



**CITY OF ST. LOUIS
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July 9, 2019

Alderwoman Cara Spencer
Board of Aldermen
Room 230, City Hall
St. Louis, MO 63103

Re: Airport Privatization

Dear Alderwoman Spencer:

I have received your letter dated July 2, 2019 requesting my opinion on two important subjects. You ask whether the approval of the Board of Aldermen is necessary in order to "privatize" St. Louis Lambert International Airport. And you ask by what authority did the Board of Estimate and Apportionment enter into a consultant agreement that allows for payment of the consultants' fees from the proceeds of a potential privatization contract. Let me address both.

First, "privatization" of the Airport would consist of the City entering into a contract wherein the City would lease the property that now constitutes the Airport, together with other contracts transferring certain rights that the City possesses to operate an airport to one or more private companies. Any official seeking to make a contract on behalf of the City of St. Louis needs to find authority to make the proposed contract. In so far as leasing the Airport property is concerned §18.08.060 of the City Code requires that all leases of Airport property and facilities that exceed three years must be approved by the Board of Aldermen by ordinance. Certainly any privatization of the Airport would require a lease that exceed three years. And, as I have said, other contracts will be necessary. I am unaware of any provision of law, whether it be by statute, charter, or ordinance, that delegates the power to make the additional contracts that would be required to privatize the Airport to any official or employee of the City. Therefore that power needs to be delegated to such an official by the Board of Aldermen, the City's governing body. (The Board itself is forbidden to make a contract itself by Article XXV, §9 of the Charter.) See McQuillin, *The Law of Municipal Corporations* (3rd ed.) 2017 §29.20: "In the absence of statutory or charter provisions in regard to who shall enter into a certain kind of a contract in behalf of a municipality, the council may designate and

authorize the officer or employee, by ordinance or resolution, to make the contract." Therefore, the adoption of an ordinance by the Board of Aldermen authorizing a City official to make the necessary contracts on behalf of the City is a prerequisite to privatization.

Second, it is not accurate to say that the Board of Estimate and Apportionment entered into the consultant agreement with the contingent fee provision nor is it accurate to say that the Board of Aldermen approves all City contracts. In fact, I made the contract on behalf of the City with the consultants. I did so under the authority of the ordinance codified as §3.97.010 of the City Code. That provision authorizes the directors of all City departments to make contracts for professional services, including those provided by consultants, attorneys, and financial advisors, which are related to the operation of the department. I engaged the consultants to provide the analysis that would assist me in drafting bills to authorize the privatization of the Airport and drafting and negotiating the contracts that would be authorized by the ordinances if the Board of Aldermen should adopt those ordinances. Drafting ordinances and negotiating contracts are, of course, generally recognized as within the purview of a city's lawyer. I recognize that there are other departments of the City government that might plausibly lay claim to the authority to negotiate these contracts on behalf of the City, but the Charter confers upon the Mayor the power to decide all questions between officers as to their relative powers and duties, see Art. VIII, §11 of the Charter, and the Mayor decided that I should exercise this responsibility in this instance, at least. As for the contingent fee to be paid the consultants, section 3.97.020 of the Code authorizes such fees if recommended and approved by a selection committee, and such a committee did so in this instance. The role of the Board of Estimate and Apportionment in the process comes to it by virtue rules and regulations adopted by the Board of Public Service pursuant to §3.97.050 of the Code, which rules and regulations provide for Board of Estimate and Apportionment approval of such contracts. Finally, I can tell you that most City contracts are not approved by the Board of Aldermen.

I trust that I have answered your questions adequately. Please let me know if you have any other questions.

Very truly yours,



Julian L. Bush
City Counselor

JLB/dl