UNIFORMITY IN AIR SAFETY
REGULATION: COOPERATIVE
FEDERALISM APPLIED

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INTRODUCTION

Because of the very nature of flight it has long been recognized
that the laws regulating aviation should be uniform throughout
the country. At the present time, both the states and the Federal Gov-
ernment regulate the activities of aircraft and airmen. This dual system
of regulation has created a problem which must be solved if aviation is
to develop unhampered. The purposes of this paper are to outline the
historical development of this problem and, in light of recent Supreme
Court decisions and policy declarations by various advisory commis-
sions on aeronautics, to offer a solution whereby uniformity in the
application and enforcement of air safety regulations may be estab-
lished and maintained.

DEVELOPMENT OF THE PROBLEM

During the period of aviation development following the historic
flight of the Wright brothers on December 17, 1903, every flight of an
airplane was an experimental undertaking. The "flying machines"
were contraptions of piano wire, bamboo and bicycle parts with feeble
30-45 horsepower motors. Airports were non-existent. The coura-
geous pilot was more concerned with getting his plane in the air and
experiencing flight itself than he was in determining how and where
the airplane might land. This state of affairs caused many state of-
officials, staid in the existing interpretation of law, to become disturbed
by the possibility that the legal rights of their constituents were being
violated through unauthorized intrusion upon their property by un-
licensed airmen. It is not surprising that the impact of this new means
of transportation (at that time hazardous) upon current legal thought
resulted in enactment by the states of laws to regulate safety aspects
of aviation. At the instigation of Governor Simeon Baldwin in 1911,
Connecticut passed the first law regulating aircraft and airmen.2

Other states followed this example, and by 1920 eight states and
the Territory of Hawaii had some form of legislation regulating avia-

1 Smith, Airways, c. 2 (1944).
2 Conn. Pub. Acts 1911, 60. See editorial comments, 18 Bench & Bar 49 (1909)
and 14 Law Notes 188 (1911).
tion. In general, these early state laws required the registration of pilots and aircraft and prescribed air traffic rules.

During the period prior to 1920, there was a growing recognition of the need for uniformity in regulation, but leading authorities had expressed the opinion that the Federal Government lacked the constitutional power to regulate aviation on a national basis. The uncertainty of thought concerning the legal basis for regulation of aviation by the Federal Government and, at the same time, the recognition of a need for uniform regulation are best exemplified by a law passed by the California legislature in 1921. The California law contained a provision stating that when the Congress of the United States passed a law controlling aviation within the United States and its territories, the California statute as it affected interstate flight would become null and void.

The National Conference of Commissioners on Uniform State Laws, having recognized that a problem of maintaining uniformity in aviation laws among the states was developing, in 1920 recommended that a committee be formed to investigate the subject of aviation regulation and report as soon as practical a uniform aviation law for adoption by the states. The committee was appointed and its efforts resulted in the Uniform Aeronautics Act, which was approved by the National Conference in 1922. The Uniform Act covered the following subjects: Sovereignty in and ownership of air space, lawfulness of flight, damages on land, collision of aircraft, jurisdiction over crimes, torts and contracts, and dangerous flying and hunting from aircraft made a misdemeanor. During the period from 1922-1926, pending the enactment of federal legislation, ten states adopted the Uniform Aeronautics Act.

**Effects of Air Commerce Act of 1926**

In 1926, Congress, basing its action upon powers contained in the Commerce Clause of the Constitution, enacted a federal statute regulating aviation. Section 3 of the Air Commerce Act of 1926 granted

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4 Zollman, Governmental Control of Aircraft, 53 Am. L. Rev. 897 (1919). The history of early efforts toward federal regulation and the views taken by various advocates may be found in Bogert, Recent Developments in the Law of Aeronautics, 8 Corn. L. Q. 26 (1922) and 1922 Handbook of the Nat'l Conf. of Com'rs on Uniform State Laws 313.
6 Handbook, op. cit. supra note 4, at 106.
8 Ibid, and see Binzer, Civil Aviation—Relative Scope of Jurisdiction of the State and Federal Government, 33 Ky. L. J. 276, 298 (1946); Lee, op. cit. supra note 5.
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to the Secretary of Commerce broad regulatory powers over rating and examination of airmen and aircraft, establishment of air traffic rules, and denial, suspension and revocation of certificates issued for aircraft and airmen. Subsection 3(e) of the Act authorized establishment of "air traffic rules for the navigation, protection, and identification of aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between vessels and aircraft." Definitions contained in section 1 of the Act indicated that the Secretary of Commerce was granted authority to regulate only interstate and foreign air commerce. Confusion concerning the application of air traffic rules to all flights was created, however, by the following facts. A provision for state cooperation in enforcement of the regulations had been stricken from the act; one of the managers of the bill in Congress had said "the air traffic rules are to apply whether the aircraft is engaged in interstate or intrastate navigation"; and section 11 of the Act made it unlawful "to navigate any aircraft otherwise than in conformity with air traffic rules." (Emphasis supplied throughout.)

Despite the lack of a clear definition of this right to regulate flight activities the states, nevertheless, sought to adopt the federal air traffic rules promulgated under subsection 3(e) for local application and enforcement. Due to the fact that the state legislatures meet biennially, it is readily apparent that the state regulations could not keep pace with the many amendments to the federal regulations. In order for the current air traffic rules to be reflected as state laws, some legislative method such as incorporation by reference had to be used. This technique in some states ran afoul of state constitutional provisions so restrictive as specifically to prohibit legislation by reference. It was therefore recommended that the states enact laws either creating a department of aeronautics or vesting an existing agency, as a Vehicle Commissioner, with power to formulate rules regulating avia-

139 (1926); Williams, Federal Aeronautics Legislation, 76 U. Pa. L. Rev. 798, 810 (1928) (Recognizes that extent of jurisdiction of Air Traffic Rules is not definite and that circumstances of each infringement must determine extent of authority of Fed. Govt.).
11 Ibid.
12 "... 'Air commerce' means transportation in whole or in part by aircraft of persons or property for hire, navigation of aircraft in furtherance of a business, or navigation of aircraft from one place to another for operation in the conduct of a business... 'interstate or foreign air commerce' means air commerce between any State, Territory, or possession, or the District of Columbia, but through the air space over any place outside thereof; or wholly within the air space over any Territory or possession or the District of Columbia." AIR COMMERCE ACT OF 1926 §1, 44 Stat. 568, 49 USCA §171 (Supp. 1947).
13 Lee, Legislative History of the Air Commerce Act, 1929 USAvR 117, 131.
14 63 Cong. Rec. 9390 (1926). "In order to protect and prevent undue burdens upon interstate and foreign air commerce the air traffic rules are to apply whether the aircraft is engaged in commercial or non-commercial, or in foreign, interstate, or intrastate navigation in the United States, and whether or not the aircraft is registered or is navigation on a civil airway." This quotation was entitled "Application of the Law" and designated §78 of Air Traffic Rules of the Air Commerce Regulations. Information Bull. No. 7, Dept. of Commerce Aeronautics Branch, June 1, 1928.
Thus an administrative officer could merely rubber-stamp federal air traffic rules for application to intrastate air traffic. But here again constitutional objections could be raised if proper guides and standards were not prescribed for the scope of administrative action. To meet these objections, the National Conference of Commissioners on Uniform State Laws approved the Uniform Air Licensing Act in 1930. Section 3 of this Act authorized the designated state agency to make air traffic rules which "shall conform to and coincide with, so far as practicable, the provisions of the Air Commerce Act of 1926 and the air traffic rules issued thereunder."\(^\text{17}\)

The National Association of State Aviation Officials (NASAO), as we know it, did not then exist and the states were slow to adopt this act.\(^\text{18}\) In addition, there is a practical objection to this method of dealing with the problem. In most states, misdemeanors and minor civil suits are tried in magistrate courts. Justices have generally shown a lack of sympathy for and a reluctance to enforce any regulation which is not a part of the state code of laws which is their principal guide. Objections by defendants of lack of authority on the part of the administrative agency and inadequate publication and notice of administrative regulations are frequently sustained.

Even though the courts held the air traffic rules promulgated by the Secretary of Commerce under subsection 5 (e) of the Air Commerce Act of 1926 to be valid, despite the fact that they were not specifically limited in application to interstate air traffic, considerable doubt remained as to the legality of the regulations as applied to aircraft and airmen engaged in purely intrastate flight.\(^\text{19}\) The states, therefore, 

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\(^\text{16}\) State v. Larson, 10 N. J. Misc. 384, 160 A. 556 (1932) (State Aviation Act declared unconstitutional for lack of administrative standards and guides), Notes, 3 Air L. Rev. 188 and 180 (1932); Nieman v. Brittin, Minn. Dist. Ct. (2nd Jud. Dist. 1935), 1 Avi 558 (State regulation unlawful because of unconstitutional delegation of legislative power), Note, 7 Air L. Rev. 131 (1936). The various problems are discussed in Fagg, Incorporating Federal Law into State Legislation, 1 J. Air L. 199 (1930); Fagg, National Conference on Uniform Aeronautics Regulatory Laws, 17 A. B. A. Jour. 77 (1931); Lee, State Adoption and Enforcement of Federal Air Navigation Law, 16 A. B. A. Jour. 715 (1930); Young, The Province of Federal and State Regulation of Aeronautics, 1 J. Air L. 494 (1930); Vorys, What State Body Should Regulate Aeronautics?, 1 J. Air L. 494 (1930); Note, 5 Air L. Rev. 171 (1934).

\(^\text{17}\) 11 U. L. A. 183 (Supp. 1947); 1944 USAvR 130; 1930 HANDBOOK OF NAT'L CONF. OF COM'RS ON UNIFORM STATE LAWS 445. For a general discussion of the legality and application of some of the sections of the provisions of this Act, see Albertsworth, Constitutionality of State Registration of Infrastate Aircraft, 3 J. Air L. 1 (1932); Bouthele, The Coordination of Federal and State Control of Aeronautics, 5 J. Air L. 564, 570 (1934) (When a violation is reported, the state can take action under its state laws, modeled on the Federal requirements, or it can refer the violation to a Federal inspector); Cuthell, The Scope of State Aeronautical Legislation, 1 J. Air L. 521 (1930); Gambrell, Uniform Program for Aeronautical Promotion and Control, 5 J. Air L. 593, 602 (1934); Mulligan, Regulatory Laws for Infrastate Commerce, 5 J. Air L. 572 (1934); Zollman, State Control of Aeronautics in Intrastate Flying Untouched by Federal Act, 3 J. Air L. 68 (1932).


\(^\text{19}\) Neiswonger v. Goodyear Tire & Rubber Co., 35 F. 2d 761, 1 Avi 157 (1929), Swetland v. Curtiss Airport Corp., 41 F. 2d 929 (1930), modified 55 F. 2d
continued to adopt the Uniform Aeronautics Act or Uniform State Law for Aeronautics, as it was later called, usually in a modified form, with the result that by 1933 the maximum number of 22 states had enacted some such law.20

The problem of maintaining uniformity in air safety regulation was investigated by the Federal Aviation Commission (Howell Committee) which had been appointed under a provision of the Airmail Act of 1934 to study the situation in aviation transportation and make recommendations to Congress.21 The Commission reported in January 1935, and recommended that “If the several states do not adopt substantially uniform aeronautical regulatory laws within a reasonably early time, a Federal constitutional amendment should be adopted which will give to the Federal government exclusive control of all phases of civil aeronautics within the United States.”22 In discussing this recommendation, the Commission stated, “The need for a broader uniformity of practice than now exists, whether through state acceptance of uniformity or through Federal assumption of full control, seems sufficiently acute to justify the remedy of constitutional change if a uniform law is not generally adopted.”23

A most ambitious effort to obtain uniformity in regulation was embodied in the Uniform Aeronautical Regulatory Act of 1935. This Act, given whole-hearted support by the Aviation Committee of the American Bar Association and the Commissioners on Uniform State Laws, required the possession of a federal certificate for pilots and aircraft before participation in flight within a state. Section 5 required state air traffic rules to be “kept in conformity as nearly as may be, with the Federal legislation, rules . . . on the subject.”24 Prior to the passage of the Civil Aeronautics Act by Congress in 1938 only three states adopted this recommended legislation.25

**Effects of Civil Aeronautics Act of 1938**

In 1938, Congress repealed section 3 of the Air Commerce Act of

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23. Id. at 238. Further discussion of the same thesis is contained in Brown, Aircraft and the Law (1933) c. 10 (Federal or State Control and Regulation) and Davis, Aeronautical Law (1930) 9.
24. 11 U. L. A. 176 (Supp. 1947); 1935 Handbook of Nat'l Conf. of Com'rs on Uniform State Laws 220.
25. 11 U. L. A. 169 (Supp. 1947); 1944 USAvR 130.
1926, and powers formerly granted therein were delegated to the Civil Aeronautics Board (Authority) by Title VI of the Civil Aeronautics Act—Civil Aeronautics Safety Regulation. All of the air traffic rules had been rewritten and reorganized in the Fall of 1937 and they were adopted in toto by the Board (Authority). There was no break in the continuity of the application of the regulations. The scope of flight activities covered by the air traffic rules was enlarged under the provisions of section 601 of the Act which provided that:

"(a) The Board (Authority) is empowered, and it shall be its duty to promote safety of flight in air commerce by prescribing and revising from time to time—(6) Such reasonable rules and regulations, or minimum standards, governing other practices, methods, and procedure, as the Board may find necessary to provide adequately for the safety in air commerce; and (7) Air traffic rules governing the flight of, and for the navigation, protection, and identification of, aircraft, including rules as to safe altitudes of flight and rules for the prevention of collisions between aircraft, and land or water vehicles."

Under the broadened definition of "air commerce," any flight of aircraft which might endanger interstate commerce was now subject to regulation by the Federal Government.

These provisions of the Act were so broad and sweeping that the "twilight zone" of aviation activity in which the states could properly regulate became even more illusory and less precisely defined than formerly. In the determination of this area of jurisdiction, a difficult

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27 14 Code Fed. Regs. §60 (1938) (Air Traffic Rules); American Aviation, Nov. 1, 1937, p. 1; 10 Air Com. Bul. 9 (1938); Fagg, Legal Basis of the Civil Air Regulations, 10 J. Air L. & C. 7 (1939); Knotts, Cooperative Planning of the Civil Air Regulations, id. at 30; Wigmore, Form and Scope of the Civil Air Regulations, id. at 1.


29 "... 'Air commerce' means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any civil airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce." CIVIL AERONAUTICS ACT OF 1938 §1(3), 52 Stat. 977, 49 USCA §401 (Supp. 1947). Compare with definition note 12 supra.

30 Mr. Oswald Ryan of the CAB, in Oct. 1940 stated the dilemma as follows: "Few, if any, federal regulatory statutes have been enacted with as broad a jurisdiction over an industry as that asserted in the Civil Aeronautics Act of 1938.... The difficulty arises when we undertake to determine the scope of the Board's regulatory power over air navigation not traversing federal airways. This traffic includes both a rapidly increasing volume of unscheduled, off the airways interstate flight, and such other intrastate air navigation as directly or potentially affects this off the airways commerce. Here is the twilight zone in the jurisdiction conferred by the Civil Aeronautics Act. Somewhere in that zone the power of the Federal Government theoretically ends and the exclusive jurisdiction of the state theoretically begins." Ryan, Federal and State Jurisdiction Over Civil Aviation, 12 J. Air L. & C. 25, 26 (1941). The dilemma is similarly noted and discussed in DYKSTRA & DYKSTRA, THE BUSINESS LAW OF AVIATION c. 11 (1946) (Regulation under the Commerce Clause and State Police Power); FIXEL, THE LAW OF AVIATION §8 (Second Ed. 1945); FREDERICK, COMMERCIAL AIR TRANSPORTATION 249 (Revised Ed. 1946); HOTCHKISS, AVIATION LAW §61 (Second Ed. 1938).
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legal question had first to be answered. Recent Supreme Court decisions had given added strength to the power of Congress to act under the Commerce Clause. The need for uniformity in the safety regulation of aviation was an admitted fact. The question then was whether or not the states could by virtue of police powers retained under the 10th amendment of the Constitution regulate matters which were subject to extensive uniform regulation by Congress under the Commerce Clause. Now, more than ever, state laws on aviation stood to be stricken down by "endangered," "burden," "uniformity of regulation" and other well recognized doctrines.

Whereas up to this time there had been a controversy over the best possible method by which uniformity in regulation could be maintained by the states, the controversy now developed over whether the states had been completely excluded from the regulation of aviation. In 1941, the majority of the members of the aviation committee of the American Bar Association felt that there was no longer any room for safety regulation of aviation by the states and withdrew its support of the Uniform State Regulatory Act previously approved in 1935.

One of the members of the committee wrote a dissenting opinion strongly favoring state adoption of the Uniform Act. A scholarly argument over this action and the role of the states in the safety regulation of aviation has continued to the present time.

In 1940, Part 60 of the Civil Air Regulations, Air Traffic Rules, had been amended to require all airmen and all aircraft to be certified by the Federal Government. Subsequently, the Attorney General of the United States advised the Secretary of Commerce:

"Clearly the authority granted by the Act with respect to the interstate operation of aircraft extends equally to intrastate operation insofar as such operation is on a civil airway or directly affects or endangers the safety of interstate, overseas or foreign air commerce. Determination of the question when intrastate operation is on a civil airway and when it directly affects or endangers such commerce must be made by the administrator upon the basis of fact

31 Stern, The Commerce Clause and the National Economy, 1933-1946, 59 Harv. L. Rev. 645 (1946), and cases discussed therein.


33 Mr. George Logan, Minority Report, 12 J. Air L. & C. 268 (1941).


35 14 Code Fed. Regs. (Cum. Supp. 1948). "§60.30 Pilot certificates. No person shall pilot a civil aircraft in the United States unless such person holds a valid pilot certificate issued by the Administrator... §60.31 Aircraft certificate. No flight of civil aircraft, other than a foreign aircraft whose navigation in the United States has been authorized according to law, shall be made or authorized to be made in the United States unless there is outstanding for such aircraft a valid aircraft airworthiness certificate, or in violation of any term, condition, or limitation of such certificate."
It had long been advocated that any intrastate flight could at any time endanger interstate commerce, and therefore all flight was subject to Federal Regulation. The following reasons were advanced: (1) All unobstructed airspace is navigable. Therefore, there is no way to ascertain when and under what conditions an intrastate flight might possibly be in proximity to and thus endanger a plane engaged in interstate commerce. (2) All planes must use airports, and follow the same traffic pattern when landing or taking off. Obviously, during such times there necessarily is the most opportunity for local flying to interfere with interstate commerce. (3) Although the pilot is subject to direction from the ground, he is essentially a free agent in control of the aircraft and may change his plan of flight from intra- to interstate (or vice versa) at will. The decisions handed down in *Rosenhan v. U.S.* and *U.S. v. Drumm* represent judicial affirmation of the application of Part 60 of the Civil Air Regulations to aircraft and airmen participating in interstate flight whether off or on civil airways and intrastate flight across or on civil airways. These decisions give poignancy to the argument of those favoring exclusive federal regulation. The cases also are significant in the light of the fact that the Conference of Commissioners on Uniform State Laws in 1943 withdrew the Uniform Acts of 1922, 1930 and 1935 from the list of approved and recommended legislation.

**Postwar Developments**

The impetus of World War II to the growth of aviation is reflected in the increase in the number of pilots in the United States from 63,113 in 1940 to 455,000 in 1947. During the same period, the number of aircraft increased from 17,928 to approximately 100,000. The problem of maintaining proper discipline by the enforcement of safety rules and standards became correspondingly acute, and eventually the stage was reached where either through an unwillingness on the part of Congress to appropriate money, or because it did not seem wise to seek the required appropriations, the Federal Govern-

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37 These circumstances were discussed at the First National Legislative Air Conference held Aug. 18-20, 1930. See 1 J. Air L. 447 (1930).
38 *Rosenhan v. United States*, 181 F. 2d 932, 1 Avi 1066 (1942), *cert. denied*, 318 U.S. 790 (1943) (Aircraft certified by state of Utah prohibited from use in purely intrastate flight on civil airway in absence of airworthiness certificate of Fed. Govt.).
39 *United States v. Drumm*, (D. C. Nev.) 55 F. Supp. 151, 1 Avi 1088, 1177 (1944) (Pilot and airplane in interstate flight must have valid pilot and airworthiness certificates respectively, issued by Fed. Govt. even though flight may not touch upon civil airways). The Drumm and Rosenhan cases are discussed in Elwell, *Enforcement of Air Safety Regulations*, 14 J. Air L. & C. 318, 320 (1947). These cases were not unprecedented. See Note, Libeling an Airplane for Violation of Air Safety Regulations, 11 Air L. Rev. 437 (1940).
40 1943 *HANDBOOK OF NAT'L CONF. OF COM'RS ON UNIFORM STATE LAWS* 66.
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ment's enforcement program outside the certificated air carriers became wholly inadequate. As of January 1, 1948, there were 668 cases involving violation of Civil Air Regulations pending before the Board, and many were more than six months old. The number of such cases on the docket has recently increased substantially. Long before the recent period, however, the necessity for working out a cooperative program between the states and the Federal Government had become apparent. In certain states where the Civil Air Regulations were being flagrantly violated with resulting loss of lives, the authorities determined to take positive action.

One proposal for remedying the situation was embodied in the model State Aeronautics Department Act drafted by representatives of the Council of State Government, NASAO, and the CAA which authorized the state aeronautic agency to promulgate safety rules and regulations. The 1946 revision of this Act provided that the state aeronautic agency should not adopt any rule or standard inconsistent with or contrary to federal rules and standards (Section 12). This model Act also made careless and reckless operation of aircraft, and operation of aircraft while under the influence of intoxicating liquor, narcotics or other habit-forming drugs a misdemeanor (Section 13). Section 13 was based upon the theory that by fine and/or imprisonment, the states could adequately diminish the number of violations. An analysis reveals that private and student pilots, because of their numerical superiority, were involved in the greatest number of cases. The draftsmen of this proposed legislation sought to obtain a uniform interpretation of Section 13 by including in its language “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.” However, a majority of the states which passed reckless flying statutes during 1947 doubted the constitutionality of this provision and omitted it from

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42 CAA, Safety Enforcement Guide (1947); Rathje, Constitutionality of State and Municipal Air Traffic Control, 15 J. Air L. & C. 108 (1948) (Failure of Congress to grant funds for enforcement personnel required state and municipal action).


44 Dinu, State Aviation Officials, Duties and Activities, 14 J. Air L. & C. 309, 312 (1947).


46 Ibid.


49 See note 51 infra.
Experience has shown that it is difficult to obtain uniformity in regulation through the enactment of “uniform acts” by the states. Section 13 as enacted by two states and the language of the original section of the model Act are set forth below in footnote. A comparison will show conclusively that a so-called uniform act, after being processed in the legislative mills of the 48 states is no longer uniform. That the new Uniform Act in no way solved the problem is further illustrated by the fact that in one of the first state cases arising under Section 13 the defendant interposed the defense that he possessed a federal airman’s certificate, was flying a federally certificated aircraft on a federally designated civil airway and was, therefore, not subject to state regulation but subject to exclusive federal jurisdiction.

It is apparent then that none of the solutions offered to date has furnished a complete answer to the problem. In the first place, the extent to which the states can regulate aviation safety is questionable. Secondly, experience has shown that the goal of uniform laws is not attained as the 48 states do not enact similar laws, rules and regulations. Attempts by states to adopt the rules promulgated by the Fed-

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50 §13 was adopted by 17 states during 1947. Of this number 11 states omitted from their laws any reference to federal standards. 2 CCH Av. L. Rep. §§ 24,021-24,983; States Cooperating in Uniform Laws to Foster Civil Aviation, CAA Press Release (Feb. 25, 1948). Flying while intoxicated has been declared a misdemeanor in several states for many years. Note, Existing State Laws on Flying While Intoxicated, 9 Air L. Rev. 437 (1940).

51 Ohio. Whoever operates an aircraft on the land or water or in the airspace over the State of Ohio in a careless or reckless manner so as to endanger, or be likely to endanger, any person or property, or in willful or wanton disregard of the rights or safety of others, shall be punished by a fine of not more than $500.00 or imprisonment in the county or municipal jail for not more than six months, or both such fine and imprisonment. Senate Bill No. 221, Ohio Laws 1947, 2 CCH Av. Law Rep. §24,681.

North Dakota. Reckless Operation of Aircraft—No person shall operate an aircraft in the air or on the ground or water while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, nor operate aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger life or property. Senate Bill No. 40, North Dakota Laws 1947, 2 CCH Av. Law Rep. §24,663.

Uniform State Aeronautics Commission or Dept. Act §13. Reckless Operation of Aircraft. “It shall be unlawful for any person to operate an aircraft in the air or on the ground or water while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of this section, the court in determining whether the operation was careless or reckless shall consider the standards for safe operation of aircraft prescribed by the federal statutes or regulations governing aeronautics.” (Emphasis added).


52 Aviation News, June 2, 1947, p. 15. The alleged unlawful flight occurred in the vicinity of Knoxville, Tenn. The judge hearing the case took it under advisement. To the writer’s knowledge, no final decision has been rendered.
eral Government face legal and practical obstacles in that the federal rules are not static. It is doubtful if a state agency could, and certainly a state legislature could not, conveniently keep its rules currently in conformance with the federal changes. If such a result were achieved, the interpretations of these rules, which are frequently as important as the rules themselves, would not be uniform nor could uniform interpretations be legally imposed. Furthermore, penalties imposed in one state would not prevent the activities of the pilot in another. In the case of a commercial pilot, financial interest alone would be sufficient inducement for him to exercise the privileges of his pilot certificate elsewhere. Action taken by one state would not, therefore, protect the residents of another state. If the Federal Government is to achieve the fundamental objective of the federal aviation program, it will, of necessity, in many cases, have to take action independently of action taken by state authorities. The Civil Aeronautics Board (CAB) has made it clear that flagrant violations of the Civil Air Regulations, such as flying while intoxicated, will not be treated with the same degree of leniency that one often finds in automobile cases. An objection also voiced by some is that making a violation a misdemeanor is a backward step from the position taken by the Federal Government when it specifically imposed civil penalties for all violations of the Civil Air Regulations. The placing of violations in the criminal category neither adds to their effectiveness nor facilitates their enforcement. Criminal penalties merely place a stigma on airmen for which there is no compensating advantage either to the aviator himself or to the public safety.

**Recent Court Decisions**

In 1944, Mr. Justice Jackson, in his concurring opinion in *Northwest Airlines v. Minnesota*, stated:

"Students of our legal evolution know how this Court interpreted the commerce clause of the Constitution to lift navigable waters of the United States out of local controls and into the domain of federal control. Air as an element in which to navigate is even more inevitably federalized by the commerce clause than is navigable water. Local exactions and barriers to free transit in the air would neutralize its indifference to space and its conquest of time. Congress has recognized the national responsibility for regulating air commerce. Federal control is extensive and exclusive. Planes do not wander about the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in

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53 *Air Safety Enforcement Guide* (CAA, Jan. 15, 1947) 4, 42.
54 The policy of the CAA enforcement program is discussed in Elwell, *Enforcement of Air Safety Regulations*, 14 J. Air L. & C. 318, 327 (1947).
55 *Hall, Principles of Criminal Law* (1947) 245. "...the punishment of inadvertent harm doers cannot be justified on the grounds that it stimulates care by other persons. Finally, as to the negligent individuals who are subjected to punishment, both its leniency and its unrelatedness to the causes of their inadvertence or inefficiency render it very unlikely that any correction whatever results. On the contrary, recent psychological testing indicates rather definitely that it is unproductive of care or efficiency in the person punished."
the hands of federally certificated personnel and under an intricate system of federal commands. . . Its (aircraft) privileges, rights and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.”

The Supreme Court subsequently gave partial affirmation to this statement. In Causby et ux v. U.S., a case in which the constitutionality of the Civil Air Regulations was not in issue, the court noted that “airspace is a public highway” and that the “Civil Aeronautics Authority has, of course, the power to prescribe air traffic rules.” Justices Black and Burton, in a dissenting opinion, stated that “Congress has given the Civil Aeronautics Authority exclusive power to determine what is navigable airspace subject to its exclusive control.”

Recently a state appellate court interpreted these cases to mean:

“Inasmuch as the United States has declared itself to be possessed of complete and exclusive national sovereignty in all of the airspace above the United States, and inasmuch as 'sovereignty' means 'supreme dominion,' the United States thereby has reserved to itself the right 'when necessary for take-off or landing,' to grant to aviators licenses to reasonably use the airspace below the 'navigable airspace.'”

It would seem that the language of these opinions has eliminated the necessity for the definition of the “twilight zone” of aviation activities over which the states legally could exercise safety regulation. Federal regulation is intensive and exclusive and leaves no room for state action. This statement is not meant to imply that the states cannot exercise their police powers to regulate local matters touching upon or indirectly affecting flight activities, such as the location and regulation of the use of airports, and the prohibition of stream pollution by seaplanes, etc.

It would therefore seem to follow that if the

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60 Id. at 272 (dissenting opinion). See Bethlehem Steel Co. v. New York Labor Relations Board, 330 U.S. 767 (1947) (Action by N. Y. L. R. B. under a state act similar to the N. L. R. A., certifying a union previously refused certification by the N. L. R. B. held, invalid as in conflict with the N. L. R. A. and the Commerce Clause of the Fed. Const.). At p. 771 of the decision the court stated: “Congress has not seen fit to lay down even the most general of guides to construction of the Act, as it sometimes does, by saying that its regulation either shall or shall not exclude state action . . . Our question is primarily one of the construction to be put on the Federal Act. It has long been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting.” (Emphasis added.) It is submitted that this statement could apply with even greater force to the Civil Aeronautics Act. See Ryan, note 26 supra.
61 Antonik v. Chamberlain, Ohio Ct. Appeals, 9th Jud. Dist. (Dec. 23, 1947), 2 Avi 14,500, 14,504 (Lower ct. holding that private airport was nuisance per se and that flights therefrom were trespasses in airspace of neighboring property owners reversed on appeal); Accord, Crew v. Gallagher, Pa. Sup. Ct., East. Dist., 2 Avi 14,513 (Dec. 15, 1947) (Municipality may exercise police powers to prohibit flight activities from lake used as source for municipal water supply) with Salem Air Service v. Devaney, Cir. Ct. Ore., 2 Avi 14,432 (Mar. 5, 1947) (Owner of airplane certificated by Fed. Gov't. cannot be compelled to register such aircraft with state authority under state statute requiring registration and licensing of all resident aircraft).
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states are to exercise regulatory powers over the activities of aircraft and airmen they can do so only with the express permission of the Federal Government.

Before a solution of the problem previously developed can be determined, the relationship of these decisions to recent statements of policy concerning the enforcement of civil air regulations must be established.

POLICY STATEMENTS

The Fifth National Aviation Clinic held in November 1947, approved Bill of Policy 20-A embodying principles which a few weeks previously had been endorsed by NASAO. The first three sections of the bill recognized that adequate enforcement of the safety rules and regulations relating to aviation requires state participation and that the duplication of federal regulation by states is undesirable. The rest of the bill follows:

“Section 4. The Congress of the United States is respectfully requested to amend the Civil Aeronautics Act of 1938:

(a) To authorize State Courts to impose penalties and to authorize the Courts of any State or any agency of a State authorized by the State after notice and opportunity for hearing to suspend in whole or in part for periods not in excess of 90 days any airman certificate issued by the Federal Government for violation of Civil Air Regulations prohibiting careless or reckless operation of aircraft or regulating the minimum safe altitude of flight.

(b) To provide that the jurisdiction exercised by the Court or agency of any State pursuant to these delegations shall be concurrent with that of the jurisdiction of a Federal Court or the Civil Aeronautics Board as the case may be.

“Section 5. In the event Congress takes parallel action with respect to Section 4 of this Bill, then the Clinic urges that the several states repeal all existing safety regulations previously promulgated by them.”

The President’s Air Policy Commission, which reported January 1, 1948, under the title “State Enforcement and Participation in Federal Aviation Policy,” recommended:

“The postwar expansion of personal aviation has made impossible the direct Federal enforcement of Civil Air Regulations without the creation of a large and cumbersome Federal policing agency. Rather than expanding the Federal payroll, the Commission recommends that the Civil Aeronautics Act be amended to authorize State aviation officials or courts to enforce the noncarrier safety regulations of the Federal Government. We emphasize, however, our belief that the Government should retain its power to promulgate Civil Air Regulations in order to preserve national uniformity.”

Following the recommendations of the Fifth National Aviation Clinic and of the President's Air Policy Commission, the Congressional Aviation Policy Board, in its report dated March 1, 1948, in Recommendation 24 (b) concluded that:

"The Federal Government should continue to have exclusive jurisdiction over the establishment of safety regulations applicable to all classes of aircraft and airmen, but the increase in non-air carrier flying makes it desirable to delegate the administration and enforcement to non-Federal personnel by . . . Amending the Federal laws to give concurrent jurisdiction to the State courts and aviation agencies to enforce the non-air-carrier safety regulations of the civil aeronautics authorities, including the right to suspend airmen's certificates.

"The essence of effective enforcement of safety regulations is the speedy and just handling of alleged violations. The need for additional enforcing services to achieve this result will increase in proportion to the growth of aviation. The several States share with the Federal Government the responsibility of protecting the safety of the citizens. It is essential that a uniform and simple procedure be used by established local enforcing agencies in this important task. This objective can be accomplished without relieving the Federal Government of its responsibility and without unduly increasing the demand for additional Federal personnel by the Congress giving concurrent jurisdiction to the State courts and aviation agencies to enforce the non-air-carrier safety regulations of the Federal civil aeronautics authorities."

All these statements recognize that uniformity in regulation can be maintained only so long as the Federal Government exclusively prescribes rules and regulations of flight which apply on a national basis. These statements also recognize that the supervision of non-air-carrier flight activities is essentially a local function and therefore the respective groups recommend that the onus of enforcement be shared through direct concurrent participation by the state agencies with the CAA and the CAB, and the concurrent use of the state courts with the federal courts. These groups have accordingly asked Congress to pass legislation embodying these recommendations.

LEGAL PRECEDENT

There is legal precedent for such action. The Supreme Court has held that state agencies and state officers may be authorized by Congress to execute and enforce federal laws.65

64 Report of the Congressional Aviation Policy Board, National Aviation Policy, Recommendations 24(b), 21 (Mar. 1, 1948), p. 208 infra this issue of the Journal. The recommendation that private pilots and local, non-commercial flying should not be regulated by the CAB, which is concerned essentially with the economic regulation of air carriers, is not new. Representatives of the ICC especially pleaded for such a plan before the Committee largely responsible for the drafting of the Civil Aeronautics Act. See Hearings before the Committee on Interstate and Foreign Commerce on H. R. 9738, 75th Cong. 3rd Sess. (1938) 50.

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acting under such authority are agents of the Federal Government. Their actions are permissive. They may not be coerced or punished for refusing to perform their duties. They may execute such duties unless prohibited from so doing by the constitution or legislation of the state.66 Constitutional prohibitions against dual office holding usually do not apply if no oath of office is taken, no salary paid, no tenure of office prescribed, and no formal commission with seal is issued.67 In order for federal authorization to be effective any prohibitory legislation must be repealed and in lieu thereof the states should enact legislation clarifying the status of state agencies which would have concurrent jurisdiction with the CAA and the CAB and sanctioning their activities under federal authorization.68

Furthermore, the Supreme Court in 1946 in the decision of Testa v. Katt69 specifically held that “a state court cannot refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers.”70 Prior to this decision, state courts, by applying the rules of conflict of laws, had entertained civil

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66 Dallemagne v. Moisan, 197 U.S. 169, 174 (1905). “Power may be conferred on a state officer, as such to execute a duty imposed under an Act of Congress, and the officer may execute the same, unless execution is prohibited by the constitution or legislation of the State.”

67 U.S. v. Hartwell, 6 Wall. (U.S.) 385, 398 (1867). “An office is a public station, or employment conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties.”; Metcalf & Eddy v. Mitchell, 269 U.S. 514, 520 (1926). “Where an office is created, the law usually fixes its incidents, including its term, its duties and its compensation.”; U.S. v. Germaine, 90 U.S. 588, 589 (1879); U.S. v. Mounet, 124 U.S. 303, 307 (1887); U.S. v. Smith, 124 U.S. 525, 528 (1888); Helvering v. Powers, 293 U.S. 214, 219 (1934); Bouvier’s Law Dictionary 1002 (Baldwin’s Cent. Ed. 1946); CLARK, THE RISE OF A NEW FEDERALISM 87 (1938); MECHEN, A TREATISE ON THE LAW OF PUBLIC OFFICES AND OFFICERS §§1–9 (1890). At p. 4 the author quotes the following language from the opinion of Judge Cooley in Throop v. Langdon, 40 Mich. 672, 682 (1879): “The officer is distinguished from the employee, in the greater importance, dignity and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to be called to account as a public offender for misfeasance or non-feasance in office, and usually, though not necessarily, in the tenure of his position. In particular cases, other distinctions will appear which are not general”; 35 WORDS & PHRASES 198, 200 (Perm. Ed. 1940, Supp. 1947).

68 Kauper, Utilization of State Commissioners in the Administration of the Federal Motor Carrier Act, 34 Mich. L. Rev. 37, 81 (1935). See cases and statutes cited and discussed at p. 83 where the author states, “It would be the part of wisdom . . . for state legislatures to . . . expressly authorize their commissions to exercise any powers or authority that may be conferred upon them by the Federal Government . . .”

69 330 U.S. 386 (1946) (Action to recover triple damages under the Emergency Price Control Act. Statute granted concurrent jurisdiction for such suits to the state and Federal courts and authorized an action to be brought in any court of competent jurisdiction. The U.S. Supreme Court held that the Conn. courts must accept jurisdiction of suit arising from violation of Act in that state); Notes, 9 Ga. B. J. 463 (1947), 15 Geo. Wash. L. Rev. 481 (1947), 60 Harv. L. Rev. 968 (1947).

suits arising under federal laws. The *Testa v. Katt* case is significant in that it holds that state courts must also enforce penalties prescribed for the violation of federal laws if Congress orders them to do so. In this decision, the Supreme Court stated that the supremacy clause of the Constitution, Article VI, Section 2, was explicit, absolute, and controlling when it stated “The judges in every state shall be bound . . . (by the laws of the United States) . . . anything in the constitution or laws of any state to the contrary notwithstanding.”\(^{71}\) Quoting precedent,\(^{72}\) the court interpreted its previous decisions to mean that the supremacy clause placed not only the power but also the duty upon state courts to enforce federal laws. The state courts must, however, have adequate jurisdiction over purely local law.\(^{73}\)

This method of dealing with the problem, state participation in the enforcement of the Civil Air Regulations, was advocated by Mr. Oswald Ryan of the CAB in a speech which he made in St. Louis before the meeting of the NASAO on November 6, 1945.\(^{74}\) A strong proponent of this idea is Mr. Merrill Armour, Assistant Chief Examiner, CAB, formerly Assistant General Counsel, Safety, CAB, who was largely responsible for the passage of Policy Bill 20-A at the Fifth National Aviation Clinic. Mr. Theodore P. Wright, former Administrator of Civil Aeronautics, in an effort to better the air safety regulation enforcement situation, urged the states to enact their own reckless flying statutes and to cooperate in a joint federal-state enforcement program. The Board, on the other hand, has never given wholehearted support to the proposal, but has recommended that a joint committee composed of representatives of NASAO, the CAA, and the CAB be formed to explore the possibilities of the proposal.\(^75\)

**PROPOSED SOLUTION**

The solution proposed herein has all of the advantages and none of the disadvantages of any of the prior attempts to obtain uniformity. In the first place, it insures uniformity of rules and regulations. Only federal rules and regulations are involved. Decentralization would

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\(^{71}\) Id. at 391.


\(^{74}\) Address of Mr. Oswald Ryan, Member, CAB, to NASAO, St. Louis, Mo., Nov. 6, 1945. Letter from Mr. Merrill Armour, April 9, 1948.

\(^{75}\) *Ibid.* It is unfortunate that the CAA and the CAB at times have worked at cross purposes. While the CAB was proposing a cooperative program for the enforcement of the Civil Air Regulations the CAA, because immediate action was required, was actively encouraging the states to enact and enforce their own reckless flying statutes. See Elwell, *Enforcement of Air Safety Regulations*, 14 J. Air L. & C. 318, 330 (1947); Plaine, *State Aviation Legislation*, 14 J. Air L. & C. 333, 338 (1947).
occur in enforcement.\textsuperscript{76} It is obviously more practical and less costly not to duplicate the existing competent state law enforcement set-up.\textsuperscript{77} Aircraft owners and pilots would be protected from the evils of conflicting state rules and laws and would be assured that action would not be taken by more than one disciplinary body. Under the Civil Aeronautics Act, a safety certificate holder is subject not only to action against his certificate instituted by the Administrator before the CAB but also to prosecution in a Federal Court for the collection of a civil penalty in the event that he does not agree to the compromise offer which the Administrator, in his discretion, may make to him.\textsuperscript{78} Under the present laws, a pilot may find himself subject to prosecution by the federal authorities, state authorities, and possibly municipal authorities. Inasmuch as some states require a state airmen's certificate, the pilot may be subject to fine and imprisonment by the state authorities, and also may be grounded by having action taken against his state registration certificate. The principle inherent in the proposed solution eliminates this duplication and confusion and achieves the goal toward which both the Federal Government and the states are directing their efforts.

In the light of the recommendations by the Congressional Aviation Policy Board and the President's Air Policy Commission, the Bill of Policy of the Fifth National Aviation Clinic, and the current lack

\textsuperscript{76}McCracken, Special Problems in Aeronautic Legislation, 2 Air L. Rev. 479, 482 (1931). It may well be that decentralization of the enforcement of air traffic rules through the cooperating state officials would be more effective, and in the future when flying becomes more general, work less hardship on operators than would federal enforcement. Authority for state officials to enforce the air traffic rules would presumably have to be obtained by Congressional legislation consenting to state enforcement.\textsuperscript{77} The Supreme Ct. recognized this fact as long ago as 1835. See U.S. v. Bailey, 9 Pet. (U.S.) 238, 243 (1835), "To deny these powers [to authorize state agents to exercise federal functions] in the federal government would be to create a necessity for a great multiplication of federal officers to discharge duties now well performed by state functionaries."\textsuperscript{78} Letter of the Director of the Bureau of the Budget Construing Reorganization Plans No. III and No. IV, Aeronautical Statutes, supra note 26 at 87. In addition, the Civil Aeronautics Authority issued a statement June 29, 1940 setting forth the jurisdiction of the Administrator of Civil Aeronautics over the safety provisions of the Act as affected by the Presidential Reorganization Plans III and IV. The federal safety enforcement program presently follows the plan outlined in this statement, the pertinent portion of which is quoted here.

"The Administrator will also have substantial jurisdiction over the enforcement of the safety provisions of the Act and of the Civil Air Regulations. There are in use at present five methods of enforcing civil air regulations: (1) a reprimand, (2) the transmission of information concerning violations to the Department of Justice for the initiation of proceedings to collect a civil penalty, (3) the compromise of a civil penalty, (4) the suspension or revocation of a certificate, and (5) the denial of the renewal of a certificate upon the expiration thereof.

"The first three of these methods of enforcement will be exercised by the administrator, although in case of methods (2) and (3) it is anticipated that some channels for the interchange of comments upon the proposed action between the Board and the Administrator will be established. Under such an arrangement, if the Administrator determines to recommend that a civil penalty be imposed upon a violator, the Administrator will transmit the reported violation to the Department of Justice, after consulting with the Board, for the initiation of judicial proceedings to collect the civil penalty incurred. Also, it will be the duty of the Administrator, after consulting with the Board, to accept or reject any compromises of civil penalties which may be offered."
of enforcement of the Civil Air Regulations, it appears that Congressional action authorizing State agencies, judicial and administrative, to enforce the Civil Air Regulations would be a major step forward in attaining uniformity in and enforcement of air safety regulations. This could be accomplished by a simple amendment to Section 903, or in the alternative, Section 1106 of the Civil Aeronautics Act. The following language might be used:

A. The trial of any offense arising from the violation of the provisions of Section 610(a) of this Act shall be held in any court of competent jurisdiction. The state and territorial courts shall have concurrent jurisdiction with the federal district courts over such suits.

B. The courts of any state, possession or territory of the United States are hereby granted concurrent jurisdiction with the federal courts; and those duly authorized state law enforcement and aviation regulatory agencies as the Administrator of Civil Aeronautics (or Civil Aeronautics Board) may from time to time hereinafter designate, are hereby granted concurrent jurisdiction with the

"Method (4) is to be exercised by the Board whether such action is taken after the statutory hearing or on a waiver of hearing by the violator. It is expected, however, that, in most cases, the Administrator's staff will present the evidence to the Board or its examiners in suspension and revocation cases where the suspension or revocation is recommended by the Administrator. If the Administrator or his staff determines that the holder of a safety certificate has failed to maintain the original qualifications for the certificate and that the suspension or revocation of the safety certificate is necessary, it will be his duty to bring the matter to the attention of the Board in order that it may take the necessary action to suspend or revoke the certificate.

"On the other hand, if facts come to the attention of the Board from sources other than the Administrator (such as through the investigation of accidents) which indicate the necessity for suspending or revoking the safety certificate, the Board will, of course, initiate the proper proceedings on its own motion. The temporary suspension of certificates in emergency, as authorized by the Act, may be effected by the Administrator. Promptly after such a temporary suspension has been effected, an opportunity for a hearing before the Board or one of its examiners must be given to the holder of the certificate.

"While method (5) is to be exercised by the Administrator, a petition for a reconsideration of a denial by the Administrator of the issuance or renewal of an airman certificate is to be heard and decided by the Board, although it is expected that the Administrator's staff is to present evidence to the Board at the hearing. All such petitions should, therefore, be filed with the Board.

"It will be the duty of the Administrator, through his inspection staff, to investigate violations of the safety provision of the Act and of the safety standards, rules, and regulations, and through his legal staff in Washington, to take such of the above-mentioned steps as seem to him to be necessary.

"In performing his function relating to air safety, the Administrator will be bound by the safety standards, rules, and regulations prescribed by the Board. The Board will determine and issue in the form of regulations, the qualifications for securing the various types of safety certificates and will prescribe the safety standards, rules, and regulations which govern the operation of aircraft and other aeronautical activities. Of course, the Administrator may, and undoubtedly he will, recommend to the Board the issuance and amendment of such rules and regulations as his experience indicates to be necessary. On the other hand, the Board will take the initiative in prescribing new or amended safety standards, rules, and regulations where the Board feels that such action is required. Thus, in so far as safety regulation is concerned, it can be said generally that the Board prescribes the standards, rules, and regulations, and that the Administrator is primarily charged with the taking or recommending action to carry them into effect.

Statement Released by the Civil Aeronautics Authority, June 29, 1940, 1 CCH Av. L. Rep. 2233.


Administrator of Civil Aeronautics and the Civil Aeronautics Board, as the case may be, after notice and opportunity for hearing as required by law to:

1. Suspend any airmen's certificate for violation of the Civil Air Regulations promulgated under Section 601 of this Act for a period not exceeding one year;
2. Compromise any civil penalty authorized to be assessed under Section 901 of this Act.

There are several reasons why it would be advisable to word the amendment in such general terms. In the first place, by not specifically singling out the non-air-carrier violations for prosecution by the states, any charge that this is class or arbitrary legislation would be less likely and peace more probably be maintained between private pilot groups and the air carriers. Secondly, the present gentlemen's agreement between the CAA regional enforcement personnel and the state authorities, whereby only non-air-carrier violators are prosecuted under the state reckless flying statutes, would be continued. This type of federal-state cooperation should be fostered and encouraged if an enforcement program is to be equitable and effective. In this manner, air-carrier violations which usually require more detailed procedure and technical proof would continue to be processed through federal channels. Thirdly, the language permits a flexible program to be fostered. In those states which have no aeronautical regulatory agency, or where for political reasons the efforts of the state agency are ineffective, the CAA-CAB enforcement attorneys could continue to carry the burden of maintaining law and order in the air. NASAO could make an additional contribution by fostering state-federal cooperation to carry out the plan and in the active organization of honest, sincere and enlightened aeronautical agencies in all of the 48 states.

State legislation could take the following form:

Be it enacted by the State of

Sec. 1. The State Department of Aeronautics (or proper aeronautics regulatory body) or the members thereof, and the State, county, and municipal police, whenever authorized by an Act of Congress of the United States to exercise any power or authority over aircraft and airmen, shall have full power and authority to administer the provisions of such Act within the State of , and in cases and proceedings authorized under such Act, in cooperation with the Administrator of Civil Aeronautics and the Civil Aeronautics Board.

81 The extraordinary remedies of compulsory order, §1002(c) of the Act, 52 Stat. 1018, 49 USCA §642(c) (Supp. 1947); mandatory injunction, §1007, 52 Stat. 1025, 49 USCA §647 (Supp. 1947); libel in rem, §§903(b) (1), 52 Stat. 1017, 49 USCA §823(b) (1) (Supp. 1947); and the imposition of a criminal fine or imprisonment, §§902(a)- (c), 52 Stat. 1015, 49 USCA §622, are retained by the Administrator and Board. Cooperative undertakings between state and federal agencies have notoriously been more successful than those between federal agencies. See authorities cited supra note 65.

82 The NASAO cannot work alone. Although a few informal conferences have been held, the Board has never invoked the authorization for federal-state cooperation contained in §205(b) of the Act, 52 Stat. 984, 49 USCA §425(b) (Supp. 1947).
Sec. 2 (Specific citation to any statute interfering with the carrying out of functions authorized in Sec. 1) are hereby repealed.

Sec. 3 (Specific citation to all State aviation safety regulations) are hereby repealed.

A bill, S. 2452, to carry out Recommendation 24 (b) of the Congressional Aviation Policy Board was recently introduced in Congress.\footnote{83 S. 2452, 94 Cong. Rec. 4194 (April 6, 1948) and H. R. 6147, 94 Cong. Rec. 4320 (April 7, 1948).}
The scope of this article does not permit an extended analysis of this proposed legislation. Instead of accomplishing needed revision of the Civil Aeronautics Act, however, S. 2452 would seem to increase the present unwieldiness of the statute. Until the Act is revised with the authority for air carrier safety regulation and enforcement under one title, non-air carrier safety regulation and enforcement placed under another title, and the authority, duties, and responsibilities of the Board and Administrator clearly defined, it is submitted that a brief, succinct amendment phrased in general language is to be preferred.\footnote{84 See notes 78 and 81 supra. Bryce, The Conditions and Methods of Legislation, 31 Rep. N. Y. S. B. A. 153, 162 (1908). "As respects Form, you, as lawyers, know that a statute ought to be clear, concise, consistent. Its meaning should be evident, should be expressed in the fewest possible words, should contain nothing in which one clause contradicts another or which is repugnant to any other provision of the statute law, except such provisions as it is expressly intended to repeal."; Read and MacDonald, Cases and Materials on Legislation c. 6 (1948) (Legislative Language, Its Arrangement, and the Mechanics of Drafting); Sutherland, Statutes and Statutory Construction §4502 (Horack, 3d Ed. 1943).}

**CONCLUSION**

The solution offered herein is admittedly not perfect. Although many problems will arise in carrying out a program of this kind, it is felt that none of these problems will be of such a serious nature that they cannot be solved by the cooperative efforts of NASAO, the CAA, and the CAB. The present policy of conducting law enforcement clinics in which CAA inspectors, enforcement attorneys, state aviation directors and state law enforcement personnel discuss problems and procedure in aviation safety regulation should be continued. This sort of federal-state cooperation is necessary if the proposed plan is to be effective.

With a solution available to a problem which has plagued aviation from its start, it is hoped that Congress will take steps to amend the Civil Aeronautics Act as soon as possible.