

1947

State Aviation Legislation

Herzel H. E. Plaine

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

Recommended Citation

Herzel H. E. Plaine, *State Aviation Legislation*, 14 J. AIR L. & COM. 333 (1947)
<https://scholar.smu.edu/jalc/vol14/iss3/6>

This Article 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>.

STATE AVIATION LEGISLATION

By HERZEL H. E. PLAINE

Member of staff of the Assistant Solicitor General, United States Department of Justice; Assistant Chief of Federal-State Relations section; New York University, J.D.; member of New Jersey Bar. Consultant of the Civil Aviation Legislative Council and National Aeronautics Association. *Formerly*, associated with state and municipal governments in New Jersey, as well as a practicing lawyer. Co-draftsman of several model aviation acts and author of articles on aviation law and local government.

THE effect of state legislation upon our domestic aviation, may not be as profound as the federal Civil Aeronautics Act¹ and related federal legislation, but certainly the range of subject matter is as broad, if not more so. While we think of the flight of aircraft as oblivious to state lines, we are constantly reminded that state law governs much that transpires in and about flight. Our basic law of contracts, torts and crimes, affecting domestic passengers, aircraft, air freight and airports is grounded in state law (or grounded by it, if you have a federal bias). Apart from the federal income and social security taxes, taxation of aviation is principally a state matter. Certain areas of safety and economic regulation—in some cases filling the gaps of federal regulation, in other cases paralleling it—are the subjects of state laws. Except for the strings of federal grants-in-aid, the development of airports and their approaches is principally covered by local law and regulation, and noticeably encouraged by such law.

Under our dual system of government, as it has affected other great and important subjects of our national life, the tug of federal supremacy against reserved state power has had and continues to have its molding influence on aviation. But if we recognize the obvious advantages of a single body of law applicable uniformly, or excluding certain actions uniformly, in all states, we have also recognized the strength of permitting and encouraging local initiative, local experimentation and local responsibility in governmental activities concerning aviation, as in other fields.

In this paper I shall try to paint a composite picture of state aeronautical legislation in broad strokes, dealing mainly with trends, leaving the details to those who may be concerned with them in their private practice or civic life.

ORIGINS

In most states, the aggregate of state aviation laws, even though re-enacted into an aviation code, has fairly well discernible roots growing out of nationally planned origins. Thus in the 1920s and 1930s prior

¹ Act of June 23, 1938, c. 601, 52 Stat. 977, 49 USCA § 401-681 (Supp. 1946).

to the enactment of the Civil Aeronautics Act of 1938, you will find the strong influence of the uniform acts prepared by the National Conference of Commissioners on Uniform State Laws. After 1938 the predominant influence has been the model or suggested legislation, sponsored by the National Association of State Aviation Officials and the several other aviation groups represented in the Civil Aviation Legislative Council, the federal Civil Aeronautics Administration, and such non-aviation organizations as the Council of State Governments and the National Institute of Municipal Law Officers. In some instances the later models have covered subjects treated in the earlier uniform laws, or have revised them, and throughout all of the adoptions of the suggested laws there have been variations and deviations by the several states in many respects.

THE UNIFORM ACTS

Perhaps the most influential of the uniform acts was the Uniform Aeronautics Act of 1922,² which asserted for the state, contract, tort and criminal jurisdiction over pilots, passengers and aircraft while in flight over the state, and in general assimilated their actions and the legal consequences thereof to the contract, tort and criminal law of the state. However, certain interesting innovations were included, such as the provision imposing upon the owner of every aircraft absolute liability for injuries to persons or property on the land or water beneath, caused by the flight of the aircraft or the dropping or falling of any object therefrom.³ This absolute liability was imposed whether the owner was negligent or not, except in the case of contributory negligence of the person injured or the owner of the property damaged. If the aircraft was leased at the time, the lessee would be jointly and severally subject to the same absolute liability with the owner. However, the operator of the aircraft, who was not the owner or lessee, would be liable only for the consequences of his own negligence.⁴ Although changed by some states, these are still applicable rules of liability in a considerable number of states which adopted the uniform act provision. I believe Wisconsin is among them.

The Uniform Licensing Act of 1930⁵ dealt with the licensing of aircraft and airmen, and authorized issuance of state air traffic rules. It is noteworthy that the act recognized the policy, principles and practices established by the federal Air Commerce Act of 1926.⁶ Furthermore it provided for the acceptance of a federal airman's license if offered in lieu of a state license, and directed that issuance of state licenses for aircraft and airmen should coincide as far as practicable with the federal laws. In addition the act exempted from its terms, civil aircraft or airmen engaged exclusively in commercial flying constituting an act of interstate or foreign commerce.

² 11 Uniform Laws Anno. 159.

³ *Id.*, sections 5 and 4.

⁴ *Id.*, section 5.

⁵ 11 Uniform Laws Anno. 185.

⁶ Act of May 20, 1926, 44 Stat. 568, 49 USCA § 171-184. (Supp. 1946).

The Uniform Aeronautical Regulatory Act of 1935⁷ shifted the emphasis of the earlier Uniform Air Licensing Act, by making the possession of federal aircraft and pilots' licenses the requisite for lawful operation; and it added to the powers of the state supervisory body authority to license airports, landing fields, air schools, flying clubs, air beacons, etc.

The Uniform Airports Act of 1935⁸ provided for the acquisition, construction and regulation of airports by municipalities, counties and other political subdivisions of the state. It declared the acquisition and ownership of land for such purposes to be public, governmental and municipal purposes, and expressly conferred powers of condemnation and taxation in that connection.

While not adopted in toto by many states, except in the case of the Uniform Aeronautics Act of 1922 which was accepted by about half of the states, many of the provisions of the uniform acts, or comparable provisions, found their way into the statute books of the states. However, by 1943 the usefulness of the uniform acts as models had waned to the point where the National Conference of Commissioners on Uniform State Laws withdrew all four from the active list of uniform acts recommended for adoption by the states.

THE SHIFTING OF AUTHORITY UNDER THE FEDERAL ACT

The Civil Aeronautics Act of 1938 wrought a material shifting in the areas of federal and state authority. The Act established the dominance of federal power in the matter of air safety, particularly in the matter of air traffic rules, airworthiness of aircraft, competence of airmen, and the certification of both aircraft and airmen.⁹ The Act asserted federal control over the economic regulation of transportation by common carriers by aircraft, granting to the federal aeronautical agencies the important functions of certification of routes and of rate making.¹⁰ As so often happens in the accomplishment of great changes, there were left shaded areas of doubt, where exclusivity of respective jurisdictions was not clear and where dual or joint governmental activity remained a possibility.

In the air safety field, court decisions have supported the construction of the Act which in effect requires federal certification of all aircraft and airmen.¹¹ In the economic regulatory field, instances of purely intrastate air transportation by scheduled carriers had been and continued to be so negligible as to leave very little of substance upon which state regulation might operate without duplicating federal action. As subjects for fairly full state action, the airport, contract, tort, criminal and tax jurisdictions were generally left undisturbed.

⁷ 11 Uniform Laws Anno. 173.

⁸ 11 Uniform Laws Anno. 193.

⁹ Title VI, sections 601-610, Civil Aeronautics Act, cit. note 2, *supra*.

¹⁰ Title IV, sections 401-416, Civil Aeronautics Act, cit. note 2, *supra*.

¹¹ *Rosenhan v. United States*, 131 F. (2nd) 932 (C.C.A. 10th 1942), cert. den. 318 U.S. 790; *United States v. Drumm*, 55 F. Supp. 151 D.C. Nev., 1944).

AIRPORT ZONING

The growth of air transportation, especially as it affected urban areas, brought an awareness of the necessity for developing and protecting the approaches to airports, by the prevention of obstructions to safe landings and takeoffs. In 1939 the Civil Aeronautics Administration, acting jointly with the National Institute of Municipal Law Officers, drafted and recommended for general adoption by the states a Model Airport Zoning Act. This has been revised several times to meet certain changed conditions. The most recent draft was prepared in November 1944,¹² and has since been endorsed by a dozen aviation and non-aviation groups and agencies. The act empowers municipalities and other political subdivisions of the state to promulgate, administer and enforce under the state police power, airport zoning regulations limiting the height of structures and objects of natural growth and otherwise regulating the use of property in the vicinity of public airports, and to acquire by purchase, grant or condemnation, air rights and other interests in land, for the purpose of preventing obstruction of the airports' approaches. As of the beginning of this year, the latest model draft had been substantially adopted in 16 states and the territory of Hawaii,¹³ and 9 states and the territory of Alaska had adopted acts substantially similar to one of the earlier versions of the model act.¹⁴ In addition, 12 states (of which Wisconsin is one) had some form of airport zoning legislation,¹⁵ which the Civil Aeronautics Administrator regards as inadequate in some respects as compared with the model law. Reports so far this year indicate that at least 5 more states have adopted the latest model draft.¹⁶

AIRPORT CONDEMNATION AMENDMENT

The war brought many aviation problems, some of which were susceptible of solution by the use of state power supplementing the main war effort. For example, in the building of more and better air-

¹² See SUGGESTED STATE LEGISLATION, Nov. 1, 1946, pps. 134-154, published by Council of State Governments; also in publications of the U. S. Civil Aeronautics Administration and the National Institute of Municipal Law Officers (Wash., D.C.).

¹³ Arizona, L. 1945 (1st Sp.) c. 15; Florida, L. 1945, c. 23079; Georgia, Acts 1945, Gov. Act. 558; Hawaii, L. 1945, c. 182; Illinois, L. 1945, p. 317 (S.B. 445); Iowa, L. 1945, c. 149; Kentucky, L. 1946, c. 183; Minnesota, L. 1945, c. 303, secs. 24-36; Nebraska, L. 1945, c. 233; North Dakota, L. 1945, c. 40; Oklahoma, L. 1945, H. 359; Pennsylvania, L. 1945, Act 107; Rhode Island, L. 1946, c. 1742; Tennessee, L. 1945, c. 74; Utah, L. 1945, c. 10; Vermont, L. 1945, Act 50; Washington, L. 1945, c. 174.

¹⁴ Alaska, L. 1943 c. 23; Arkansas, L. 1941 Act. 116; Louisiana, L. 1944 Act 118; Maine, L. 1941 c. 142; Maryland, L. 1944 (1st. Sp.) c. 13; Massachusetts, L. 1941 c. 537 (L. 1939 c. 412, Boston Airport); New Hampshire, L. 1941 c. 145; New Mexico, L. 1941 c. 171; North Carolina, L. 1941 c. 250; L. 1945 c. 300; South Dakota, L. 1943 c. 2.

¹⁵ Alabama, L. 1945 Act 402 Sec. 2, 4, 5 (Subd. 2, 3, 4) 6 (Subd. 1, 2); Connecticut, G.S. c. 185 Sec. 3096; Idaho, L. 1939 c. 154; Indiana, L. 1945 c. 190 Sec. 9; Michigan, L. 1945 Act 327 Sec. 102, 127-129, 132, 151-156; Mississippi, L. 1942 c. 200; Montana, L. 1939 c. 2; New York, L. 1945 c. 901; Ohio, L. 1945 S. 269 Sec. 5; Oregon, L. 1941 c. 265; Wisconsin, L. 1945 c. 471, c. 235; Wyoming, L. 1941 c. 110.

¹⁶ Kansas, L. 1947, H.B. 56, approved April 10, 1947; Montana, L. 1947, c. 287; Nevada, L. 1947, c. 205; Oregon, L. 1947, H.B. 75, approved April 21, 1947; Texas, L. 1947, H.B. 333, approved June 17, 1947.

ports, the program was speeded by state agencies and their political subdivisions acquiring necessary land through the power of eminent domain, with a wartime authorization in state law to take possession at an early stage of the condemnation proceedings, prior to judicial determination of the amount of the award, or review thereof, thereby eliminating, in a great many states, time-consuming delay. Success in obtaining and operating under such amendments to the state condemnation laws during the war, prompted continuation of the proposal as a general airport condemnation amendment, suggested either as part of the state eminent domain laws, or as part of the state airport enabling laws.¹⁷ The proposal was particularly opportune in view of the extensive postwar program of federally-aided airport construction which was authorized by Congress in May 1946.¹⁸ Fairly widespread approval has been obtained, although at the beginning of this year there were still 16 states which did not allow the taking of possession for airport purposes until after the confirmation of the condemnation award by a court.¹⁹ Some of the statutes adopted have made provision for payment of an estimated award into court, others have regarded the responsibility of the state or the municipality as a sufficient guarantee of payment and satisfaction of state constitutional requirements.

AERONAUTICS COMMISSION OR DEPARTMENT ACT

The war also brought a realization of the potentialities of postwar civil aviation, and it was believed in many quarters that the states and their political subdivisions might and could have an important role therein. As a result a concerted drive was made by state, federal and non-governmental groups combined, to see established in every state an independent aeronautics agency, either a commission, or a department with a single administrator, preferably divorced from other influences and responsibilities, and concerned only with the best interests of aviation. The vehicle was an initial draft of a State Aeronautics Department Act in 1944 and a revision in 1946, known as the State Aeronautics Commission or Department Act.²⁰ Adoptions were widespread, so that there are few states today without a state body or official charged with duties and powers of promotion and supervision of aeronautics in the state.

RECKLESS FLYING

The State Aeronautics Commission or Department Act (of 1946) contained certain provisions which were the embodiment of carefully worked out policies with regard to organization, promotional and developmental powers, regulatory powers, and procedures. These were

¹⁷ SUGGESTED STATE LEGISLATION, pps. 127-133, cit. note 12, *supra*.

¹⁸ Act of May 13, 1946, Pub. L. 377, 79th Congress, "Federal Airport Act," 49 USCA § 1101-19 (Supp. 1946).

¹⁹ Alabama, California, Illinois, Louisiana, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, North Dakota, Ohio, South Carolina, South Dakota, Vermont, Washington.

²⁰ SUGGESTED STATE LEGISLATION, pps. 87-126, cit. note 12, *supra*. For history of the State Aeronautics Commission or Department Act, see Schroeder, "Activities of NASAO, 1941-1945, 14 JOURNAL OF AIR LAW AND COMMERCE 72 (1947).

agreed upon by the Civil Aeronautics Administration in consultation with other federal agencies on one side, and the National Association of State Aviation Officials consulting with other state agencies on the other, and were thereafter endorsed by non-governmental groups. For example, in aviation law enforcement, notice was taken that air traffic, particularly in non-scheduled and private flying, was on the increase, and since increased reckless or careless operation of aircraft was likely, it was deemed desirable and salutary to provide for local punishment, swiftly meted out. It was recognized that the Civil Aeronautics Board should continue to be the sole agency to establish regulations pertaining to general air traffic rules, airworthiness of aircraft, competency of air-men and operating standards; that the Civil Aeronautics Administration should continue to be the sole agency to enforce such regulations; but that the states should cooperate in such enforcement by administering punishment under their own laws for reckless operation of aircraft occurring in their jurisdictions. On its part, the Civil Aeronautics Administration stipulated that if adequate state action were taken against pilots in such cases, it would not take further action, except to proceed in appropriate cases for the revocation or suspension of the offending pilot's federal certificate, on the ground of his incompetency.²¹ Accordingly, a provision was drafted in the State Aeronautics Commission or Department Act which would make it a violation of state law to operate an aircraft while under the influence of intoxicating liquor, narcotics or other habit-forming drug, or to operate an aircraft in a careless or reckless manner so as to endanger the life or property of another. It was further provided, that in any proceeding charging careless or reckless operation of aircraft, the court in determining whether the operation was careless or reckless "shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics".²² In such manner, it was sought to supplement federal enforcement of the obvious infractions of air safety law without drawing in questions of law and policy regarding direct enforcement of federal regulations by the states, or incorporating federal law by reference into state law. It might be said that in directing the court to consider the standards for safe operation as prescribed by federal statutes or regulations, the state legislature has set up a *prima facie*, nevertheless not absolute, test of what constitutes reckless flying. Punishment provided under the suggested provision of law is by fine or imprisonment or by a prohibition against operation of an aircraft within the state for a period of time prescribed by the court, not to exceed one year.²³ With a system of exchange of violations information between the state and federal agencies, also provided for in the act,²⁴ it was believed that a useful coupling of state and federal law enforcement, without destroy-

²¹ "Civil Aeronautics Administration Policy Concerning the Role of the States in the Field of Air Safety Enforcement," February 4, 1946 (C.A.A., Wash., D.C.).

²² Section 13, cit. note 12, *supra*, at p. 111.

²³ Section 23, *id.* at p. 124.

²⁴ Section 24, *id.* at p. 125; see also policy statement of C.A.A., cit. note 21, *supra*.

ing the basic federal responsibility over air safety regulations, had been provided for.

REGISTRATION

As a means of further tightening the relationship between federal requirements and local enforcement, it was made unlawful by the act, for any person to operate a civil aircraft in the state without appropriate effective federal airman or aircraft certificates.²⁵ To enable the state to more effectively police private flying, provision was made in the Act authorizing the state aeronautics commission or department to require that resident private flyers register with the commission or department, and that resident owners of aircraft, not engaged in commercial flying in interstate commerce, register their aircraft with the commission or department. The requirements for state registration are limited to the possession of appropriate federal certificates and the payment of any required state fee. Pilot registration fees are to be nominal, not exceeding \$1.00, while fees for aircraft registration, if imposed, would be in lieu of all personal property taxes which might otherwise be levied upon the aircraft.²⁶ As a further aid to enforcement of the reckless operation provision it is permitted that convictions of reckless operation be noted upon the violator's state certificate of pilot registration. Neither pilot nor aircraft registrations are made revocable for any reason, and of course the act makes clear that neither the state court nor any other state agency may affect the federal airman or aircraft certificates.²⁷

AIRPORT LICENSING AND DEVELOPMENT

Under the act, the commission or department is vested with authority to provide for the approval of airport sites and the licensing of airports.²⁸ In general, it can be said that the standards prescribed for such approval or licensing are safety standards, not economic standards. In every case throughout the act, where discretionary or rule making powers are vested in the aeronautics commission or department, the standards prescribed for its action have been couched in terms of public safety.

In the developmental field, the aeronautics commission or department is given general supervisory powers, and is directly charged with assisting the municipalities of the state in the development of airports.²⁹ It is further authorized, out of appropriations made available, to establish and operate state-owned airports.³⁰ Provision is made for the rendering of state financial and technical assistance to municipalities for the development of their airports, as is provision for the receiving of federal financial aid in the case of both municipally and state-owned airports.³¹ In this connection it may be noted that a number of states have found themselves barred from rendering state financial assistance to

²⁵ *Ibid*, at p. 111, section 14.

²⁶ *Ibid*, at pps. 112-115, section 15.

²⁷ *Ibid*, at p. 125, section 23(b).

²⁸ *Ibid*, at p. 116, section 17.

²⁹ *Ibid*, at p. 101, section 4, at p. 102, section 6.

³⁰ *Ibid*, at p. 103, section 7.

³¹ *Ibid*, at p. 102, section 6, at p. 107, section 7(f).

municipalities by virtue of prohibitions contained in their state constitutions.³²

One further provision of the State Aeronautics Commission or Department Act, indicative of the attempt to dovetail state and national action, is the requirement written into the rule-making provision, that no rule, regulation, order or standard prescribed by the commission or department shall be inconsistent with or contrary to any act of Congress or any regulations promulgated or standards established pursuant thereto.³³

MUNICIPAL AIRPORTS ACT

With the enactment by Congress in 1946 of the Federal Airport Act,³⁴ the role of the states and their political subdivisions in the development of new airports and the improvement of existing airports was given shape. To insure the carrying out of the national airport plan, which was the basis for the legislation and the continuing chart in promoting the system of public airports, it became necessary to be sure that the various municipalities and other public agencies, who were to be financially assisted and who would be basically responsible for the project developments, were equipped with legal authority to obtain the full benefit of the financial assistance made available by the Federal Airport Act, as well as assistance from their respective state governments and other sources. It was important that there be authority to locate airports outside of the city or county limits, and in some cases outside the state, or upon public waters and reclaimed lands. It was also important that the power of eminent domain be conferred. To be completely useful, it was necessary to be sure that there existed power to raise money by taxation or by bond issues for airport purposes; also power to police the airports, and power to enter into joint operations with neighboring municipalities or political subdivisions. It was felt to be helpful if municipal airport property were clearly exempt from state taxation. Many of the foregoing powers and attributes already existed in municipalities and counties at the time of the adoption of the Federal Airport Act. Nevertheless it was not clear that such was universally true in all states. Accordingly, the "Municipal Airports Act" was drafted with an eye to these many needful and useful details in providing for municipal and county authority in the airport field.³⁵ It was the aim of the legislation to provide a guide in amending or supplementing existing state legislation or to provide an act which might be adopted in its entirety, repealing statutes in conflict with it.

³² Wisconsin apparently was among these states, for recently, in 1945, it amended its constitution, Article VIII, § 10, which provided that the state shall never contract any debt for works of internal improvement or be a party in carrying on such works, by excepting therefrom state appropriations and the raising of money by taxation for the development, construction and improvement of airports or other aeronautical projects. Wisconsin, L. 1945, c. 3, approved at election April 3, 1945. Several other states with comparable constitutional barriers have similarly amended, or initiated steps to so amend, their constitutions.

³³ Section 12(b), *cit. note 12, supra*, at p. 110.

³⁴ *Cit. note 18, supra*.

³⁵ *Cit. note 20, supra*, at p. A-5.

As drafted, the Municipal Airports Act contained sufficient language to accomplish the purpose of the Airport Condemnation Amendment, referred to earlier, in the matter of obtaining early possession in connection with eminent domain proceedings.³⁶ The act also embodied the essential elements for authorizing the political subdivisions of the state to establish and operate airports in an adjoining state whose laws permit,³⁷ such as was suggested by a "Reciprocal Airport Act"³⁸ prepared by officials of several midwestern states.

CHANNELING OF FEDERAL FUNDS

One of the controversies in the enactment of the Federal Airport Act of 1946, and which delayed agreement on the law for over a half-year, was the struggle to require in the federal act that federal financial assistance should be channeled to the political subdivisions of the states through a state agency and not by direct dealings between the federal government and the cities. This attempt to eliminate direct federal-city relationships by specific prohibition in the federal law failed of passage. However, the act, in Section 9b, took cognizance of the struggle by providing that:

"Nothing in this act shall authorize the submission of a project application by any municipality or other public agency which is subject to the law of any state if the submission of such project application by such municipality or other public agency is prohibited by the law of such state."

At the time of the adoption of the Federal Airport Act in May 1946 there were not more than one or two states of which it could be said that their laws clearly prohibited the direct dealings noted in Section 9b. However, representatives of the state governments, notably the Council of State Governments and the N.A.S.A.O. who had been the principal proponents of channeling federal assistance, accepted Section 9b as a challenge and drafted a "State Channeling of Federal Airport Funds Act" for submission to the 44 state legislatures which were to meet in regular session in 1947.³⁹

³⁶ Ibid, at p. A-9, section 3.

³⁷ Ibid, at p. A-7, section 2.

³⁸ Not printed, but possibly available at Council of State Governments, Chicago. See, Wisconsin, L. 1945, c. 74, G.C. 114.11 (2) (3). This act contains a condition of reciprocity not found in the Municipal Airports Act.

³⁹ While many of these state legislatures have recently adjourned, accurate reports on all of their actions are not as yet available. However, on April 3, in introducing a proposed amendment (S. 1038) to the Federal Airport Act, which would write the channeling requirement into the act, Senator Brewster made the statement that approximately 15 states had accepted the invitation contained in Section 9b of the Federal Airport Act, and had specifically required that federal funds for airport development be channeled through the state governments. Cong. Rec. 3179 (April 3, 1947). See, Indiana, L. 1947, c. 114; Maine, L. 1947, H.B. 1690, approved May 13, 1947; Maryland, L. 1947, c. 896, sec. 85 (d); Minnesota, L. 1947, c. 22; Montana, L. 1947, c. 288, secs. 11 (a), (b); Nebraska, L. 1947, L.B. 177, approved April 9, 1947; New Jersey, L. 1947, c. 315; New York, L. 1947, c. 489; Pennsylvania, L. 1947, Act 56; South Dakota, L. 1947, c. 4; Tennessee, L. 1947, c. 131, but applicable only to class 3 and smaller airports; Utah, L. 1947, H.B. 149, approved March 20, 1947; West Virginia, L. 1947, S.B. 120, sec. 7(f), approved March 8, 1947; Vermont, L. 1947, S. 46, approved April 16, 1947.

ECONOMIC REGULATION

I should like to turn for a moment to an aspect of the legislative field which I have but lightly touched upon in describing briefly the effect of the Civil Aeronautics Act of 1938, namely, the field of economic regulation. The significant existing legislation providing for economic regulation of air transportation is federal, contained in the Civil Aeronautics Act of 1938, although there are some state laws which have been little used.⁴⁰ However, on the ground that Congress in enacting that act preserved the right of the states to provide economic regulation of intrastate air commerce, and that there is coming a great development in intrastate air transportation, a drive was begun in 1944 by the National Association of Railroad and Utility Commissioners to secure an adoption of their draft of a "Uniform State Air Commerce Bill."⁴¹ This bill would subject common carriers by aircraft to state economic regulation, to be administered by the state agencies now charged with the duties of administering the regulation of public utilities. As drafted, the bill would affect intrastate segments of interstate routes, as well as purely intrastate air transportation. In three states which recently adopted the Uniform State Air Commerce Bill, in 1945, Alabama, Arkansas and Vermont,⁴² the legislatures specifically cut down the possible coverage by exempting from regulation the intrastate business of interstate air carriers holding Civil Aeronautics Board certificates.⁴³

With respect to state participation in the control of economic regulation there has recently been another and different approach from that of the Uniform State Air Commerce Bill. This is suggested in a resolution which was adopted by the Eighth General Assembly of the States, January 18, 1947, at Chicago, wherein it was resolved:

"That the several states be given major consideration in the federal determination of air route services and patterns in continental United States, by the establishment of a procedural system which will provide participation by the states affected in the formulation and determination of air routes."⁴⁴

TAXATION

In the field of state taxation, the aviation business, the airlines, other commercial operators and private flyers, find a variety of taxes which are applicable to them specifically, as in the case of aircraft registration fees, pilot license fees, and aviation gasoline taxes, and the usual

⁴⁰ See Rhyne, *Federal, State and Local Jurisdiction Over Civil Aviation*, 11 *Law and Contemporary Problems* 459, 470 (1946).

⁴¹ Special Report of Committee on Legislation, Oct. 15, 1944, National Association of Railroad and Utilities Commissioners (New Post Office Building, Washington, D. C.).

⁴² Alabama, L. 1945, Gov. No. 269; Arkansas, L. 1945, No. 252; Vermont, L. 1945, H. 189. See also Tennessee, L. 1945, c. 72 excepting federally certified air carriers from state economic regulation administered by Bureau of Aeronautics, and So. Dakota, L. 1945, H. 132, limiting Aeronautics Commission to regulation of purely intrastate air carriers.

⁴³ This Uniform State Air Commerce Bill was introduced in approximately six state legislatures in 1947.

⁴⁴ Proceedings, 8th General Assembly of the States, January, 1947, Chicago (Council of State Governments).

general taxes applicable to all businesses and persons, such as real property, personal property, net income, capital stock, gross earning and payroll taxes.

With respect to personal property taxes on aircraft there has been a tendency in some places to substitute a graduated registration tax, payable to the state in lieu of state, county or city personal property taxes, and scaled according to the weight of the aircraft.⁴⁵ In the matter of eliminating multiple taxation of airlines, the National Association of Tax Administrators has suggested that the states adopt legislation embodying a formula for the allocation of all interstate airlines tax bases.⁴⁶ The formula is made up of three equally weighted factors, namely, scheduled aircraft arrivals and departures, originating revenue, and originating and terminating tonnage. It is contemplated that the parts of a given tax base allocated to the several states in which any one airline operates should add up to 100 percent, no more and no less. Of course, the sum of the several parts will equal 100 per cent, if, and only if, all of the states in which an airline operates use the same allocation formula and data, and agree upon the elements of the tax base which are subject to allocation by formula. Whether such a solution can be accomplished by the states acting independently, without some form of federal supervision or control, as was suggested in the Civil Aeronautics Board report to the 79th Congress on the "Multiple Taxation of Air Commerce,"⁴⁷ remains to be determined.

THE FUTURE

With respect to the future of state legislative activity in aviation, may I say that I have been privileged to stand at a place of vantage, where federal and state interests have met and sometimes clashed, and I have had the privilege of taking part in the drafting of laws most often designed to harness the sometimes opposing forces to pull cooperatively.

I am inclined to believe that there is still much of state aviation legislation ahead, that we are in the flood tide rather than the ebb. The activity of the state legislatures in aviation law in the four years 1944-1947, has been unparalleled in any other four year period of aviation history. Literally, thousands of bills affecting aviation have been introduced in the state legislatures and hundreds enacted. Aviation is experiencing growing pains, and as it grows, the tendency to regulate, to postulate and then to clarify grows with it. While there have been many introductions of bills in Congress since the Civil Aeronautics Act of 1938 which would tend to further reduce state action, the Congress has as yet shown no tendency to accept such a position.

⁴⁵ Such as in Michigan, L. 1945, No. 327. See also Minnesota, L. 1945, c. 411 and c. 418, fixing aircraft taxation in lieu of all other taxes on such, and taxing flight property of air carriers on an assessment of 40% of full value as apportioned to state per formula, prorating state activity to total activity of air carrier.

⁴⁶ See Report of the Committee on Taxation of Airlines, August 1946, National Association of Tax Administrators (Chicago).

⁴⁷ H.R. Doc. No. 141, 79th Congress (1945). For incorporation of the report's recommendations into proposed legislation see Representative Bulwinkle's H.R. 1241 (80th Congress) introduced Jan. 23, 1947.