committee proposals (VII Record of Proceedings 1748) stated that section 10(b) is intended to allow officers and employees of any participating unit to take part in the administration of intergovernmental activities. Thus, an officer of a participating unit could sit on a joint administrative board without having to step down from the former office.

Membership of the joint board and the function of the present airport commission and its relationship to the joint board are matters to be negotiated in the agreement consistent with law. This opinion only advises that joint operation of the airport by Effingham County and the city of Effingham is authorized. It does not attempt to discuss or determine the procedural steps that are necessary to accomplish this end.

Very truly yours,

A T T O R N E Y G E N E R A L