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State and Local

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STATE AND LOCAL

Department Editor: Madeline C. Dinu*

NASAO ACTIVITIES

A NNOUNCEMENT is made of the Annual Meeting of the National Association of State Aviation Officials at Fort Worth, Texas, October 26-28, 1947.

In recent months, two Regional NASAO meetings have been held at which state aviation problems were discussed and action taken thereon.¹ At the Region II meeting, the states of Alabama, Florida, Mississippi and South Carolina were represented. The following subjects were discussed at length: Channeling of Federal Airport Funds; Coordination of State Plans with National Airport Plan; Reception of Federal Airport Program; Surplus Airports; State Aviation Legislation; Air Safety and Enforcements; CAA Air-marking Program; Puerto Rico Proposed as a Member of NASAO.

Resolutions adopted were on the following matters:

Federal Intervention in State Aviation Legislation (a serious indictment).

Federal Policies in Negotiations with Local Public Officials.

Programming of Federal Airport Funds.

At the Region I meeting, which was a coordinated CAA-NASAO meeting,² the states of Connecticut, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Pennsylvania and Vermont were represented. The following subjects were discussed: Veterans Flight Training Program; Non-Scheduled Flight Operations; CAA Program in Aviation Education and its Relation to Individual States; Urgent Need of Better Training to Eliminate Unhealthy Aviation Practices; Air Navigational Facilities Program; Communications and Air Traffic Control Services to Airmen; Functions of the CAA Regional Attorneys; Organization of Training Program for State Enforcement Agencies; Air Marking Program; and Federal Airport Program.

As a National Association, state aviation officials have been actively participating in conferences, meetings and discussions with other groups, including federal, state, aviation industry and governmental agencies on matters treating safety-enforcement, crash injury research, flight schools, education, taxation, helicopters, legislation, navigational aids, weather broadcasts, scheduled air transportation route determination, airport management, and the Federal Airport Program. As a direct result of the activity of state aviation officials, some of the state legislatures have made commendable progress in the passage of suggested and recommended uniform aviation bills.

There has been a noticeable increase in the use of the services, facilities and advice of state aviation agencies by local communities, the personal flying public, commercial operators, and by the general public. Studies are being made by or under the auspices of state aviation agencies on the subjects of state economic regulation of scheduled commercial operations in intrastate air commerce (Indiana), flight training (Ohio), and taxation (Minnesota). Situations which at first appear to be only local in character develop into a pattern of nation-wide trends. One situation involves the opposition by neighboring landowners to the establishment of airports. Another involves the use of inland lakes by aircraft. The former situation has been in the courts for some years past, but the latter recently has developed into serious

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¹ March 1-3, 1947, Sanford, Florida.

² Held in New York City, April 29-30, 1947.

proportions. Petitions to prohibit any and all flying by aircraft from inland lakes have been signed by many owners of abutting property and forwarded to various state aviation agencies. To the reporter's knowledge, one state (Iowa) has passed legislation on the subject this year, while in the legislature of another state (Michigan), a bill was introduced which was not reported out of Committee on the understanding that public hearings would be held on the subject. The summer months will tell the story of whether restrictive use of inland lakes will affect whole areas of the country.

Paramount in the activities and efforts of state aviation officials has been and still is the Federal Airport Program. A program, which, by weight of bureaucratic prerogatives assumed by some federal officials, is being bogged down into the mires of quicksand. It will surely disappear if attitudes and procedures are not changed. Those of the federal aviation personnel who have had professional experience in the building of projects under federal-state-community programs in past years, who sincerely have made vigorous efforts to get at least a beginning of construction under way, have themselves been stymied in their attempts to cut through the enmeshing tangle of "interpretative requirements."

Questions are being asked all over the country: "What is this, a fight between the Legal and the Airport divisions of the C.A.A. at Washington?" "Why are the new Rules being interpreted in accordance with provisions of the discarded first set of Rules?" "Didn't Congress intend that the money appropriated for airports be used in *building airports*?" "By what Right do some of the C.A.A. personnel impose their will upon the community-sponsors and states, and why?" "In relations between sovereign states and the federal government, on a mutual aid program, why must dealing be at 'arms length', like two antagonists, instead of on a basis of governmental cooperation with confidence in each other?"

Those of the state aviation officials who since 1936 have been preparing the groundwork for a federal aid airport program comparable to the Federal Highway Aid Program, who inaugurated the movement and rallied other groups to the task of getting federal legislation, and who enlisted the aid of every state aviation official to convince the public, and through them, their Congressional representatives, of the need for a nation-wide airport program and the required appropriations therefor, believe that their work is being impaired by a handful of misguided federal aviation officials. In order to salvage at least a portion of their efforts some of the state aviation officials have gulped their pride and held their tempers, and attempted to comply with the bureaucratic 'mandates'. But they can go only so far as their constituents will go. When Sponsors will not execute Assurance Agreements which are confiscatory in their provisions; when engineering requirements are so much greater than practicable that contractors openly state their bid prices are definitely upped on projects under the Federal Airport Program; when business-like contractors will not even bid on these projects because of the overwhelmingly burdensome conditions imposed by the contracts-documents 'bible' which they must execute; when communities see their tax dollars wasted on needlessly involved administrative costs, then not even the stout hearts of state aviation officials can convince 'Mr. John Q. Public' he needs *this kind* of a Federal Airport Program.

Where are the promises of at least 200 projects under way by the first of July and approximately 600 by fall? As of June 11, 1947, authoritative advice indicated only eight Grant Agreements had been executed, and the majority were conditional. Promise of decentralization of federal administrative functions on the program has been termed only lip service. The urgent solicitation of project requests from Sponsors during last summer and fall on an expansive basis of larger projects than could be financially undertaken by Sponsors is now falling flat, when Sponsors are required in mandatory fashion to warrant they have their share of the funds available.

The state aviation officials will still carry on if they are given even a modest amount of federal cooperation. After the glowing promises made by the federal agency in soliciting projects last year, the American public is demanding the reasons for the long delay.

M. C. D.

STATE REGULATION OF ECONOMIC PHASES OF AIR TRANSPORTATION — VIEWS OF THE CAB

Mr. C. F. Cornish, Director
Aeronautics Commission of Indiana
Indianapolis, Indiana
Dear Mr. Cornish:

February 12, 1947

The Civil Aeronautics Board has asked me to reply to your letters of December 21, 1946 and January 29, 1947, setting forth its views on the questions contained therein. We all sincerely regret the unavoidable delay in replying to your letter of December 21. The questions raised in that letter involve fundamental issues of policy on which I know you desired the considered judgment of the Board. The pressure of official business, some of it of an emergency character, has prevented the earlier consideration which your letter would otherwise have received.

Your inquiry concerns the growth of intrastate air commerce and the role of intrastate air carriers. We agree with you that the development of intrastate air commerce, especially when it is of a feeder character, will contribute to the growth of long-distance air carriage. In implementing this conclusion, the Board has been occupied with a series of so-called area proceedings as a result of which a very substantial amount of local air services, intrastate as well as interstate, is being provided. These newly designated local carriers are being granted temporary three-year certificates to engage in operations, necessarily of an experimental character, in order that the Board may know from actual operating experience what the public response to local air services will be and how the industry can best solve the equipment, organizational and operational problems inherent in local services. A lack of suitable specialized equipment and an absence of adequate airport facilities at many cities to which the Board has certificated service is curtailing and delaying these services and to that extent impairing the value of the experiment. The Board has been appreciative of the help given by the state and local officials in the local area certificate cases, and it will, of course, welcome any state action which facilitates the development of this program of local services. It is also the Board's hope that the State Aviation Officials will follow closely the experience of this branch of the industry and assist in appraising the value of such services to their respective communities. If experience indicates a need to reorganize this local air network, the State Aviation Officials will be asked to give us the benefit of their specialized knowledge of local conditions and public needs.

Your letter calls attention to the 1947 legislative sessions in 44 of the states and indicates that bills relating to air commerce are in prospect "which, in the considered opinion of State Aviation Officials, could create a smothering of the beginning breath of state air commerce" and adversely affect the development of national air transportation and the interstate carriers. And you inquire as to the Board's judgment regarding the policies and procedures, the jurisdictional and regulatory responsibilities, which the states should adopt to fit into a cooperative and coordinate regulatory program for aviation. Specifically, you ask that the Board address its attention to four questions. In replying to your queries it should be understood that the Board does not wish to be in a position of telling the state legislatures what policy they should follow in adopting aviation legislation. The Board can only set forth the considerations on the basis of which a decision on such matters may be reached.

QUESTION 1. *"Do you find that for the proper development of air transportation any state legislation is necessary at this time to provide for state*

regulation of any of the economic phases of the carriage by air of persons or property for hire?"

Whether state economic regulation of commercial air transportation is now required in the public interest must depend upon the facts respecting developments within each state. As you are aware, commercial aviation thus far has been predominantly long-distance transportation performed, with one or two exceptions, by carriers operating through a number of states. The Board does anticipate a considerable growth in local services providing a substantial amount of intrastate air transportation along with interstate carriage. However, it is not anticipated that there will be any significant development of *exclusively* intrastate services: The development of such services would have to be predicated on a larger air transport market than now exists and presumably on the use of equipment that is not yet available. The further discussion of this matter may be facilitated by considering the situation of the interstate and intrastate carriers and asking what activities with respect to each might require state regulatory action.

The interstate carriers fall as a practical matter into two categories: the trunk-line carriers and the local-feeder carriers. The preponderant proportion of the traffic carried by the trunk-line carriers is long-distance, interstate traffic. Although many of these carriers serve two points in the same state and may, in a few instances, carry an appreciable volume of state traffic, there does not appear to the Board to be any public interest to be served by the institution of state controls over the trunk-line carriers. Indeed, the intrastate traffic is so intermingled with the interstate traffic that the Board's regulation of the latter in practical effect sets the standards to which the carriers conform with respect to both the rates and the services of the intrastate traffic. Passenger fares have quite generally reflected the costs of the services performed, and no instances have come to our attention of any discrimination in rates or in service against the intrastate traveler. Thus no public interest appears to be adversely affected by the absence of state regulation over the intrastate business of the interstate trunk-line carriers.

On the contrary, it is the Board's considered judgment that state regulation of the *interstate trunk-line carriers* might seriously prejudice the growth of air commerce. The trunk-line carriers typically operate through many states, from four for Colonial Airlines to over twenty for American Airlines. State economic regulation of such carriers might mean multiple regulation of a particularly wasteful and uneconomic kind. However diligently the state regulatory bodies might seek to achieve uniformity of regulation inconsistencies and conflicts in regulatory requirements among the states and as between the state and federal authorities would seem to be inevitable. The consequent confusion in regulatory purpose and requirement would clearly be detrimental to the industry and the public it serves. Under these circumstances, repeated courts appeals, after protracted and costly litigation, would, we believe, ultimately establish the principle that air transportation is so essentially national in character that any state regulation of this branch of the industry would constitute an improper burden upon interstate commerce.

Moreover, such multiple state regulation could impose an unbearable financial burden upon the interstate trunk-line carriers. The industry has become increasingly competitive as the Board, in response to the growth in traffic and to the need for improved one-carrier services, has extended trunk carrier route systems. Consequently, the industry is now operating, and will continue to operate, with narrow competitive profit margins. The costs which compliance with multiple state regulation would impose on the trunk-line carriers would tend to prevent the carriers from reducing costs and lowering rates to the fullest degree, thereby foreclosing the possibility

of serving that mass transportation market which must be served if the industry is to achieve economic stability and contribute its maximum of public service. It is not unlikely that the burdens of multiple state regulation would discourage carriers from seeking to enlarge their intrastate services and might even lead some to seek to curtail their service offering to remove themselves from state controls. In our opinion, therefore, the national public interest and the public interest of the people of each state will best be served if all regulatory effort is directed to enabling the air transport industry to achieve the maximum in economical operations attainable under existing technological conditions in order that the service may be generally available to all communities at the lowest possible costs.

State regulation of the interstate trunk-line carriers can hardly be effective regulation, although it must inevitably be costly to the states. Any attempt to prescribe rates will involve difficult questions of cost allocation. Attempts to regulate services and schedules would immediately create problems that would affect operations throughout the carrier's route. Any positive regulation of rates and service and ancillary matters such as accounts would project the states into interstate matters beyond their effective regulatory jurisdiction and could hardly accomplish an improvement in service or in fares to the public, unless it be assumed that the Board will be seriously derelict in its duties.

In the light of these considerations, we are of the opinion that there is no present need for state economic regulation of the intrastate services performed by the interstate trunk-line carriers.

A different situation may exist with respect to another class of interstate carriers, the *local-feeder operators*. The new local carriers that are in process of being certificated in the so-called area cases currently before the Board will, it is hoped, carry a substantial volume of intrastate traffic along with the interstate traffic. These carriers are receiving experimental three-year certificates in order that the Board and the public may have an opportunity to judge whether such services are permanently required in the public interest. These carriers will each characteristically operate in three or four states. It might be thought that these local carriers, serving a more compact area and carrying a substantial amount of intrastate traffic, should be immediately subjected to state economic regulation; the Board believes, however, that such a conclusion is not warranted until fuller experience has become available through the present experimental certificates and that the institution of state economic regulation at this time would be premature.

The financial position of these new local carriers is precarious: their resources are limited, their organizations untried, and their markets uncertain. It has been suggested that they are largely without competition, but this overlooks the fact that they must generally meet the competition of the private automobile and of the world's most highly developed network of surface carriers by rail and highway. These carriers will have every incentive to operate economically and to reduce rates to the public. Moreover, the Board has ample authority to deal with any discrimination that might arise if such local carriers should fail to deal equitably with intrastate travelers. Finally, it may be noted that the local carrier will presumably be dependent upon mail pay to carry it through its developmental period and that the Board must consequently assume a large measure of responsibility for its entire operation.

If these local and feeder carriers are successful in developing a substantial volume of local intrastate traffic, the time may come when the states will wish to regulate some of the intrastate operations. We cannot now foresee when local intrastate traffic will develop to such proportions. Meanwhile, any state economic regulation of these carriers would, we believe,

be unwise from the point of view of the traveling public and detrimental to the development of the national air network of secondary services.

There remain to be considered those *uncertificated local operators* that seek to engage in a common carrier business within the borders of a single state. In the absence of state control over operating rights, there is every likelihood that there will be an influx of such operators into the air transport industry. These circumstances may lead some states to conclude that certificates of convenience and necessity should be required before the inauguration of any intrastate common carrier operations.

If a state should decide that it is necessary for it to undertake the control of the geographically intrastate carriers by the issuance of operating authorizations, there is much merit in the procedure outlined tentatively in your letter.¹ You remark that a suggestion has been made that a state could issue a Letter of Approval to an applicant for an intrastate route provided the applicant had pending with the Civil Aeronautics Board an application for a certificate of convenience and necessity. You indicate that under such a Letter of Approval the state aviation agency would assume responsibility for the inspection and approval of equipment, personnel, facilities and airports in accordance with federal safety rules and regulations.

There appears to be merit in the proposal to issue a Letter of Approval only if the applicant has filed application for a federal certificate of convenience and necessity. The fact is that the Board must be concerned with any development of uncertificated operators even though each operation be geographically confined within a single state. In creating both the trunk-line network and the secondary system of local feeder routes, the Board has sought to achieve a balanced competitive industry with a reasonable relationship between the quantity of service offered and the potential demand for service. We have sought to assure a stimulus to technological progress and managerial efficiency and at the same time to afford to each operator, as far as possible, the opportunity to become a commercially self-sufficient carrier. Any substantial paralleling of interstate carriers by intrastate operators could seriously disrupt this competitive balance and deprive interstate operators of traffic which is essential to the achievement of economically sound operations. This eventuality would be particularly serious for the recently authorized local carriers, which in the Board's judgment, offer the best hope of developing the kind of local service, both intrastate and interstate, which the public interest requires. Thus you can appreciate that a substantial growth of paralleling intrastate operations could have the ultimate effect of substituting a less satisfactory for a more essential service.

What has been said with respect to the geographically intrastate operations should not be interpreted as expressing a judgment that such operations require any state economic regulation at the present time. On the contrary, we doubt whether such operations can survive economically; indeed, it appears that they could not survive even if they were without competition

¹ Letter of Mr. C. F. Cornish, of December 21, 1946: "One of the suggested procedures proposed by a member state is for state issuance of a Letter of Approval to an applicant for an intrastate route which, at the time of issuance, would be predicated upon the filing of an application for certificate of convenience and necessity with the Civil Aeronautics Board. During the period of investigation by the CAB, past experience indicates this would probably extend to a period of two years, the state carrier would have an opportunity for developing its potential carriage so that its federal application may be more fully and adequately considered. The state aviation agency, under such Letter of Approval, would inspect and approve the equipment, personnel, facilities and airports from the safety aspect in accordance with federal safety rules and regulations and the compliance with requirements for the several types of equipment and personnel certifications. There would also necessarily be required compliance with state securities and corporation laws."

from interstate operators. With present-day equipment and with the general availability of good surface transportation, an air operation must attract a substantial amount of interstate business. And unless the local carrier has access to that market, it appears quite unlikely that it will secure a sufficient volume of local traffic to be able to continue in operation. Thus, believing that the economics of the industry will eventually eliminate the very small intrastate operators, we doubt the necessity for establishing regulatory procedures to cope with the problem.

You, of course, recognize that the local carriers, even though their operations may be geographically confined to a single state, may be engaging in interstate commerce and may therefore be subject to the Civil Aeronautics Act of 1938, as amended.

If, contrary to judgments herein expressed, the states should undertake to regulate intrastate air transportation and intrastate carriers, we believe it essential to the development of air transportation that multiple regulation of the same carriers by both federal and state authorities be avoided. Carriers which are operating under the authority of federal certificates of convenience and necessity should be exempt from state controls.

QUESTION 2. *"If your answer to the above is affirmative what phases of the carriage by air needs state regulation?"*

Inasmuch as the answer to question No. 1 is generally negative, this question appears to require no separate consideration.

QUESTION 3. *"If your answer to No. 1 is negative, do you think any distinctions exist between services designed to link small areas within a state with their principal metropolitan state markets, and feeder services such as you have certificated under temporary certificates of public convenience and necessity?"*

In authorizing a secondary network of local service on a three-year experimental basis, the Board has in some instances provided for market-area local service linking outlying communities with their central markets and with the principal metropolitan centers. These service patterns appear to have feeder possibilities as great as are inherent in linear local service operations. In most instances we have found that market areas tend to extend across state boundaries and that they can be most economically and satisfactorily served by interstate operations. As experience accumulates with respect to certificated local operations, it is hoped that it will prove economically feasible to provide more complete coverage and to extend the services to many additional and smaller communities.

QUESTION 4. *"If any economic regulation legislation by the states is enacted, do you consider that some provision requiring coordination or uniformity between the regulations issued by the CAB and the states is essential?"*

If the states should undertake the enactment of economic regulatory legislation, it would be essential to provide for coordination, and in some instances for uniformity, between the regulations issued by the Board and by the states. The achievement of this goal would call for careful study and perhaps for consultation on the legislative level as well as on the administrative, regulatory level.

The Board has been embarrassed in formulating replies to your queries by the dearth of experience with small local operations. It seems to us that any present legislative action must be predicated upon assumptions which may not square with the actualities of the industry when and if local intrastate operations become economically practicable.

The substance of the resolution adopted by your legislative and executive committees on January 17 prompts us to suggest a direction in which the State Aviation Agencies can participate in the Board's proceedings, making

a large contribution to the public interest of the state and the nation. We regret that the local area cases which have recently been before the Board for decision have not benefited from the more active participation by those who can speak accurately and authoritatively for the public interest. Most of the applicants for local-feeder services have had little experience in studying the potential market for air service and even the cities that have appeared have not always been prepared to speak for the service needs of larger areas. The character of the participation and contribution which we have in mind is excellently illustrated by the testimony and exhibits which the Port of New York Authority has submitted in our recent area cases. We believe that it would be possible for the State Aviation Agencies, acting either singly or in concert where appropriate, to present for the Board's consideration comprehensive, detailed and quantitative factual information with respect to the transportation needs of the smaller communities, thereby assisting the Board to provide services which, by serving the public's needs, will have the best chances for successful growth. We believe the State Aviation Agencies are in an excellent position to assist the Board in determining traffic flows and to assay the relative traffic potentials of different communities within their states. Being familiar with the realities of air transportation from both an operational and a commercial point of view, you are in an excellent position to help us in providing an air network which will meet the needs of the people of your respective states both for local air services and for connecting feeder services. We suggest that this is an enterprise which may be appropriately undertaken by two or more states because we have become convinced on the basis of our recent proceedings that it is rarely possible to establish a local service that does not extend throughout a substantial trade area serving two or more states.

The Board is quite aware of the imperfect record upon which it has had to act in its recent establishment of local services. Operating experience will certainly demonstrate the desirability of changes in the service patterns provided. When these matters are again before the Board, whether on reconsideration or in new proceedings, we hope that you will find yourself adequately staffed to participate in a reexamination of the needs for service in your respective states.

Referring to the third paragraph in your letter of January 29, I believe you are under a misapprehension in stating that the Board had agreed to participate in or spearhead a study of overall problems respecting to the appropriate jurisdiction of the Federal Government and the States relative to the economic control of air transportation. I believe it was agreed that members of our staff should assist and advise with your organization in such investigation as it might undertake, making available any pertinent information in our files. This assistance was offered, of course, subject to the limitations of time imposed by the large burden of responsibilities resting on our relatively small staff. This Board still stands ready to give you such help. We shall also be glad to be as helpful as possible to the Aeronautics Commission of Indiana in the study which you say you have initiated at Indiana University.

Very sincerely,
Oswald Ryan,
Vice Chairman, CAB

STATE REGULATION OF ECONOMIC PHASES OF AIR TRANSPORTATION — VIEWS OF NASAO — STATEMENT
ISSUED FEBRUARY 14, 1947

For the past several years there has been a tendency toward imposing economic regulation on air transportation by the various states. This seems to have made itself most evident by action on the part of the National

Association of Public Utility and Railway Commissions. They prepared and circulated a so-called uniform state law bill two years ago which was designed to apply to air transportation intrastate, economic regulation quite similar and in fact patterned after the present regulation of surface transportation. Naturally the bill was designed to give the regulatory authority to the public service or railway commissions of each state even in such instances where the states had already set up aviation or aeronautic commissions.

The argument for this generally was that all transportation should be regulated by the same agency and that it was unfair to surface transportation facilities to permit air transportation to develop in competition with the surface facilities without regulation. Whether it was so conceived or not no different result would have been obtained had such regulation been designed and developed by the competitive surface transportation agencies themselves. It was generally punitive in character.

The argument against this which has developed in many states, is that air transportation had not yet grown or developed to the point where we needed economic regulation of it within the states. Economic regulation can only be justified on the basis of protecting a public interest. It cannot be justified on the basis of protecting an individual or private competitive interest. The fact is that even after two years of development since this was first presented to some of the states, the local air carriers still handle such a small portion of the total transportation services of the country and the state that there is no public need for its regulation by the state in the public interest to avoid undue and unfair competition with surface carriers. Economic regulation from its very nature is restrictive regulation. In the present condition of air transportation this is not only unnecessary but would be definitely harmful to the further normal development of air transportation.

Another fact of importance is that experience within the past few months, even more so than a year ago, has demonstrated conclusively that air transportation is still in much of an embryo state. It has many obstacles to overcome before it can equally and sufficiently compete with other forms of transportation and certainly, therefore, could not be said to be harmful to those other forms sufficient to justify an application of state economic regulation. It is most important, therefore, that air transportation and aviation be still permitted an unrestricted opportunity to develop itself and grow naturally and normally for a further period of time.

In many states action of this kind would definitely destroy or deter the development of intrastate air service. The public interest and benefit from air transportation is largely from the major airline operations. Wherever states attempt to impose economic regulation it means that every effort of the airlines to develop new service or expand can and would be opposed by the competitive agencies, and the procedures necessary to secure authorization to do this would often be so expensive and burdensome to the air carriers that it could not be justified from the volume or extent of intrastate business they would enjoy if the authority was secured. On the other hand without state economic regulation many intrastate services can and will be established and developed to the benefit of the public within the state, and if and when air transportation grows and becomes localized to the point that it presents unfair and destructive competition to other forms of transportation then and then only could the states, or even the Federal Government, be justified in entering this field.