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Date: October 27, 2016

To: Scott Manske, Comptroller

Cc: Chairman Theodore Lipscomb, Sr.
Chief of Staff Kelly Bablitch
Brian Dranzik, Director, Department of Transportation
Ismael Bonilla, Airport Director
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From: Assistant Corporation Counsel Tim Karaskiewicz *TKK*
Interim Corporation Counsel Colleen Foley
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RE: Assistance for MKE Fuel Acquisition of Shell Assets at General Mitchell International Airport

Question:

Does Milwaukee County have the authority to extend a 120-day loan from the General Mitchell International Airport (GMIA) Airport Discretionary Fund (ADF) to MKE Fuel for the purchase of a terminalling and pipeline facility which is only partially located on airport property, but which is necessary to the continuing operation of the airport?

Answer:

Authority for such a transaction is granted by Wis. Stats. §§ 59.01 and 59.58 (1).

Discussion:

Under the terms of its Airline Use and Lease Agreement (AULA) with the signatory airlines at General Mitchell International Airport (GMIA), the County collects certain funds from the airlines for deposit in an Airport Discretionary Fund (ADF). ADF funds may be disbursed after the approval of a fund transfer request for airport purposes designated by the airport director. In the past, ADF funds have been designated for airline gate relocations, airline incentive programs, and jetbridge purchases. In this instance, the Signatory Airlines at GMIA have requested that the County disburse ADF funds in the form of a 120-day loan to the airlines' newly-incorporated fuel consortium (MKE Fuel) for the purpose of acquiring and operating an aircraft fuel terminalling facility and related pipeline for transporting aircraft fuel for use by aircraft serving GMIA. The Airlines have requested this short-term loan because even though MKE Fuel is a corporate entity, they are unable to capitalize it prior to the expiration of certain time limits related to the purchase

of the fuel facilities. Although the terminalling facility is located off airport property, 90% of the pipeline is located on airport property. The Comptroller has requested an opinion identifying the authority for the proposed loan of ADF funds for 120 days to MKE Fuel in order to complete the acquisition of the terminalling and pipeline assets.

Section 59.01 authorizes the County to enter into contracts and “such other acts” that are “necessary and proper to the exercise of the powers and privileges granted” by the statutes including the management and operation of GMIA.

Section 59.58 (1) (a) grants the County the authority to:

Construct, purchase, acquire, develop, improve, extend, equip, operate and maintain airports and airport facilities and buildings, including without limitation because of enumeration, terminal buildings, hangars and parking structures and lots, and including all property that is appurtenant to or necessary for such purposes.

The question, therefore, is whether the proposed 120-day loan from the GMIA ADF fund to MKE Fuel for the purchase of the terminalling and pipe-line assets is necessary for the public purpose of operating the airport.

The airlines state that if they are unable to purchase the terminalling and pipeline facility their source of fuel for flights at GMIA will be jeopardized. The “jeopardy” they foresee is that if the facilities are acquired by a third party their fuel costs will increase unreasonably or, worse yet, that the new owner will discontinue the transportation of jet fuel in favor of such higher margin fuels as gasoline, diesel, and home heating oil. In either case without the terminalling facility or its pipeline the airlines would be required to transport aircraft fuel by truck – some 18 to 24 tankers per day for each day of the year and perhaps more at peak travel times. The airlines further represent that trucking aircraft fuel would raise their costs and, therefore, slow or cease the addition of new flights to and from GMIA. If burdened with higher fuel costs the airlines say that they would eventually discontinue marginally profitable routes to Milwaukee. These representations and consequences support the view that the fuel facilities are necessary to the continuing operations of GMIA and that their acquisition is for the purpose of operating and maintaining the airport. But there are other reasons supporting the view that the requested loan is for the necessary public purpose of operating an airport as authorized by statute.

Federal regulatory law places on an airport sponsor the obligation to use airport funds only for airport purposes. In other words, funds generated on the airport may not be diverted for non-airport purposes. The funds contained in the ADF are airport funds generated by airline activity at GMIA and may not be used for non-airport purposes. We contacted the Federal Aviation Administration’s (FAA) Airport Compliance Division and explained the circumstances of the 120-day loan transaction proposed by the airlines. The manager of the FAA Compliance Division has opined that such a transaction is for the purpose of securing GMIA’s source of aircraft fuel and because no airport can operate without a reliable and appropriately priced fuel source, the transaction constitutes an airport purpose.

The County has also previously made loans or assumed debts on behalf of private entities in support of public purposes. In 2003, for example, Milwaukee County provided credit assistance and authorized the issuance of promissory notes (pursuant to its authority under Wis. Stats. § 67.12

(12)) in support of Midwest Express Airlines. And, in 2014, Milwaukee County made certain grants that supported a Micro Loan Program for minority businesses.

Conclusion:

For all of these reasons, the proposed 120-day loan constitutes a use of County funds for a purpose within the authority for such transactions granted by Wisconsin Statutes §§ 59.01 and 59.58 (1) (a).

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