

# Journal of Air Law and Commerce

---

Volume 9

---

1938

## The N.A.S.A.O. Looks Ahead

Fred D. Fagg Jr.

Follow this and additional works at: <http://scholar.smu.edu/jalc>

---

### Recommended Citation

Fred D. Fagg Jr., *The N.A.S.A.O. Looks Ahead*, 9 J. Air L. & Com. 696 (1938)  
<http://scholar.smu.edu/jalc/vol9/iss4/13>

This Symposium is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

## THE N. A. S. A. O. LOOKS AHEAD\*

FRED D. FAGG, JR.†

The National Association of State Aviation Officials was organized eight years ago to undertake certain responsibilities in the promotion of aeronautics which had been undertaken by no other organization or group of individuals and which, in the opinion of its members, required immediate and forceful action.

The opportunity for this service arose, in large part, from our system of dual sovereignty wherein the federal government, in absence of constitutional amendment, could not be given complete authority over civil aeronautics. When the Air Commerce Act was passed by Congress in 1926, there existed a sizeable body of state aeronautical legislation which contained a sufficient number of conflicting provisions as to impose considerable hardships on the aviation public. To prevent a repetition of mistakes which occurred during the early railroad days, due to conflicting and burdensome state laws, to provide a single system of federal and state regulation, and to allow aviation its full measure of rapid and healthy growth, this Association assumed, as its first major task, the responsibility of bringing about substantially uniform state aeronautical legislation.

Constitutional limitations and specific language of the Air Commerce Act also prevented the federal government from spending money for the establishment or maintenance of airports. While millions of dollars were being spent to develop the finest national network of air navigation facilities which exists in the world, the provision of the most vital unit in that network was left to state and local activity. The Association assumed, as its second major task, the responsibility of supplying the airports necessary to the federal and state network.

To accomplish such tasks, it became necessary to have representatives in each state who enjoyed the confidence and support of their respective governors, who were technically qualified to study and present the issues involved, who had sufficient time to devote to the subject matter, and who could speak with enough authority to obtain results from the several legislatures. The establishment of an official state aviation body involved the outlay of some state

---

\* Address presented at the Eighth Annual Convention of the National Association of State Aviation Officials, October 13-15, 1938.

† Dean, Northwestern University School of Commerce.

money and governors who might readily have found a few thousand dollars during those pleasant days before the crash of 1929 were thereafter so pressed to effect economies that they sought to finance the new aviation unit from funds to be furnished by the aviation public it was supposed to serve. The tax on aircraft motor fuel was seized upon, in several states, as the most convenient device. The full force of this tax fell, quite naturally, upon the scheduled airlines whose operations almost entirely involved interstate commerce and who, therefore, were least concerned with the evil effects of conflicting state laws or the financing of a system of state airports. The tax also fell upon the private flyer who was irked by the very idea of state regulation, who listened carefully to arguments suggesting an unnecessary duplication of federal control on the part of state agencies, who quite naturally became incensed at the unwarranted personal ambitions of some individuals who wished to turn public need to private advantage, and who, when aroused, marched into the state capital to denounce any scheme to establish a state aviation body. During this period, the federal government was none too clear in its own policy and, while doing lip service to the doctrine of dual sovereignty, seemed quite willing (and, at times, even anxious) to accept all responsibility, except the onerous duty of enforcement, on the theory that the federal air traffic rules completely controlled all flying activities in the great ocean of the air, both interstate and intrastate, to the complete exclusion of state action. Financial difficulties and muddled thinking served for many years to impede the effective organization of the Association forces. Financial difficulties still continue, but, for the first time, at the Miami meeting last year, the federal position, under the provisions of the Air Commerce Act, as to the clear-cut division of responsibility between federal and state agencies, was set forth by Assistant Secretary Monroe Johnson. Serving as a climax to that troublesome question, under the provisions of the new Civil Aeronautics Act of 1938, comes the lucid statement of yesterday at your morning session, from Administrator Hester. If such a pronouncement is indicative of the statesmanship, intelligence and candor of the new federal group, then I feel we have every reason to feel confident in the results of their administration.

In this recital of difficulties encountered by your Association, I do not want to be misunderstood as being critical of the position of the airlines or the private flyer. Instead, I think each group had ample justification for its position. I have referred to these

difficulties only to indicate why the Association and the individual members have made less progress along certain lines than they wished to make, and how, as a result of meeting our mutual problems with intelligence, frankness and patience, we have been able to come through a troublesome period with splendid achievements. In our experience to date there is a great lesson for our responsibilities of the future.

When the Association was organized in 1931, it appeared that we should not be unduly pressed in the carrying out of our program. But, how little we could then anticipate the tremendous rapidity with which this aviation infant of ours would develop. Hardly had we embarked upon the two-fold program mentioned than the CWA airport program was started. Almost over night, the Association mobilized its forces, enlisted recruits in every state, and entered upon a construction program that brought the names of Sheriff, McMullen, Evans, Smith, and countless others to the fore. FERA and WPA succeeded CWA in turn and your Association members have provided the leaders in every phase of airport development. For the moment, antagonism toward state aeronautical agencies disappeared as if by magic. In this promotional work, no one could suggest any duplication of federal activity and it was noticed that states like Montana, Florida, Michigan and Ohio, which possessed strong official aviation leaders, had the decided advantage in making full utilization of federal funds available for airport purposes. New state agencies sprang into existence with the full support of the forward-looking airlines and other aviation interests.

During the period of feverish airport activity, the lawyer members, selecting the best features of the legislation of the various states, had welded their suggestions into a proposed uniform state aeronautical regulatory act which was submitted to the Cheyenne Annual Meeting in 1934. The proposal was carefully reviewed by the National Conference of Commissioners on Uniform State Laws and by the Committee on Aeronautical Law of the American Bar Association and, with slight modification, was adopted by both those organizations during the summer of 1935, along with a uniform airports act.

It was not enough for your Association to concern itself with airports and uniform laws. Other matters were developing that required immediate attention and, of these, the most important was the formulation of a national aviation policy. The Air Mail Act of 1934 had set up a Federal Aviation Commission to make an ex-

haustive study of all aviation needs and to report its findings to Congress by February 1, 1935. Much of the Cheyenne Annual Meeting was devoted to discussing the national questions involved and in preparation of a report to be presented to the Commission. From that moment, and for four years, until the enactment of the Civil Aeronautics Act of 1938 last June, your representatives have been in the forefront of national aviation matters and your record of constructive service is unsurpassed by any other organization in the country.

Having outlined the major steps in the history of the Association, let us briefly consider the essential issues that seem to lie ahead. With respect to uniform state legislation, it is at once apparent that we must effect revisions in the regulatory act and the airports act in order to bring them up to date and make them consistent with the Civil Aeronautics Act of 1938. The provisions of the new act extend beyond those in the Air Commerce Act of 1926. From now on, every American aircraft that engages in flight within the air space of the United States must be registered with the Civil Aeronautics Authority, and every American civil aircraft that enters the limits of a civil airway must be possessed of a federal certificate of airworthiness. These provisions should do much to provide a single standard of aircraft airworthiness and pilot competency as they will doubtless reach nearly 100% of all the civil aircraft and their pilots within the country. To the states will remain the control of landing areas, except that which is incident to federal supervision of interstate air carrier operations. The numerous recent aircraft accidents which have caused injury to persons and property on the ground will focus consideration on the third part of the Uniform Aeronautical Code—the Uniform Aviation Liability Act. The proposals for this legislation have been in preparation for a long time and are the result of several years of careful draftsmanship. They come from the National Conference of Commissioners on Uniform State Laws and have been acted upon already by the Conference at its Cleveland Meeting during July of this year. Unfortunately, the federal government, the air carriers, the private flying interests and the members of the Association have not been able to give serious attention to these proposals. That they should have done so, we all admit. But the fact is that we have been so busy with this national legislation and our every day duties that we have simply neglected this extra and important assignment. The thoughtful and painstaking work of Mr. Schnader and the members

of his committee merits our best thought. When we realize the volume of legal work alone that needs consideration, we might well wish for a larger Association membership with whom to share the present labors. My only plea is that the Conference representatives give us all the remaining time possible and that, in turn, we assist them with our best advice. Now that the federal legislation has been disposed of, we have no legitimate excuse for further delay.

The airport development work will require more careful thought than ever before—despite the splendid federal assistance provided for in the new law. Decisions of the greatest moment must be made without loss of time and all the technical skill and vision of the membership is necessary to a wise determination of landing area standards and uses.

In the field of private flying, I am delighted with the charter of powers and duties assigned to Grove Webster, Chief of the Section on Private Flying of the Civil Aeronautics Authority. He has a splendid field of service ahead and should be of immense value to our members in that part of their promotional activities. I wonder if we completely realize the unusual interest of the various governmental agencies of this country in flying. Nothing like it exists in the history of any other transport medium. It is true that government has spent tremendous sums for the development of rivers and harbors, for lighthouses, for railroads, and for some three million miles of paved roads to make possible the utilization of the horde of autos, buses and trucks. In aviation development, government has not only provided the airways aids, including airports, but has also carried on its promotional activities to the point of training its citizens in the design and construction of aircraft, in ground school subjects, and in actual flying. Part of this may be attributable to reasons of national defense, as a result of our experience during the last war, but I wonder if, in large part, it is not due also to the fact that aviation training is really conducive to the molding of that kind of character and those human qualities that make for the highest type of useful citizenship. In this field, much work remains to be done. For centuries, man has desired the use of wings. We still dream of aircraft as plentiful as automobiles—so that the heavens should be darkened by their wings. Yet, with all the technical advances made to date, the anticipated legion of private flyers has not materialized. What is the reason? Are we too fanciful? Is the chief hurdle one of expense, fear, a too high standard of physical requirements, or too complicated regu-

lations? Are we doing enough, in the process of getting more persons to fly, by merely talking about the subject, or should we follow the lead of Tennessee and some other states who have embarked upon a program of actual flying training for their youth? Several states have given ground school instruction and then stopped short. Is this due to lack of funds or to a feeling that the state agency does not wish to shoulder responsibility in case of occasional accidents? In all these matters, are we perhaps guilty of doing too much barracks-flying instead of taking more active steps to increase the number of persons who participate in aviation? I believe there is no subject to which more time of the Association should be devoted than this one.

A few months ago, the President signed the Civil Aeronautics Act which placed in the hands of one agency almost all of the federal government's powers over civil aviation, and which added many new, and difficult, responsibilities to those which had been shared by three former agencies. We have all labored long for this body and for the legislation by which it was established. We all expect great things from it. But, in our haste for results, let us not overlook the magnitude of the task before the Authority and demand the working of miracles. Clearly remembering my own period of governmental service, and appreciating your splendid cooperation, fairness and kindly understanding during the recent months of transition from the old to the new, may I request for this new body that same fine spirit of aid and counsel during its formative period. My few contacts with the new group convince me of their sincerity, understanding and intent to do everything within their power to bring American aviation to the full realization of its limitless powers.

With respect to your own organization, may I merely indicate one trend. Because of your active interest and participation in federal matters, and your technical abilities, your ranks are gradually being reduced. They must constantly be recruited to full strength or your organization will suffer. So I ask you—are we developing enough new men to take the places of Carroll Cone, Sumpter Smith, Fred Smith, Dick Boutelle, A. B. McMullen, Elwood Cole, Arthur Blomgren, Opie Lindsay and the many others that were one time active members? It is fine to see the way in which the new officers of each year shoulder their responsibilities, but I hope you will not be unmindful of keeping your force intact.

There is room in this country for one national organization to

serve as the non-political leader in all of aviation's activities. That organization should be composed of men possessed of integrity, courage, high purpose, who can endure merited and unmerited criticism, who can give hours of thankless toil, and who are willing to pay the price which leadership demands. As one who has served shoulder to shoulder with you for many years, who admires your traditions, illusions and achievements, and who delights in an opportunity to be with you again, may I urge you to continue, and never surrender, your position as standard bearer for American civil aviation. If the progress of transportation is, as the historian says, the measure of civilization, then I am confident that, in aviation's development and use, lies much of the destiny of mankind.