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Via First Class U.S. Mail & Electronic Mail

Winsome A. Lenfert
Division Manager
FAA Southern Region
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Re: Response to Request for Legal Opinion Regarding Resolution 15-01

Dear Ms. Lenfert:

I have been engaged by Paulding County to respond to your letter dated June 30, 2015 to Chairman David Austin, Paulding County Board of Commissioners. In your letter, you requested clarification as to the effect of Paulding County Board of Commissioner's Resolution 15-01 ("Resolution 15-01") and a related application for a Part 139 Certificate (the "Part 139 Application") submitted to the Federal Aviation Administration ("FAA") on or about September 24, 2013. Resolution 15-01 – transmitted to the FAA in January 2015 – withdraws the Part 139 Application.

In your June 30, 2015 letter, you asked two questions. First, "[o]n whose behalf was the Part 139 application submitted?" Second, "[w]hat, according to the County, is the legal effect of the Resolution on the Part 139 application?" These questions will be addressed, in turn, below. That said, some background information is in order.

I. Background

Ownership of the Airport Property

Paulding County was established by act of the Georgia General Assembly in 1832. The governing authority of Paulding County is its five-member Board of Commissioners. The Paulding County Airport Authority ("PCAA") is a separate legal entity created by a separate act of the Georgia General Assembly in 1972. The PCAA has nine members, which consist of the six members of the Paulding County Industrial Building Authority and three members appointed by the Paulding County Board of Commissioners.

Generally speaking, construction of the Paulding County Airport¹ began in 2006, when the PCAA initiated condemnation procedures to acquire approximately 590 acres in western Paulding County. These condemnation procedures were essentially completed in 2009 with the recording of a Consent Order and Judgment as to a portion of the property and a Final Judgment as to the balance of the property.

On or about July 6, 2006, Paulding County approached the City of Atlanta (“Atlanta”) about purchasing approximately 163 acres adjacent to the 590-acre tract being condemned by the PCAA. In August, 2007, Atlanta sold to Paulding County – and conveyed via quitclaim deed – the 163-acre tract of land for \$815,000.00. To this day, the 590-acre tract remains titled in the PCAA, and the 163-acre tract remains titled in Paulding County. The Airport is constructed on these two tracts.

The Part 139 Application

On September 24, 2013, Blake Swafford submitted the Part 139 Application. He identifies himself as the “Director,” and the Part 139 Application provides as the “Name of Owner” the “Paulding County Airport Authority/Paulding County Board of Commissioners.” As of September 24, 2013, Paulding County maintained an “Airport Department,” and Mr. Swafford was the “Director” of that department; Mr. Swafford was not an employee of the PCAA.

As one might expect, the Paulding County Code of Ordinances does not specifically address the authority or procedure for submission of a Part 139 Application. That said, Article I, Section 10 and Article I, Section 11 of the Code of Ordinances delineates the respective powers of the Chairperson of the Board of Commissioners (Section 10) and the Board of Commissioners itself (Section 11). It is the opinion of the undersigned that the submission of a Part 139 Application more appropriately falls within the scope of the authority of the Board of Commissioners as a whole. That said, a review of the minutes from the Paulding County Board of Commissioners meetings prior to September 24, 2013 reveals no vote pursuant to which Mr. Swafford was authorized to submit the Part 139 Application.²

The October 31, 2014 Intergovernmental Contract

On or about October 31, 2014, the PCAA and Paulding County entered into an Intergovernmental Contract, the term of which is ten (10) years.³ Pursuant to the terms of the Intergovernmental Contract, the PCAA is to “operate and maintain the Airport.” The

¹ The Paulding County Airport has been and is sometimes referred to alternatively as the “Paulding County Regional Airport,” “Paulding Northwest Atlanta Airport,” “Paulding County Northwest Atlanta Airport,” “Paulding Northwest Regional Airport,” or “Silver Comet Field.” For ease of reference, the airport will be referred to herein simply as the “Paulding County Airport” or the “Airport.”

² Similarly, a review of the minutes from the PCAA meetings prior to September 24, 2013 reveals no vote pursuant to which the Part 139 Application was authorized.

³ The parties subsequently amended the Intergovernmental Contract by First Amendment to Intergovernmental Contract, dated November 13, 2014.

Intergovernmental Contract provides that Paulding County will make certain “Contract Payments” to the PCAA in exchange for its services and that Paulding County is to transfer to the PCAA “approximately 168 acres of property.”

The Intergovernmental Contract also provides that Paulding County “will eliminate the staffing of its own Airport Department,” thereby “shift[ing] the Director’s position from a County employee to an Airport Authority employee.” PCAA Board of Commissioners Mtg. Minutes, p. 2, Sept. 24, 2014. Indeed, following the approval of the Intergovernmental Contract, Paulding County eliminated its Airport Department, and Mr. Swafford became the Interim Executive Director of the PCAA, effective October 20, 2014. *See id.* at 3.

Resolution 15-01

On January 13, 2015, the Paulding County Board of Commissioners approved Resolution 15-01 by a 3-2 vote. Resolution 15-01 provides that it is “resolved by the Paulding County Board of Commissioners as an Airport sponsor that the application to the FAA for a Part 139 Certificate is hereby withdrawn and any associated environmental review is hereby terminated.” Paulding County’s attorney submitted Resolution 15-01 to the FAA by letter dated January 23, 2015.

Five days later, on January 28, 2015, Mr. Calvin Thompson, Chairman of the PCAA, submitted to Ms. Daphne Fuller at the FAA a letter in support of the Part 139 Application. Mr. Thompson requested that – notwithstanding Resolution 15-01 and the withdrawal of Paulding County’s support – the FAA continue its review of the Part 139 Application because the same “was submitted by the Airport Director, not by the Paulding County Commission. The Airport Director’s submission of the Part 139 Application followed a vote of the Paulding County Airport Authority.”

In light of the PCAA’s expressed interest in pressing forward with respect to the Part 139 Application, your June 30, 2015 correspondence indicates that the “FAA is inclined to deem the Part 139 application to remain active and pending.”

II. Response to FAA Questions

Question #1: On whose behalf was the Part 139 application submitted?

As set forth above, the Part 139 Application identifies as the owner of the Airport both Paulding County and the PCAA. Presumably, this was to reflect the fact that a portion of the Airport property was (and still is) owned by Paulding County, and a portion of the Airport property was (and still is) owned by the PCAA.

In terms of Airport operations, however – at the time of the submission of the Part 139 Application – the Airport was operated and maintained by Paulding County through its Airport Department. Therefore, Paulding County was the only party with the authority to authorize submission of the Part 139 Application.

PCAA Chairman Thompson contends in his January 28, 2015 letter that the Part 139 Application “was submitted by the Airport Director, not by the Paulding County Commission,” and appears to suggest that the “Airport Director” was acting at the instruction of the PCAA. However, the only “directorship” position Mr. Swafford held at the time of submission of the Part 139 Application was as an employee of Paulding County – specifically, the Director of the Paulding County Airport Department. He was not then an employee of the PCAA, and he did not become the Interim Executive Director of the PCAA until over one year later, on October 20, 2014. To the extent he was acting as “Airport Director,” such designation could have only referred to his position as a Paulding County employee.

Moreover, there is nothing to suggest that the PCAA had the authority to authorize or direct a Paulding County employee to undertake an act for which – in the opinion of the undersigned – the approval of the Paulding County Board of Commissioners was required. Taking these facts together, the only conclusion is that Mr. Swafford – to the extent he had any authority – was acting for Paulding County, not the PCAA.

Accordingly, the Part 139 Application was submitted on behalf of Paulding County, as (i) Paulding County was the owner of at least a portion of the Airport property; (ii) Paulding County operated the Airport through its Airport Department; and (iii) the signatory on the Part 139 Application was an employee (indeed, the Director of the Airport Department) of Paulding County. Again, it appears that the PCAA was included in the Part 139 Application simply to reflect that the PCAA owned a portion of the Airport property.

This conclusion is further supported by the fact that – more than a year later on October 31, 2014 – the PCAA and Paulding County entered into a 10-year Intergovernmental Contract, whereby Paulding County was to transfer operation and maintenance of the airport to the PCAA and ownership of that portion of the Airport property owned by Paulding County to the PCAA.

Question #2: What, according to the County, is the legal effect of the Resolution on the Part 139 application?

Because the Part 139 Application was submitted on behalf of Paulding County, Paulding County retains the right to withdraw it, and the legal effect of Resolution 15-01 was to withdraw the application.

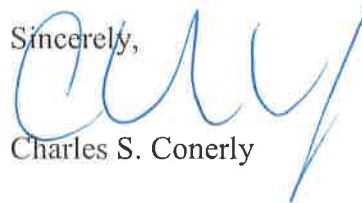
Your letter requests clarification as to how Paulding County may “withdraw the application notwithstanding the apparent designation of the Authority as the airport operator.” Presumably, this is in reference to the Intergovernmental Contract.

The Intergovernmental Contract certainly shifts operational control of the Airport from Paulding County to the PCAA. But by its own terms, the Intergovernmental Contract is a limited agreement, as to both its duration – ten years – and its scope. With respect to the latter, the Intergovernmental Contract does not expressly allow the PCAA to move forward with the Part 139 Application or to otherwise pursue commercialization of the Airport. Rather, the Intergovernmental Contract seems to contemplate that the PCAA is merely responsible for the Airport’s then-existing operations and for similar operations over the next ten years. Notably,

the Intergovernmental Contract provides that Paulding County is still responsible for financing the Airport's operations. Had the parties to the Intergovernmental Contract intended for the PCAA to have the authority to change the operational scope of the Airport – at added expense to Paulding County – then presumably the parties would have said so.

I trust that this letter adequately addresses the questions posed to Paulding County, but feel free to follow up with me should you have additional questions or require further assistance.

Sincerely,



Charles S. Conerly

cc: Deandra Brooks, Airport Compliance Specialist, FAA Southern Region
David Austin, Chairman, Paulding County Board of Commissioners
Lani Skipper, County Attorney, Paulding County
Calvin Thompson, Chairman, Paulding County Airport Authority
W. Thomas Cable, Talley, Richardson & Cable, P.A., Counsel for Paulding County
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