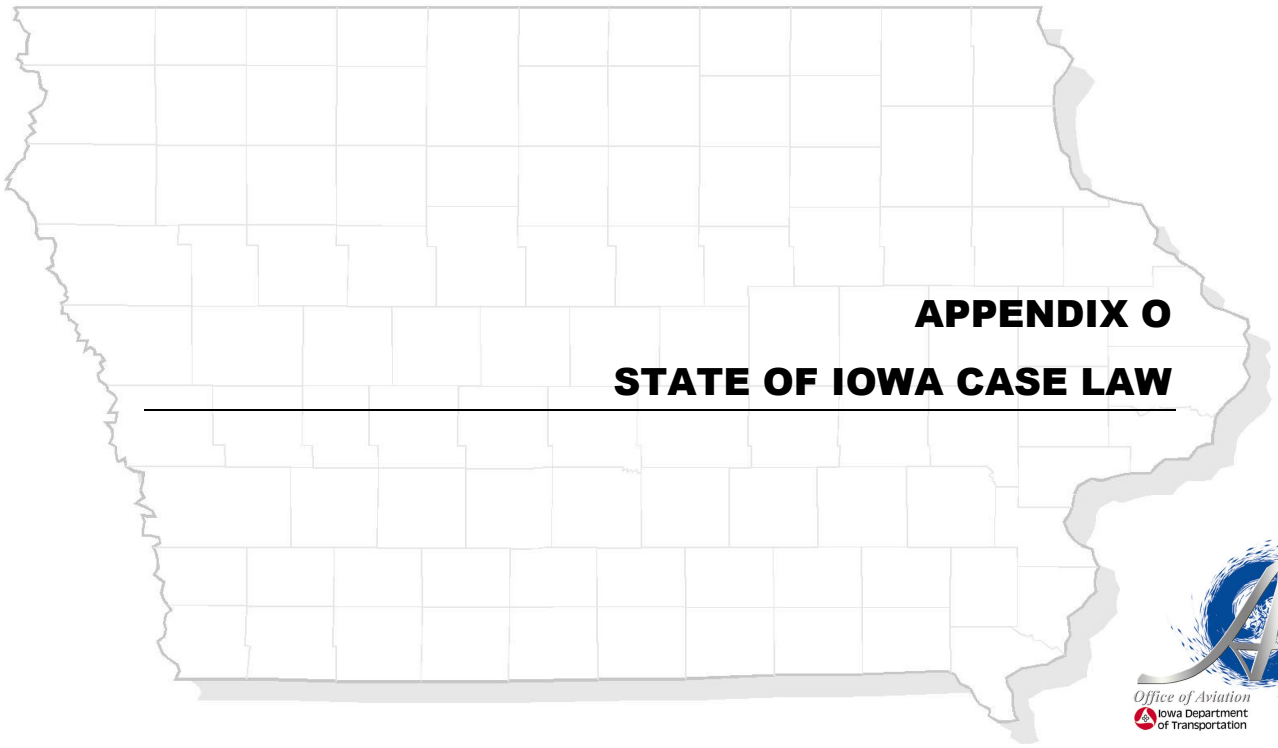
Iowa Airport Land Use Guidebook



APPENDIX O

STATE OF IOWA CASE LAW

Office of Aviation
Iowa Department of Transportation

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State of Iowa Case Law

This appendix contains a sample of various state of Iowa cases which may be appropriate for reference regarding land use and zoning related issues. For additional information or interpretation of any of these cases, contact legal counsel.

Planning and Design

CHAPTER 329 – Airport Zoning

City of Iowa City v. Hagen Electronics, Inc., 545 N.W.2d 530 (Iowa 1996), in which the court found that the city "did not violate landowner's substantive due process rights by pursuing injunction for removal of owner's structures near airport, by denying building permit" based on public safety issues for "underlying airport zoning based on federal runway regulations."

Dolezal v. City of Cedar Rapids, 209 N.W. 2d 84 (Iowa 1973) found that an avigation easement as one that permits free flights over land including those so low and so frequent as to amount to a taking of property.

CHAPTER 335 – County Planning and Zoning

Iowa Coal Mining Co., Inc. v. Monroe County, 257 F.3d 846, C.A.8 (Iowa 2001), the court found that the enactment of zoning ordinance precluded mining company from operating a landfill on property it was strip mining was "not an unconstitutional taking, although it deprived company of the most beneficial use of the property."

Webb v. Giltner App., 468 N.W.2d 838 (Iowa 1991), found that the county's zoning ordinance must promote the goals of the enacted county comprehensive plan.

Montgomery v. Bremer County Board of Supervisors, 299 N.W.2d 687 (Iowa 1980), in which the court found that if the board of supervisors gave full consideration to public safety, welfare, changing conditions, and similarity of other land in same area, that zoning was in accordance with comprehensive plan, which addressed the issue of preserving open spaces committed to agriculture in Iowa.

Op. Attorney General (Henke), July 14, 1972
"Counties establishing county zoning must have a "comprehensive plan" which is a general statement of policy of the result to be achieved in the community as a whole."

CHAPTER 414 – Municipal Planning and Zoning

City of New Hampton v. Blayne-Martin Corp., 594 N.W.2d 40 (Iowa 1999), found that zoning is an exercise of police powers delegated to municipalities by the state, therefore, "ordinances are to be strictly construed in favor of the free use of property."

Neuzil v. City of Iowa City, 451 N.W.2d 159 (Iowa 1990), the court determined that a "zoning ordinance is valid if it has any real, substantial relation to public health, comfort, safety, and welfare, including maintenance of property values." In applying this assessment, key consideration is the zoning ordinances general purpose and not hardship of individual case.

Greenawalt v. Zoning Board of Adjustment of City of Davenport, 345 N.W.2d 537 (Iowa 1984), states that zoning ordinances are "enacted for purpose of promoting healthy, safety, morals, or general welfare of the community."

Incorporated City of Denison v. Clabaugh, 306 N.W.2d 748 (Iowa 1981), determined that setback provisions are a valid exercise of police power of zoning ordinances.

Jersild v. Sarcone, 149 N.W.2d 179, 260 Iowa 288 (Iowa 1967), found that a zoning ordinance establishing a building or setback line is presumed valid. Further, the burden to prove the line is unreasonable is on the one asserting it is invalid.

Brackett v. City of Des Moines, 67 N.W.2d 542, 246 Iowa 249 (Iowa 1954), the court held that a zoning ordinance be made in agreement with a comprehensive plan.

Environmental

CHAPTER 455B.171-199 – Water Quality

Williams Pipe Line Co. v. Bayer Corp., 964 F.Supp.1300 (S.D.Iowa 1997), where the court found that any pollutants that enter surface waters "either directly or through groundwater are subject to regulation by national pollutant discharge elimination system (NPDES) permit, as Clean Water Act's (CWA) goal is to protect quality of surface waters."

CHAPTER 455B.411-440 – Hazardous Waster and Substance Management

U.S. v. Dico, Inc., 266 F.3d 864, C.A.8 (Iowa 2001), the court held that the retroactive application of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 to landowner's activities did not violate Fifth Amendment's due process or takings clauses.

CHAPTER 455B.471-479 – Underground Storage Tanks

Iowa Comprehensive Petroleum Underground Storage Tank Fund Board v. Shell Oil Co., 606 N.W.2d 370 (Iowa 2000), the court held that the Comprehensive Petroleum Underground Storage Tank Fund Act applied retroactively to underground storage tanks in operation prior to the requirement that the owner or operator maintain responsibly.

Land Acquisition

CHAPTER 6 – Eminent Domain

Milligan v. City of Red Oak, Iowa, 230 F.3d 355, C.A.8 (Iowa 2000), where the court found that the promoting of airport safety was for public purpose. Further, the court supported the city's proposed condemnation of agricultural land between the airport's runways as the taking was "necessary to, and rationally related to," accomplishing the public purpose of promoting airport safety.

Keokuk Junction Ry. County v. IES Industries, Inc., 618 N.W.2d 352 (Iowa 2000), which found that if an easement is taken through eminent domain just compensation is required.

Comes v. City of Atlantic, 601 N.W.2d 93 (Iowa 1999), the court found that the owner of farm land adjacent to the airport was not entitled to a permanent injunction barring the city from condemning his land for expansion of the adjacent airport until uncertainties about project were resolved.

Bormann v. Board of Supervisors in and for Kossuth County, 584 N.W.2d 309 (Iowa 1998), found that easements are subject to just compensation by both the state and federal constitutions.

Fitzgerald v. City of Iowa City, 492 N.W.2d 659 (Iowa 1992), where the court found no compensable physical invasion was present where the evidence presented by plaintiffs was devoid of any evidence showing either the frequency or approximate altitudes of planes flying over the plaintiffs' land and "not every noise or interference with property as a result of over flying aircraft constitutes a taking."

Abolt v. City of Fort Madison, 108 N.W.2d 263, 252 Iowa 626 (Iowa 1961), the court found that "power of eminent domain may be exercised only where public use is involved."

Hoover v. Iowa State Highway Commission, 230 N.W. 561, 210 Iowa 1 (Iowa 1930), which addressed the right of eminent domain and that all private party is subject to eminent domain unless specifically exempted by law.

Operational and Management

CHAPTER 303 – Department of Cultural Affairs (Historic Preservation Districts)

Op. Attorney General (Anderson), Feb. 25, 1980

"Zoning powers granted to municipalities by Chapters 364 and 414 include the power to zone for historic purposes and such ordinances would not be in conflict with local historic districts created under §§320.20 to 303.22."

CHAPTER 328 - Aeronautics

Mook v. Sioux City, 60 N.W.2d 92, 244 Iowa 1124 (Iowa 1953), which addressed the condemnation of 1,600 acres of land by the municipality to enlarge the airport which would be used jointly by the city and the United States Air Force. The court found that the municipality did not "violate any constitutional principle or statutory provision pertaining to exercise by cities of power of eminent domain."

CHAPTER 330 - Airports

Air Host Cedar Rapids, Inc. v. Cedar Rapids Airport Commission, 464 N.W.2d 450 (Iowa 1990), found that the lease agreement at the old airport location between the airport commission and concessionaire did not give contractual right of first refusal for concession lease at new airport.

Airport Commission for City of Cedar Rapids v. Schade, 257 N.W.2d 500 (Iowa 1977), found that the "city airport commission was authorized under § 330.21, without violating § 364.1, to establish airport safety force whose members were not "policemen" or "firemen" under civil service statutes (§ 400.1 et seq.) or statutes relating to retirement systems for policemen and firemen (§ 411.1 et seq.)."

Brown v. Sioux City, 49 N.W.2d 853, 242 Iowa 1196 (Iowa 1951), in which the court found that the city was within its rights to lease land to tenants on the airport for the purpose of farming operations in an effort to produce revenue.

Mill v. City of Denison, 25 N.W.2d 323, 237 Iowa 1335 (Iowa 1946), which addressed the public establishment and operation of airports and their services. The court found that the establishment of the municipal airport and acquisition of land for that purpose met with compliance of the statutory requirements. Further, "that only part of land required for the airport according to master plans approved by state aeronautics commission was acquired thereby did not invalidate condemnation proceeding."

Op. Attorney General (Rensink), Jan. 26, 1989 (No. 89-1-2)
"Airport commissions created pursuant to Iowa code chapter 330 may only be dissolved pursuant to the election provisions of section 330.17. Recently adopted section 330.23 does not supersede the election provisions of section 330.17.

Op. Attorney General (Martin), Aug. 8, 1989
"While the commitment by airport authority to keep airport open for 20 years was an outstanding obligation of the authority, that duty would not prohibit the withdraw of a member municipality; however, the member's share of the obligation would have to be met before the member could withdraw."

Op. Attorney General (Martin), Aug. 8, 1989
"A county in its ordinance joining an airport authority should follow the provisions of its resolution and may not put conditions on its membership."

Op. Attorney General (Martin), Aug. 8, 1989
"A county may, in regard to its joining an existing airport authority, use Rural Services Funds for its contribution to the airport authority."

Op. Attorney General (O'Kane), June 27, 1986 (No.86-6-6)
"An airport commission is "an agency which is controlled by state law" so that the definition of an "administrative agency" in section 362.2 precludes the authority of a municipality to establish an airport board other than pursuant to chapter 300. However, a board which does not have the power to manage and control the municipal airport, such as an advisory board, may be established pursuant to chapter 392.

Op. Attorney General (Lightsey), May 1, 1978
"This section prescribes elections as the only means of creating or abolishing an Airport Commission, and no airport property can be transferred or sold by the city council without approval of the Airport Commission. If an Airport Commission is abolished, its contracts legally made are binding upon the city."

Op. Attorney General (Griffee), Feb. 4, 1977
"An airport commission has the power to lease airport land under its control not needed for a public purpose."

Op. Attorney General (Palmer), April 8, 1976
"Funds from taxation or otherwise for airport purposes are under the full and absolute control of the airport commission if one is established."

Op. Attorney General (Bergman), Dec. 28, 1973
"A municipality may own, operate and maintain an airport outside of its corporate limits.

Op. Attorney General, July 26, 1968 (No. 68-7-27)
"The definition of airport under this section encompasses the entire 1,440 acres upon which is situated the municipal airport of the City of Ottumwa, and authority to manage this airport and industrial area which is located upon its grounds is in the airport commission."

Op. Attorney General, 1948, p.175
"A county may convey part of a county farm no longer needed for that purpose for use as a county airport and may use county owned equipment in its construction, and thereafter land may be leased to private individuals for hangar space and contracts may be made for concessions."

Op. Attorney General, 1948, p.38
"A municipality which had acquired municipal airport with federal aid was without power to lease entire airport to private person for operation by him."

Op. Attorney General, 1932, p.3
"A city may pay for the establishment of an airport out of general fund of city, and when that is done it is not necessary to submit the question to a vote of the people."

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