

1941

Editorials

Recommended Citation

Editorials, 12 J. AIR L. & COM. 64 (1941)

<https://scholar.smu.edu/jalc/vol12/iss1/6>

This Comment 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>.

EDITORIALS

TENTH ANNUAL MEETING N.A.S.A.O.

With this issue, the Journal again performs its "proud and effective" assignment of recording the convention proceedings of the National Association of State Aviation Officials. To publish all that transpired is impossible. Hence, from the record has been selected that deemed most noteworthy and of probable interest to the reading public. The carefulness and finesse of this selection must be accredited to the Journal's ranking editor, himself a member of the Association.

Largely, the papers delivered to the convention in past years have been a reliable barometer of things to come in the field of aviation. Doubtless those of this year do no less. The Association is to be commended for astutely avoiding simple regurgitation of past woes. Such an attitude is indicative of an organization composed of men characterized with imagination and ingenuity sufficient to allow adaptation to those exigencies characteristic of America's fastest developing enterprise.

J. H. H.

JURISDICTION SYNTHESIS FOR AERO-REGULATORY AGENCIES

In July of last year, this Journal invited comment on the question of federal versus state jurisdiction of air commerce. Source of such request was the contemporaneous publication of Mabel Walker Willebrandt's, "Federal Control of Air Commerce." Her position, to the degree she dared argue, was one for complete federal control. Rebuttal was not long forthcoming. Charles L. Morris, in the October issue championed state regulation in, "State Control of Aeronautics." Thus in the truly Hegelian sense of thesis, antithesis, the issue was presented. Yet worthy of note is the fact that, either out of diplomacy or sincere belief, both writers agreed that there was *some* need for *both* bodies of government to participate in air commerce regulation; this albeit the fact that they could not agree as to degree.

This thread of unanimity constitutes the keynote of the article appearing in this issue, properly regardable as the synthesis of the present conflict. Written by Oswald Ryan, it represents an official

commitment by the Civil Aeronautics Board, of which he is a member. His argument is not for exclusive jurisdiction in either body but for *cooperation* between the two for the air transport industry's welfare. Such a solution is sensible and practicable.

Sound discussion of this problem demands careful distinction between the question of how far federal control *may* go and that of how far it *should* go; i.e., law versus policy.

Legally, it is clear that Congress phrased the statutory definition of "Air Commerce" sufficiently broad to permit all federal regulation of intrastate activities allowable under the Constitution. Nor does the Constitution seem much of a bar for the Supreme Court has long recognized as to federal regulation of other forms of transportation, an area of influence doctrine inclusive of intrastate commerce. The Court is not likely to retreat merely because the doctrine is sought to be applied to a new form of transportation. No tribunal will be so blind as to overlook the enhanced importance of the safety factor in aviation.

But is this a question properly justiciable in a court of law? Does such a body possess instruments rendering it capable of settling the problem more effectively than those conversant with aviation's problems? Too much confidence has been placed in the efficacy of litigation. The issue here involved is one of policy. As such it is not primarily for the courts. Hence the present article is a step in the right direction. It offers conciliation and suggests some of the first steps in a program of cooperation. Such a policy should be encouraged.

J. H. H.