

File: CP Aupt District

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OFFICE OF
THE COUNTY COUNSEL



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February 7, 2003

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Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

Title: County Counsel reporting on the validity of Ordinance 847 pertaining to roads within the Cameron Park Airport District and the request for proposed amendments.

Honorable Supervisors:

Recommendation:

County Counsel recommends that the Board of Supervisors receive and file this report, and direct County Counsel to seek an opinion from the California Attorney General on the validity of Chapter 10.20 of the El Dorado County Ordinance Code.

Reasons for Recommendation:

The Board of Supervisors requested that County Counsel report to the Board on the status of Ordinance 847 and its continued validity after transfer of the Cameron Park Airport to the Cameron Park Airport District. Ordinance 847 is now embodied in Chapter 10.20 of the County Ordinance Code. County Counsel's analysis and conclusions are set forth in the attached memorandum. Our conclusion is that the continued validity of Chapter 10.20 of the County Ordinance Code is very questionable. However, there are unresolved issues relating to certain general provisions of the Vehicle Code and the authority they might grant to the County. Because of the issues involved and potential exposure to the cost of litigation, it is recommended that the County seek an opinion from the California Attorney General on the subject before the Board of Supervisors might consider any amendment to Chapter 10.20 or the active enforcement of its provisions.

Fiscal Impact:

None.

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Actions to Be Taken Following Approval:

If the Board of Supervisors approves the recommended action, County Counsel will prepare and submit a request for an opinion from the California Attorney General.

We would be pleased to answer any questions the Board might have.

Respectfully submitted,




LOUIS B. GREEN
County Counsel

LBG/stl
Attachment
cc: Chief Administrative Officer
Director of General Services
s:\Bd of Supervisors\Correspondence\Regulation of Airport District streets



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Board of Supervisors

FROM: Louis B. Green
County Counsel 
Thomas R. Parker
Deputy County Counsel

RE: Traffic Controls on Roads Within Cameron Park Airport District
Jurisdiction

DATE: February 7, 2003

You have asked this office for a legal opinion on the following legal issue. The background information is also provided in this memorandum.

ISSUE

Does Chapter 10.20 (formerly Ordinance No. 847) of the County Ordinance Code retain any validity after transfer of the Cameron Park Airport to the Cameron Park Airport District?

CONCLUSION

There is serious doubt as to the continued validity of Chapter 10.20. It appears that at the time the Cameron Park Airport was transferred to the Airport District, it was the intent of the parties to transfer ownership, control and regulatory authority over the streets included in the Airport District to the Airport District. However, certain general provisions of the Vehicle Code may be interpreted to give some continued authority to the County to regulate such roads. Because of potential legal liabilities, it is recommended that the County seek an opinion from the California Attorney General on the subject before considering any amendments to or active enforcement of the provisions of the chapter.

BACKGROUND

The District is an airport district authorized by Public Utilities Code ("PUC") section 22001 through 22975. It was formally created in December of 1987 through a 1986 petition from the residents surrounding the airport to the County to divest itself of what was the County's Cameron Park Airport and the appropriate El Dorado Local Agency Formation Commission ("LAFCO") approval process in early 1987.¹ The statutory purpose of an airport district is found at PUC section 22002, providing for the development of airports and air navigation facilities for defined communities. The powers of the District, and airport districts in general, are found at PUC section 22553. The powers relevant to this opinion are located at subsections (c) and (e) wherein the District is to provide and maintain a public airport and landing places for aerial traffic as well as to "...use, repair, maintain, control..." the property of the District. The District has, within its jurisdiction, roads that are designed and used, or capable of being used, by aircraft to taxi to and from the actual runway as well as personal residences with oversized garages that can shelter aircraft. Our office understands and assumes that many of the residents living adjacent to these oversized roads have personal aircraft and taxi to and from the runway from their homes via the oversized road in their aircraft.

Chapter 10.20 of the El Dorado County Ordinance Code establishes certain roads now within the jurisdiction of the Airport District for combined use of vehicular traffic and the taxiing of aircraft. It then establishes regulations for aircraft taxiing on the streets. Section 10.20.020(B) currently states that aircraft with a "gross weight in excess..." of 12,500 pounds shall not use any streets named in subsections A-H of Section 10.20.010. All of the streets listed in section 10.20.010 are located within the 1987 boundary designation of the District. Chapter 10.20 was originally enacted prior to 1981(found at "Prior code section 7652"), when the Cameron Park Airport was a county airport operation, and simply renumbered in the 1981 ordinance code revision to its current designation. The continued viability of Chapter 10.20 does not appear to have been addressed at the time of the creation of the Airport District and the transfer of the streets to the District. No amendments to Chapter 10.20 appear to have been made since its enactment.

California Vehicle Code section 21114 provides as follows:

If a local authority finds that a city street or *county road* under its jurisdiction adjacent to an airport has been specifically designed and constructed, with the prior approval of the local authority, so as to safely permit the use thereof by regular vehicular traffic and also the taxiing of aircraft thereon between the airport and the place where such aircraft are hangared or tied down, the local authority

¹The County also owned what is now the South Lake Tahoe Airport until the mid-1980s when that airport was sold to the City of South Lake Tahoe for \$1.

may by resolution or ordinance designate such street or road or portion thereof for such combined use and prescribe rules and regulations therefor which shall have the force of law. No such street or road shall be so designated for a distance of more than one-half mile from the airport, provided, the finding of the local authority in this respect shall be conclusive. Upon such designation becoming effective, it shall be the sole responsibility of the local authority to enforce the provisions of the Vehicle Code and all rules and regulations adopted by it upon such street or road. Upon such designation becoming effective it shall be lawful to taxi aircraft upon such street or road in accordance with the rules and regulations prescribed as aforesaid and said aircraft need not be licensed under this code or comply with other provisions thereof. (Emphasis added.)

Chapter 10.20 of the County Ordinance Code appears to have been enacted under the authority of Section 21114 of the Vehicle Code.

There appears to be a local controversy over what size aircraft should be allowed to travel on the oversized roads within the District. This issue presented itself to the County in 2002 in the form of a request by the District (through its board and general manager) for an amendment of section 10.20.020(B) to "clarify" what aircraft weight limitations should be enacted. The proposed amendment to section 10.20.020(B) would prevent aircraft with a "maximum certified gross weight" of 12,500 pounds from using taxi roads. The issue of the continued validity of Chapter 10.20 was raised at that time and County Counsel was requested to research and present an opinion on the issue.

ANALYSIS

The County, after the District became an official and functioning special district in December 1987, executed a quitclaim deed with the District (approved on March 15, 1988 by the Board of Supervisors). This quitclaim deed (see Attachment 1 of this memorandum) conveyed to the Cameron Park Airport District all of the County's interest in various property described in Exhibit A to the Quitclaim Deed. The property conveyed included:

The following streets within Air Park Estates as dedicated to the County of El Dorado with the filing of the plat of Air Park Estates and Resubdivision of Lot No. 459, Cameron Park North Unit #1, recorded February 14, 1967, in Book D at page 78 or:

- (a) Western Drive-
- (b) Fairway Drive-
- (c) Bonanza Drive-
- (d) Lockheed Court-

- (e) Aeronca Way-
- (f) Boeing Road-
- (g) Baron Court-
- (h) United Drive, Northerly of Boeing Road.

The quitclaim deed provided that the property conveyed would remain open for public use.

All of the roads named above in the 1988 quitclaim deed to the District are also found in section 10.20.010(A-H) and are the roads found within the boundaries of the District on the LAFCO map of the District boundaries from 1987. The 1986 LAFCO proposal from the petitioners seeking the special district status indicated that one of the "specific" functions the District would assume was to "Institute a program for control of the vehicular traffic on airport aprons, taxiways, and streets". (See Attachment 2.) From a financial perspective, the District assumed responsibility for insuring and maintaining the property. (See Attachment 3, dated December 5, 1986, regarding the transfer of revenue to the District for airport insurance and "road maintenance responsibilities".)

It is reasonably clear from the nature of the transaction surrounding the creation of the Airport District, including the various documentation, that everyone understood the District to be assuming ownership of the streets as well as the responsibility for maintenance and regulation of vehicular/aircraft use of the roads within the District as a particular purpose of that entity. The March 15, 1988 action of the County completed the process of making that understanding a legal reality. Since Vehicle Code section 21114 authorizes the County to regulate aircraft use on county roads, it appears that that authority was lost when ownership of and maintenance responsibility for the streets within the District were transferred to the District.

For these reasons, it would appear that Chapter 10.20 of the County Ordinance Code is no longer valid and should be repealed. However, an additional issue presented itself in the course of our research. In particular, several provisions of the Vehicle Code allow the County to regulate vehicular traffic on privately owned and maintained roads under specified circumstances. Some of those could be read to authorize the County to regulate traffic on the roads within the Airport District. Whether, however, they can be read to include regulation of aircraft is unclear.

Probably the most directly relevant section is Vehicle Code section 21108 which reads as follows:

Local Authorities may adopt rules and regulations by ordinance or resolution regulating vehicular traffic on privately owned and maintained roads or ways within the boundaries of a privately owned airport, when the roads or ways are

expressly open to the general public for purposes of vehicular traffic.

The term vehicle is broadly defined by Vehicle Code section 670 to mean "a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks." This definition if taken literally is broad enough to encompass aircraft, but would not necessarily be interpreted in that fashion. Aircraft are not normally allowed on highways, except under the authority of Vehicle Code section 21114. In one old opinion the Attorney General opined that aircraft do not come under the Vehicle Code definition of vehicle for purposes of the liability provisions of the Vehicle Code. There are several other reasons why we believe that an interpretation of these sections to allow regulation of aircraft on the District streets is somewhat unlikely.

First, most of the code sections allowing the County to regulate on privately owned roads refer to the regulation of "vehicular traffic." As noted above, although the term "vehicle" can be viewed as encompassing aircraft, it is not clear that it would be interpreted in that manner. A court may take a more pragmatic view based on the fact that aircraft do not normally utilize the streets and the term vehicular traffic is not commonly used to refer to aircraft. In fact, as noted above, aircraft would in most instances be precluded from using public roads and are not likely to be generally considered as "vehicular traffic." Second, Vehicle Code section 21114 which allows the county to authorize the taxiing of aircraft on *county* roads adjacent to airports, and to regulate their operation, may be viewed as the exclusive authority for counties to allow and regulate aircraft. This section may preempt the other more general sections that could be interpreted to allow additional county regulation. Section 21114 applies only to county roads and therefore does not form the basis for regulation in the present circumstances since the roads are owned by the District, not the County.

Finally, the general provisions of the Vehicle Code refer to regulation on privately owned roads within privately owned airports. Although the term "privately owned" could be interpreted to include streets and airports owned by an airport district, that would not necessarily be the case. Given the authority of airport districts to control the property owned by airport districts under Public Utilities Code section 22553, as well as the authority under Public Utilities Code section 22555 to "make all needful rules governing the use of the airports, landing places for aerial traffic, and other aerial facilities of the district", a court might find that this encompasses the power to establish and enforce regulations regarding the operation of aircraft on streets owned by the District and, therefore, find it unnecessary to extend the same power to the County. This could be true especially under circumstances where creation of the District and the conduct of the parties after that creation indicate a mutual intent that the District assume responsibility for the control and regulation of the streets within its jurisdiction.

Under these circumstances, we conclude that the continued validity of Chapter 10.20 is

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very questionable, although some argument can be made for the Chapter being authorized under some of the general provisions of the Vehicle Code. Under these circumstances, if it is the desire of the Board of Supervisors to consider an amendment of Chapter 10.20, it is our advice that the County solicit an opinion from the California Attorney General on this subject before the County considers either an amendment to Chapter 10.20 as requested by the Airport District, or active attempts to enforce the current provisions of the Chapter.

We would be pleased to respond to any questions the Board might have.

Respectfully submitted,

LOUIS B. GREEN
County Counsel

LBG/stl

Attachments

cc: Chief Administrative Officer
Director of General Services

s:\Transportation\cpdistrds2