

\*4083 Office of the Attorney General  
State of Arizona

I77-202 (R77-274)  
November 4, 1977

Mr. Michael A. Ramnes  
State Parks Director  
Arizona State Parks Board  
1688 West Adams Street  
Phoenix, Arizona 85007

Dear Mr. Ramnes:

This is in response to your letter of August 11, 1977 in which you asked whether the Arizona State Parks Board has the statutory authority to acquire ownership of a public airport and operate it, and if so whether the Board has the authority to contract out the operation of a public airport.

A.R.S. § 28-104.A provides:

The exclusive control and jurisdiction over state highways, state routes, state airports and all state owned transportation systems or modes is vested in the department of transportation.

In a predecessor to this statute (A.R.S. § 18-106; Section 59-105, A.C.A. 1939, 1952 Supp.), the Highway Commission was authorized to '[e]xercise complete and exclusive control and jurisdiction of the state highways. . . .' This language was held by the Arizona Supreme Court to be a 'clear and unambiguous statement of legislative intent' that state highways are to be exclusively controlled by the State Highway Commission. Harlan v. City of Tucson, 82 Ariz. 111 at 116, 309 P.2d 244 (1957). Consistent with this grant of exclusive jurisdiction over state airports are statutes which grant the Director of the Department of Transportation authority to build and maintain state airports (A.R.S. § 28-108), acquire land for airport purposes (A.R.S. § 28-1865) and adopt rules and regulations and establish fees and charges for state owned airports (A.R.S. § 28-1707). The Aeronautics Division, an organizational unit of the Arizona Department of Transportation (A.R.S. § 28-104.C), and the Assistant Director for that division share with the Director of the Department of Transportation the authority for administering the state aviation responsibilities set forth in Chapter 12 of Title 28, A.R.S. entitled 'Aviation in General'.

In contrast to the jurisdiction explicitly granted to the Department of Transportation, the statutes governing the Parks Board make no mention of airports or aviation. The Parks Board has the limited authority to acquire property 'for state park or monument purposes.' A.R.S. § 41-511.05. The meaning of this phrase can be gathered from A.R.S. § 41-511.03, which defines the purposes of the Arizona State Parks Board:

The purposes and objectives of the board shall be to select, acquire, preserve, establish and maintain areas of natural features, scenic beauty, historical and scientific interest, and zoos and botanical gardens, for the education, pleasure, recreation, and health of the people, and for such other purposes as may be prescribed by law.

The authority to acquire and operate a public airport is neither expressed nor implied in the statutes governing the Parks Board. It is fundamental law in Arizona that an administrative agency has no powers except those expressly conferred or necessarily implied in the statutes governing the agency, Pressley v. Industrial Commission, 73 Ariz. 22, 236 P.2d 1011 (1951); Kendall v. Malcolm, 98 Ariz. 329, 404 P.2d 414 (1965); Atty. Gen. Op. No. 77-153 (R75-764) dated July 20, 1977. Any action by the agency beyond the powers granted to it is an usurpation of constitutional authority vested only in the Legislature. Swift and Company v. State Tax Commission, 105 Ariz. 226, 462 P.2d 775 (1969).

It is clear from the legislatively established scheme of control and jurisdiction over airports and aviation that the Arizona State Parks Board does not have the authority to acquire ownership of a public airport and operate it. (FN1) The answer to question number 1 must, therefore, be 'no' thus making an answer to question number 2 unnecessary.

Very truly yours,

BRUCE E. BABBITT

Attorney General

FN1 We do not address in this opinion the question of whether the State Parks Board could own or operate a private airstrip and related facilities for sole use by State Parks Board personnel.