

MATTOX LAW FIRM

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MEMORANDUM

FROM: Mattox Law Firm on behalf of the Umstead Coalition
RE: RDU Airport Authority Quarry Lease to Wake Stone Corporation
DATE: May 21, 2019

There are three different provisions under North Carolina law which render the lease agreement from RDU Airport Authority to Wake Stone illegal. Two of these provisions legally require action by the City of Raleigh.

- I. The Oddfellows Tract is owned by the City of Raleigh, City of Durham, County of Wake, and County of Durham. In independently approving a lease for non-airport purposes, RDU acted outside the scope of its enabling legislation.
- II. N.C. Gen. Stat. § 63-56(f) requires RDU to obtain the approval of the owning municipalities when disposing of property. RDU has not sought such approval.
- III. RDU Airport Authority is a municipality under state law and therefore must follow the procedures in N.C. Gen. Stat. § 160A to lease property. RDU has failed to follow these procedures.

Please see the following pages for a more thorough discussion of these matters.

I. The Raleigh-Durham Airport Authority Board exceeded its authority by entering into the lease agreement with Wake Stone Corporation for operation of a quarry (the “Quarry Lease”), without the approval of the owning municipalities.

- (a) The RDU Airport Authority (“RDU”) is “a municipal corporation organized pursuant to Chapter 168 of the Public-Local Laws of 1939.” *Raleigh-Durham Airport Authority v. Stewart*, 278 N.C. 227 (1971).
- (b) RDU is governed by its enabling legislation found in the public-local laws *and* the North Carolina General Statutes.
- (c) House bill 878, passed in 1959, to amend RDU’s enabling legislation provides that RDU has the power “to lease (without joinder in the lease agreements of the owning municipalities, to wit, the Counties of Wake and Durham, and the cities of Raleigh and Durham) for a term not to exceed 40 years, and *for purposes not inconsistent with the grants and agreements under which the said airport is held by said owning municipalities*, real or personal property under the supervision of or administration by the said Authority.”
- (d) The 105 acre property referred to as the Oddfellows Tract, and subject to the Quarry Lease, was conveyed by several deeds to the City of Raleigh, City of Durham, County of Wake, and County of Durham.
- (e) A complete reading of the enabling legislation provides insight regarding the intended meaning of “not inconsistent with the grants and agreements.” The grant of authority sought to allow RDU broad authority over airport operations. However, the grant of authority was not infinite and the document distinguishes between airport purposes and non-airport purposes throughout.
- (d) RDU has executed numerous lease agreements for airport purposes without the joinder of the owning municipalities. However, to our knowledge, RDU has never executed a lease agreement of airport property for non-airport purposes.
- (e) The Quarry Lease is for non-airport purposes and will permanently alter the character of the property. Therefore, the Quarry Lease is for purposes inconsistent with the grants and agreements under which the airport is held by the owning municipalities. Thus, the execution of the Quarry Lease by RDU was outside of its authority under N.C. law and therefore invalid.
- (f) The Quarry Lease agreement includes a conveyance of mineral rights. Under North Carolina law, a conveyance of mineral rights (even when found in a “lease”) is a profit rather than a lease and therefore outside of RDU’s leasing authority under the enabling legislation.

II. The RDU Airport Authority is required to obtain the approval of the City of Raleigh, City of Durham, County of Wake, and County of Durham under N.C. Gen. Stat. § 63-56(f).

- (a) N.C. Gen. Stat. § 63-56(f) provides that “no real property and no airport, other air navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board, by sale, or otherwise, except by authority of the appointed governing bodies, but the board may lease space, area or improvements and grant concessions on airports for aeronautical purposes or purposes incidental thereto.”
- (b) Chapter 63 of the North Carolina General Statutes was enacted in 1945 to “make uniform the law with reference to public airports.” *Harrelson v. City of Fayetteville*, 271 N.C. 87 (1967).”
- (c) The Quarry Lease is effectively a disposal of airport property. At the end of the life of the lease, the land will have de minimis economic value and will be a liability for RDU.
- (d) Because the Quarry Lease is a disposal and for a non-aeronautical purpose, its execution requires the approval of the governing board of each owning municipality.

III. As a municipality, RDU is required to follow the procedures for leasing property found in N.C. Gen. Stat. § 160A.

- (a) Property owned by a municipality may be leased for more than one (1) year only pursuant to a resolution authorizing the execution of the lease adopted at a regular meeting upon thirty (30) days public notice. N.C. Gen. Stat. §160A-272(a1). Leases for terms of more than ten (10) years shall be treated as a sale of property (with certain exceptions inapplicable here) and may be executed by following any of the procedures authorized for sale of real property.
- (b) The quarry lease is for a minimum period of twenty-five years and is therefore treated as a sale under Chapter 160A.
- (c) In executing the Quarry Lease, RDU did not comply with any of the requirements of 160A including the minimum notice requirement and the competitive bidding procedures.