

1942

State

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# STATE

## WORKING MEMORANDUM ON INTERMUNICIPAL AIRPORT COOPERATION

Emil F. Jarz\*

### LEGISLATION: RECOMMENDATIONS

1. *Intermunicipal cooperation (functional consolidation) vs. aviation districts.*

Indications are that under ordinary circumstances "direct" cooperation among municipalities is preferable to the creation of independent ad hoc districts. Reference to my article in the *Journal of Air Law and Commerce* (Vol. 12, p. 301) October, 1941, shows 32 states authorizing the former type of airport arrangement. There are, however, at least 4 states authorizing the creation of airport districts in the form of independent political subdivisions.<sup>1</sup>

2. *General vs. specific legislation for intermunicipal cooperation*

A single general law establishing a clear-cut and uniform procedure for intermunicipal cooperation in all municipal services has certain advantages over individual acts authorizing such efforts in particular services like airports, fire, police, etc. (See, for example, New York Laws 1937, Ch. 862, S614; Tennessee P. L. 1939, Chs. 222, 223; and Wisconsin Laws 1939, Ch. 210.)

3. A good precedent in legislation for airport cooperation in particular is found in the Uniform Airports Act (6 *Journal of Air Law* 589) adopted by the National Conference of Commissioners on Uniform Laws and the American Bar Association at Los Angeles in July of 1935.<sup>2</sup>

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\* Research Assistant in Public Administration, University of Chicago, and in charge of nationwide study of intermunicipal arrangements sponsored by the International City Managers' Association and the University of Chicago. These recommendations and notes on intermunicipal cooperation in airport matters were prepared for consideration at the conference of New Jersey, New York and Rhode Island governors.

1. See Illinois law 1941, S. B. No. 372; Mass. Laws Ann. (1940) Comm. Suppl. c. 90, S51 (1939, c. 393, S3); Gen. Law of California (Deering) 1937, Act 150 (Stats. 1929, Ch. 847) Calif. Laws 1941, Ch. 52; and Florida Laws 1939, c. 19642, No. 647. In general, special districts are to be discouraged as an unnecessary burden on the electorate. In particular, moreover, two of the airport district acts cited are defective. The Illinois law permits the creation of a joint airport district by "contiguous" municipalities only. The Massachusetts act may be interpreted in such a way as to preclude the establishment of an airport district coextensive with the area served by the airport. Furthermore, it is such a bare authorization that it is virtually unworkable. In contrast, the California law of 1929 sets forth in considerable detail both the organization and powers of the airport district. The 1941 enactment applies specifically to the Monterey Peninsula. After a quick review of this latter special act, I was unable to see that it added any powers not granted by the general airport district law of 1929. The purpose of the Florida statute is to promote federal-local cooperation with only incidental application to the establishment of airport districts. Until recently, no special airport districts had been set up under any of the authorizations. It may be that the Monterey project in California is now under way.

2. The Uniform Airports law has been adopted in several states. See, for example, Florida Laws 1937, Ch. 17708; Georgia Laws 1933, p. 102 (the Uniform Law as it appeared in first draft); South Carolina laws 1937, p. 466; and Utah Laws 1937, Ch. 9—all listed in Table II of my airport article. Some of these states modified the act in several particulars. For a discussion of these modifications see 11 *Uniform Laws Annotated* 191.

a. Commendable features of the Uniform Airports Act.

- 1) *Broad Jurisdictional Grant.* "Municipalities, counties, and other political subdivisions" are authorized to cooperate. The New York and New Jersey laws do not specifically include counties. See Table II in my article.
- 2) *No Geographical Limitations on Municipalities.* The words "contiguous" or "adjacent" frequently included in state laws authorizing intermunicipal cooperation are not present in the Uniform Airport Acts. A limitation upon joint efforts to "contiguous" political subdivisions may prove especially serious in airport cooperation since the boundaries of the participating municipalities do not ordinarily meet. For a discussion of this point see my letter to Mr. David Davis, Jr., who testified before the Illinois Senate Military Affairs Committee in its deliberations upon Senate Bill No. 372, the 1941 law authorizing the creation of airport districts. I might add that neither the New Jersey nor New York Laws include this limitation.

The Uniform Law also provides for the location of airports beyond municipal boundaries. A power of this type may appear elementary but is not to be taken for granted. See footnote no. 56 in my article, *Ibid.*, citing cases upholding the location of airports outside of municipal limits.

- 3) *Liberal Financial Provision.* Taxation, bond issues and other sources of monies are provided. See p. 315 of my article, *Ibid.*, describing how the Arkansas Supreme Court remedied the omission of such a provision from Arkansas Laws 1939, Act 80, pp. 168-69. You may have noticed, too, that the New Jersey law summarized in Table II limits the source of monies to bond issues.
  - 4) *Authority is granted to police airports beyond city limits.* Such powers again should not be taken for granted. See *Ebrite v. Crawford*, 215 Cal. 724 upholding policing beyond city limits and Proceedings of the National Conference of Commissioners on Uniform State Laws in Footnote no. 56 of my article, *Ibid.*
- b. Possible improvements to the Uniform Airports act.
- 1) Extend to municipalities of one state the right to cooperate with those of another. This may be a very useful provision in our eastern seaboard states where municipalities are virtually contiguous to each other. For an example of such a provision see the citation from the Georgia law in footnote 49 of my article, *Ibid.*<sup>3</sup>
  - 2) Eliminate the requirement that *counties* be "adjacent" or "contiguous." A court may interpret "contiguous" in such a way as to require that all municipalities (if there are more than two) be adjacent at some point. This may mean that two counties con-

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3. To date, the interstate "compact clause" of the U. S. Constitution has not been invoked to enjoin any of the many intermunicipal projects sponsored by municipalities on opposite sides of state lines. If the issue should arise one might argue that a law of this type enacted without simultaneous and parallel action by the neighboring state is not a "compact" in the strict sense of the term.

nected by a third would be unable to join with the latter in an airport project. See the *Lower Indian Creek Drainage and Levee District*, case 343, Illinois 49.

- 3) Extend to employees of a joint project beyond municipal boundaries the right of compensation for injury or death.
- 4) Clarify the financial responsibility of the individual municipality if bonds or other form of indebtedness are incurred in creating joint airport projects.

*Comment:*

I have certain reservations towards both recommendations numbers 3 and 4. The fact is that questions of this type have not arisen as yet in the establishment, maintenance, or operation of joint airports. Moreover, my legal research covering such problems in other fields of intermunicipal cooperation such as fire, police, water, and sewage is not completed. I might point out, however, that the New Jersey airport law (see Table II, *Ibid.*) provides that municipalities are *individually* responsible for financial obligations incurred in the establishment of a joint airport. In light of the fact that municipalities cannot be "joint owners" in the strict sense of the term (see footnote 60, *Ibid.*) this may be a wise provision. I omit recommendations upon municipal joint liability for tort, since airport projects are now generally considered within the protective cloak of "public and governmental purpose" and are likely to be free of such responsibilities.

*Procedural and Administrative Practice: Recommendations*

1. Obligations of each party to be in writing.
2. Methods of amendment, and termination (including duration of arrangement and property disposal) to be incorporated in agreements.
3. Costs to be allocated on some other basis than the customary "equal sharing" (see methods based on population and assessed property valuation used by Johnson City and three other municipalities in Tennessee [p. 305, *Ibid.*] and Helena-West Helena, Arkansas airport [p. 311, *Ibid.*]).

MISCELLANEOUS NOTES

1. The airport owned and operated by Binghamton and the Village of Endicott is the only joint airport in New York State. Representative Armstrong of Schenectady was the sponsor of the 1941 law and may have information on recent developments.
2. New Jersey has an enabling law but is without a single joint airport. This finding was a surprise in light of the many examples of intermunicipal cooperation in other municipal services, especially in the northeastern part of the state.

In a recent letter, the state director of aeronautics expressed his appreciation of the possibilities of intermunicipal cooperation in airport defense and added his regrets since nothing had been done in the state.

3. Rhode Island has no enabling law. There are no joint airports in the state.

## ILLINOIS MODEL AIRPLANE ZONING ACT.

## A BILL

For an Act to empower and direct the Illinois Aeronautics Commission to prepare airport approach plans for publicly-owned airports; to empower and direct municipalities and other political subdivisions to promulgate, administer, and enforce airport zoning regulations limiting the height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of such airports; to authorize the acquisition, by purchase, grant, or condemnation, of air rights and other interests in land; and to provide penalties and remedies for violations of this act or of any ordinance, resolution or regulation made under the authority conferred thereby.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. DEFINITIONS. As used in this Act, unless the context otherwise requires:

(1) "Airport" means any area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air.

(2) "Airport hazard" means any overhead power line which interferes with radio communication between a publicly-owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking-off.

(3) An airport is "publicly-owned" if the portion thereof used for the landing and taking-off of aircraft is owned by a governmental body, political subdivision, public agency, or other public corporation.

(4) "Commission" means the Illinois Aeronautics Commission.

(5) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth.

Sec. 2. AIRPORT HAZARDS NOT IN PUBLIC INTEREST. It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare.

Sec. 3. PREPARATION OF AIRPORT APPROACH PLANS. The Commission shall formulate and adopt, and from time to time as may be necessary revise, an airport approach plan for each publicly-owned airport in the State. Each such plan shall indicate the circumstances in which structures and trees are or would be airport hazards, the area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measures should be. In adopting or revising any such plan, the Commission shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions, and the Commission may obtain and consider the views of the agency of the Federal Government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

Sec. 4. ADOPTION OF AIRPORT ZONING REGULATIONS.

(1) Every municipality and county or other political subdivision having within its territorial limits an area within which, according to an airport approach plan adopted by the Commission, measures should be taken for the protection of airport approaches, shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations applicable to such area, which regulations shall divide the area into zones, and, within such zones, specify the land uses permitted, regulate and restrict the height to which structures and trees may be erected or allowed to grow, and impose such other restrictions and requirements as may be necessary to effectuate the Commission's approach plan for the airport.

(2) In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this Act, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this Act.

(3) Any zoning or other regulations applicable to any area within which, according to an airport approach plan adopted by the Commission, measures should be taken for the protection of airport approaches, including not only any airport zoning regulations adopted under this Act but any zoning or other regulations dealing with the same or similar matters, that have been or may be adopted under authority other than that conferred by this Act, shall be consistent with, and conform to, the Commission's approach plan for such area, and shall be amended from time to time as may be necessary to conform to any revision of the plan that may be made by the Commission.

(4) All airport zoning regulations adopted under this Act shall be reasonable, and none shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in Section 5 (1).

## Sec. 5. PERMITS AND VARIANCES.

(1) *Permits.* Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this Act, a system may be established for granting permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that a non-conforming structure or tree has been abandoned or more than 80 per cent torn down, destroyed, deteriorated, or decayed: (a) no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and (b) whether application is made for a permit under this paragraph or not, the said agency may by appropriate action compel the owner of the non-conforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations or, if the owner of the non-conforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may proceed to have the object so lowered, removed, reconstructed, or equipped and assess the cost and expense thereof upon the object or the land whereon it is or was located. Unless such an assessment is paid within 90 days from the service of notice thereof on the agent or owner of such object or land, the sum shall bear interest at the rate of 10 percent per annum until paid, and shall be collected in the same manner as are general taxes. Except as indicated, all applications for permits for replacement, change or repair of non-conforming uses shall be granted.

(2) *Variances.* Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this Act, may apply to the Board of Appeals, as provided in Section 6 (3), for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations.

(3) *Obstruction marking and lighting.* In granting any permit or variance under this Section, the administrative agency or Board of Appeals may, if it deems such action advisable to effectuate the purposes of this Act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights thereon.

## Sec. 6. PROCEDURE.

(1) *Adoption of zoning regulations.* No airport zoning regulations shall be adopted, amended, or changed under this Act except by action of the legislative body of the political subdivision in question, after a public hearing in relation thereto, at which parties in interest and citizen shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision.

(2) *Administration of zoning regulations—Administrative agency.* The legislative body of any political subdivision adopting airport zoning regulations under this Act may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, but such administrative agency shall not be or include any member of the Board of Appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under Section 5 (1), but such agency shall not have or exercise any of the powers delegated to the Board of Appeals.

(3) *Administration of airport zoning regulations—Board of appeals.* Airport zoning regulations adopted under this Act shall provide for appointment of a Board of Appeals to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of this Act or of any ordinance adopted pursuant thereto;

(b) To hear and decide special exceptions to the terms of the ordinance upon which such Board may be required to pass under such ordinance;

(c) To hear and decide specific variances under Section 5 (2).

Where a zoning board of appeals already exists, it may be appointed as the Board of Appeals. Otherwise, the Board of Appeals shall consist of five members, each to be appointed for a term of three years and until their successors are appointed and qualified, and to be removable for cause by the appointing authority upon written charges and after public hearing.

The Board shall adopt rules in accordance with the provisions of any ordinance or resolution adopted under this Act. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Board and shall be a public record.

Appeals to the Board may be taken by any person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within a reasonable time, as provided by the rules of the Board, by filing with the agency from which the appeal is taken and with the Board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken

shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the Board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

The Board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The Board may, in conformity with the provisions of this Act, reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

The concurring vote of a majority of the members of the Board shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

#### Sec. 7. JUDICIAL REVIEW.

(1) Any person aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may present to the circuit court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the Board.

(2) Upon presentation of such petition the court may allow a writ of certiorari directed to the Board of Appeals to review such decision of the Board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and on due cause shown, grant a restraining order.

(3) The Board of Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the Board of Appeals. The findings

of fact by the Board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the Board shall be considered by the court unless such objection shall have been urged before the Board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the Board of Appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

Sec. 8. ENFORCEMENT AND REMEDIES. Each violation of this Act or of any regulations, order, or ruling promulgated or made pursuant to this Act, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$100 or imprisonment for not more than 30 days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, either the political subdivision within which the property is located or the Commission may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this Act, or of airport zoning regulations adopted under this Act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this Act and of the regulations adopted and orders and rulings made pursuant thereto.

Sec. 9. ACQUISITION OF AIR RIGHTS. In any case in which: (1) it is desired to remove, lower, or otherwise terminate a non-conforming use; or (2) the approach protection necessary according to the Commission's airport approach plan cannot, because of constitutional limitations, be provided by airport zoning regulations under this Act; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or non-conforming use is located, the political subdivision owning the airport or served by it, or the Commission, may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such an air right, easement, or other estate or interest in the property or non-conforming use in question as may be necessary to effectuate the purposes of this Act.

Sec. 10. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 11. SHORT TITLE. This Act shall be known and may be cited as the "Model Airport Zoning Act."

Sec. 12. REPEAL. All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed.

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Following were appointed to represent the Association on the Joint Federal-State Jurisdictional Committee:

Earl Johnson, Ohio  
Al Near, Kentucky  
S. B. Steers, Michigan  
George C. Roberts, Illinois, Alternate

This joint committee is to consist of three representatives of the Civil Aeronautics Board, the Administrator of Civil Aeronautics, and three representatives from the NASAO. The other two agencies have not yet announced their appointments.