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## State and Local

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# STATE AND LOCAL

Department Editor: Madeline C. Dinu\*

## NASAO ACTIVITIES

### SEVENTEENTH ANNUAL MEETING

**T**HE 17th Annual Meeting of NASAO, held at Boston, Mass., October 6-8, 1948, was highlighted by developments of excellent possibilities for federal-state-local rapprochement. The chief emphasis, on the governmental levels, was lodged in enforcement and state economic regulation of air carriers, although state taxation in aviation, the G. I. Flight Program, the Federal Airport Program, and Aviation Education also received considerable attention.

Legal implications in amending federal legislation to authorize the states to enforce the federal Civil Air Regulations, and the integration of state air-carrier routes into the federal pattern were discussed in both formal and informal sessions. Joint committees have been set up to work out the details upon an agreed implementation. Because of prospective legislation in both state legislatures and the federal Congress commencing next January, immediate work on these two subjects has been promised.

Fifteen substantive Resolutions were adopted. Several of the more important follow:

#### SMALL AIRPORTS—75% ALLOCATION—No. 7

*Whereas* many small communities are unable to finance the construction of airports as provided under the Federal Airport Act of 1946 and

*Whereas* small airports are desirable and necessary

*Therefore Be It Resolved* that the Federal Airport Act of 1946 be amended to permit the Federal government to supply up to 75% of the allowable costs of Class I (small) airfields as designated by the CAA classification, such Federal contribution not to exceed \$25,000.00.

#### ENFORCEMENT—No. 14

*Whereas* the problem of enforcement of federal and state safety regulations has reached a point of grave concern to all governmental units, due to public indignation and protest against delayed and ineffectual procedural systems permitting violators the right to pilot aircraft despite known and provable offenses against the peace and safety of the public, and

*Whereas* it is in the best interests of good government and protection of the public to use established judicial processes throughout the entire country, its territories, possessions, and the District of Columbia, in enforcement of safety regulations.

*Now Therefore Be It Resolved* by NASAO that appropriate legislation be drafted by a joint committee composed of members of CAA, CAB and NASAO, concerning necessary amendments to the Civil Aeronautics Act of 1938, as amended, which would enable the individual states to assume their proper role in the enforcement of safe flying regulations.

*Be It Further Resolved* that such joint committee assemble at the earliest possible moment.

#### AIR MAIL STAR ROUTES—No. 15

*Whereas* the value of expeditious mail service to the commerce of the nation has been demonstrated by the utilization of air mail service to date and

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\* Special Assistant Attorney General for Aviation, Michigan.

*Whereas* such service is not available to many small communities of the nation now served by star route contracts

*Be It Resolved* that the development of air mail star routes be fostered and encouraged both as an aid to commerce and as an adjunct to the development of Feeder Line air transport, and that the Post Office Department request adequate funds and authority to accomplish this purpose.

#### BORDER CROSSINGS—No. 17

*Whereas* in certain areas of the United States the personal aircraft is used in air travel involving the crossings of international borders, and

*Whereas* such use naturally occurs predominantly on Sundays and holidays and

*Whereas* the prevailing regulations of U. S. Customs and Immigration impose an inequitable charge upon each operator of each aircraft on such days in the form of full overtime wages for Customs and Immigration employees

*Therefore Be It Resolved* that the U. S. Customs and Immigration establish a reasonable maximum or pro-rated charge to be levied against the aircraft operator.

One of the encouraging aspects of the Boston NASAO meeting was the invitation extended by CAB Chairman, Mr. J. J. O'Connell, for the states to assist the CAB in reviewing policy on the feeder carriers whose certificates will be expiring during the coming year, at which time the states' views will be given great consideration. Analyzing possible plans, Chairman O'Connell stated:

"... one which has found favor with several State officials with whom the Board has exchanged ideas, would be to make provision in the Civil Aeronautics Act for intervention by the States as a matter of right in route proceedings. It is, of course, contemplated that intervening States would be limited to those having a legitimate basis for participation, as determined by the scope and subject matter of the proceeding. The State officials favoring this idea emphasized that it affords a much deserved status hitherto denied to sovereign States. Moreover, they felt that such status would furnish ample basis for seeking judicial review of Board decision. Thus far, the Board has followed the practice of permitting States and municipalities to intervene in all route proceedings directly affecting them. This is a settled policy in which no change is contemplated. The States can be sure that, even without a change in the Act, they will continue to have a full opportunity to appear and present their cases.

"However, since permissive intervention does not give the State such status as entitles it to judicial review, the idea of giving intervenor status to the States appeals to me as a proper, though belated, recognition of the legitimate role of the States in such proceedings and as giving them a position to which they have always been clearly entitled. It seems entirely appropriate to amend the Civil Aeronautics Act to so provide and to require the Board to give due consideration to such plans as the State governments may have for their areas in constituting the over-all route pattern. At the same time, this should not be a one-way street. The States in turn must do their part by intelligent and responsible preparation and presentation of their needs..."

"The Board cannot, for lack of authority to do so, impose economic regulations upon purely intrastate air operations. This leaves a void in the economic control pattern which can give rise to inequities and distortions in the over-all picture. The Board would not only have no objection to, but would welcome, State economic regulation of this area of the air transportation business. Moreover, the States can be of definite assistance to the Federal Government through local observation and reports on air transportation activities, particularly by contract and irregular carriers..."

"Comparable issues to those previously discussed arise in connection with rate regulation. Here, however, the economic factors become even more hopelessly intertwined, as between interstate traffic and intrastate traffic. Local interests are not likely to be unduly prejudiced by over-all interstate rate patterns. On the contrary, there is more danger that

local interests would bring improper pressures to bear which would distort the general rate structure. It would therefore seem advisable for the States to forego rate regulation in the case of interstate carriers and all other carriers directly and substantially competitive with interstate carriers."

New officers elected by the NASAO were President, Edward F. Knapp, Vermont; 1st Vice President, Willard Bain, Colorado; 2nd Vice President, Crocker Snow, Massachusetts; 3rd Vice President, William Lazarus, Florida; Secretary-Treasurer, James D. Ramsey, Nebraska.

#### INDIANA HEARING ON STATE ECONOMIC REGULATION OF AIR TRANSPORT

A public hearing was held in Indianapolis, in September, called by the Indiana Aeronautics Commission, for the purpose of arriving at a determination of what the State of Indiana should do with reference to economic regulation of air carriers. Briefs were filed, testimony taken, which will be correlated with public need in the state for carrier service. The commission has not yet arrived at its decision, giving itself time to make a thorough analysis of the results of the hearing.

#### ACC STATE-LOCAL PANEL

As a result of the reports of the President's Air Policy Commission and the Congressional Aviation Policy Board, for the first time the States will have an opportunity to present their views in policy making matters. A state-local panel of the Air Coordinating Committee was established and the first meeting was held in September of 1948, attended by representatives of the state aviation agencies, the county and city governments, the mayors' conference and terminal airport management. It will now be possible for all of these segments of the aviation industry to propose their constructive contributions to the advancement of aviation, rather than merely voicing critical stands at called public hearings and sessions in Washington. This development augurs well for benefic results. The prognostication made after the Fort Worth NASAO meeting in 1947, with respect to an increasing mutual understanding of respective problems and duties, appears to be on the road to fulfillment.

M. C. D.

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#### REPORT OF NASAO GENERAL COUNSEL TO ANNUAL MEETING, OCTOBER 6-8, 1948

As general counsel for the Association during the past year, and having acted as legal counsel for several years past, there are certain matters which I wish to call to the membership's attention, for their sober and serious consideration.

#### STATE SOVEREIGNTY

You will see again, in the coming two years, elements at work which will challenge the right of the States to have jurisdiction over aviation. The arguments will be long and loud that the airplane is interstate in character, that there are no physical barriers to its flight, that the Federal government is the sole repository of all powers concerning its life and death, figuratively speaking, that the air above normal use of the inhabitants below on the land is not subject to state ownership or jurisdiction, but because of its use by the federal airways system, federal communications system, inter-national airways systems, etc., it has been taken over by the Federal government. Prepare yourselves for such a program with all the ammuni-

tion you can muster, and present it through every conceivable means of communication, particularly to your Senators and Congressmen, and the public back home. It is going to be an off-shoot of the battle on the California Tidelands. Dignity can be achieved by not waiting until the squall begins to blow and then rushing to save what has been built, but by the strengthening of your own position through dissemination of full and factual information beforehand.

#### STATE TAXATION

The handwriting is on the wall,—that a renewed concerted and powerful program in certain sectors of the aviation field will be aimed at elimination of state taxation on gasoline, aircraft, air carriers, and the right to do business in commercial aviation. Concentration of these items in the Federal government will be proposed, with a doling back to the states of a token return. Until, and unless, the trend toward nationalization of the aviation business is to be considered compatible with our democratic principles of regulated competition, it behooves the states to prepare themselves by letting their public know what is being done for state aviation, and collectively for national aviation, with funds so collected. Asa Rountree's recent comprehensive report to his constituents is an excellent example. It should not stop there, however, for the people's representatives in Congress must be made keenly aware of the true picture. The homes and other property of individuals cannot sustain any further tax burdens for funds with which to build airports, landing fields and other aeronautical facilities. It is inconceivable that the states should permit themselves to be coerced into the beggarly position of having to supplicate to the federal government for every penny needed for airports, particularly when the aviation taxes originally come from the states! Consider the percentage of the taxes which will inevitably be used for the federal staff required to collect and account for the moneys! That is not good government! There is, however, another side to the picture. States which seek to impose a tax burden upon the airlines over and beyond intelligent reasonableness, are doing harm to both the struggling airlines and to the other states, for inequity of impositions bring about natural resistance, which is unhealthy for all parties concerned. Discussions already commenced between the ATA and NASAO should be sought and encouraged for an understanding of each others problems and for agreement upon a mutual program of living and letting live!

#### STATE ENFORCEMENT

In St. Louis in 1944, I was asked to assist the NASAO with redraft of certain portions of the Model Department of Aeronautics Commission Act. The federal agencies were particularly disturbed about state registration of aircraft and airmen. I was of the opinion at that time, and continue to be more firmly convinced now, that the states must have some jurisdiction over aircraft and airmen through state registrations to do an effective job of enforcement. Events have borne me out. In the interim we have seen the increase in violations predicted, which the Federal government alone cannot handle. The states are asked to take over the job, yet they are repeatedly warned they cannot touch a Federal certificate. Aroused public indignation has made the courts take matters in their own hands by grounding an airman through probation sentences. Nevertheless, the pilot still retains his right to fly and repeat violations unless contempt proceedings are instituted against him, which is a second action against him and time consuming. A new agreement between the Federal agencies and the states is in process, predicated upon amending the Civil Aeronautics Act of 1938 to permit the state courts to suspend the Federal certificate for not

longer than 90 days, although I had recommended one year, with separate secondary actions before Federal agencies or arms of Federal courts for revocation of certificates. Continued efforts between the Federal and state agencies toward an agreed program of effective enforcement, carrying out the spirit of encouragement of aviation yet protecting the public against unsafe practices so that it will be *for* aviation and not *against* it, is the order of the day. Too many state legislatures will have bills introduced in the subject during 1949 general sessions which may be considerably more restricted. Time is therefore of the essence on agreement between the federal and state agencies. Another year should see considerable progress along this line.

#### STATE PARTICIPATION IN AIR TRANSPORTATION NETWORK

In view of the establishment of the State-Local Panel of the Air Coordinating Committee, this subject will now receive the attention it merits with top governmental policy groups. Short-haul carriage is non-economic for long-haul equipment. If that phase of air transportation were assigned to the states for development, with carriers ready and able to establish and maintain intrastate routes with smaller equipment, both the public and the present scheduled airlines will benefit. Intrastate carriers have a definite role of acting as feeders into the continental routes; their greater encouragement will bring more people into the air and more communities accustomed to scheduled air service. A concrete plan for state networks, with state aviation agencies a full partner with the CAB in their adoption and integration into the continental routes is the logical long-range program. On the economic regulation aspect, it is obvious that a small state carrier cannot sustain the burden of present CAB regulatory procedures. A simplified agreed system whereby state aviation agencies concentrate on the safety aspects, using the CAB non-scheduled criterias, coordinating the rate-making with the state public utilities commissions which have established staffs, is in the best interests of good government. State legislation can and should be introduced placing an aviation-trained person on state public utilities commissions, whose guidance of staff in aviation rate making will avert the valid criticism against surface philosophies for the air. No reasonable person, interested in development of a sound and economically healthy national air transportation system, can approach the subject with thoughts of the several states attempting to impose economic regulations on intrastate segments of interstate carriage. To divide is to destroy! The NASAO is full square on building well and strong!

#### OTHER ITEMS

Several model bill drafts are being circulated for review by the NASAO, on Reciprocity, Taxation and Airport Authority. The views of counsel, the Legal Committee or the officers of NASAO on matters of such importance are not sufficient. There is time between now and January 1, 1949 to have circularization of the entire membership for their comments. It is therefore suggested that the Regional Directors immediately secure a copy of each draft and arrange a working meeting in their Regions in the next thirty days, seeking the counsel of their Attorneys General on legal aspects and sending their respective comments to the Washington office for a majority stand with respect thereto.

#### AIR COORDINATING COMMITTEE STATE-LOCAL PANEL

This is a great step forward and a real achievement in bringing the states into the governmental policy making group of the country. It augurs

well for mutual respect, understanding and agreement between the federal, state, county and city governments, and terminal airport managements. It will be an excellent medium for constructive effort on the part of all governments rather than merely voicing criticisms and battling individual interests at called hearings or at special meetings in Washington or elsewhere. It was my good fortune to have assisted the NASAO in presenting the idea of a "Congress in Governmental Aviation" to the hearings before the President's Air Policy Commission; the benefic results can now be accomplished only through hard and conscientious work in the ACC State-Local Panel. Your attention is called to the high position in the organizational chart of the ACC in which the State-Local Panel has been placed, rather than being a sub-sub Committee of another Panel. The NASAO membership at large should inform its representation on the Panel of its views in the subjects of its agenda, so that recommendations made by the Panel to the Air Coordinating Committee will represent majority thinking.

#### AVIATION LIABILITY AND INSURANCE

Evidently, in the past few years aviation is looked upon by the general public as having assumed greater maturity, for the old view that an airplane is a dangerous instrumentality per se and one for which it was absolutely liable in damages is vanishing. Those states which still have such a law on their books should seek legislation in 1949 to abolish it.

Recently the Commissioners on Uniform State Laws have discussed reviving and revising a 1936 Model Act on liability in order that definitive minimums and maximums of recoverable damages may be established uniformly throughout the country. This was presented during the American Bar Association Annual Meeting at Seattle, September 6-8, 1948. The recommendation of the Committee on Aeronautical Law, chaired by Charles S. Rhyne, was to hold the draft for further study for another year, which is a salutary development. Mr. Joseph Adams, NASAO member in Washington state, attended the meeting and assisted in the decision reached, in my stead, as I was in Washington, D. C. on Enforcement during the Seattle ABA meeting.

Copies of the draft should be secured by NASAO members—studied,—legal advice secured thereon from their own state attorneys—and conclusions reached for a NASAO stand thereon to the Commissioners on Uniform State Laws and to the ABA Committee on Aeronautical Law. It is my firm conviction that aviation generally should not be singled for special laws on liability, but that it should be governed by the general tort laws of the state similar to those applicable to any other vehicle or object which may cause damage in its use, with the defenses available in such other cases.

Your attention is again called to probable introduction of laws in state legislatures during 1949 covering either financial responsibility of aircraft owners or mandatory insurance. The insurance people state that the former is more desirable, although, unfortunately, neither will help much to lower insurance rates. There has been too much poor airport management and too many accidents, resulting in a load of claims which the companies feel must be spread in the higher rates. Everything we do in aviation dovetails into the many pieces of the mosaic. The state aviation agencies would do well to be prepared in advance for their recommendations to Legislative Committees on this question, for both greater public acceptance of the airplane and the financial survival of the aircraft owner are at stake.

The ramified problems of state aviation agencies are pyramiding,—for in addition to the preceding subjects, we have been working on Zoning, on

Crop Dusting, on Air Marking, on Surplus Airports, on Airport Authorities, on international and ICAO matters, and on many other subjects. Each one of these activities has a surprising amount of legal involvements. More participation by each director in the workings of specialized committees, with submission of their respective views in the light of their state laws throughout the year, is needed to spread the load. In the past four years, I have seen such an increase in responsibilities and duties of state aviation agencies that one person, or a handful of persons cannot do justice toward the full problems.

MADLINE C. DINU\*  
General Counsel—NASAO

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\* EDITOR'S NOTE—The pressure of her duties as Assistant Attorney General for the State of Michigan has compelled Miss Dinu to give up the post of General Counsel for NASAO.