

1949

State and Local

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

Recommended Citation

State and Local, 16 J. AIR L. & COM. 109 (1949)
<https://scholar.smu.edu/jalc/vol16/iss1/9>

This Current Legislation and Decisions is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

STATE AND LOCAL

Department Editor: Madeline C. Dinu*

NASAO ACTIVITIES

THE twelve-months ahead should see new ideas and new methods for aircraft and airport uses introduced in the various states based on good business principles of competition in a free enterprise system unhampered by too much centralized regulatory restrictions. Not the least of these is the warehousing of merchandise for air cargo at airports located away from industrial centers, bringing in revenue to the airport as well as business to the communities in increased personnel.

Smother working of the Federal Airport Program is noticeable. Many legal and economic problems initially confronting both the federal and state aviation agencies have been resolved to a great degree, and there is an increasingly apparent spirit of coordination contributing to the goal of a nation-wide network of airports as "going concerns."

The G.I. Flight Program, while decreased in size and scope, is still a mainstay in local aviation. There is a definitely improved relationship between the Veterans Administration at federal, regional and local levels, and both state agencies and the local operators.

There is still much to be accomplished toward a solution of the enforcement problem. Agreement has yet to be reached on the proposal for amendment to the Civil Aeronautics Act empowering state agencies and state courts to enforce federal laws and regulations. While a purportedly agreed to Committee Print Bill has been drafted and is in Committee the probabilities are that public hearing will be demanded by a segment of the state people to bring Congressional and public attention to their position, arising from their responsibilities to their own citizens in providing for safety from irresponsible use of the air by prompt and effective local enforcement. There is strong hope, however, that this year will see a workable compromise of this basic problem.

In the matter of reactivation of war surplus airports returned to the local communities under agreements containing thirty-days clauses, the Act authorizes return of such facilities as surplus. It is true that a community and its citizens are on notice that the armed services have the right to "take back" an airport by giving the contracted thirty-days notice of their intent to do so. Businessmen have invested thousands of dollars in locating operations on such airports, constructing hangars, repair shops and employing personnel, and the airport is thus being maintained as an active facility. Their investments are, as a consequence of reactivation, wiped out. There is a definite *public interest* in such businesses at airports, from the economic standpoint of the entire aviation industry and national stability, to transcend the principle of "caveat emptor" established for purely private commercial enterprises. Common-sense might direct that the services arrive at a policy of not reactivating such airports when there are other war-built facilities in the near area, or, in the alternative, not to have them declared surplus if

* Member of Michigan Bar, General Counsel to NASAO.

there is any probability of needing them for military purposes within a short time thereafter.

The states are becoming more keenly aware in recent months of the implications in the ICAO (International Civil Aviation Organization) activities as they affect private flying and airports from both technical and economic viewpoints. Recommended standards and practices already in published form have been in great part predicated on scheduled airline requirements, with but small attention to their restrictive application on private flying. Again, on the recent standards for charges at airports, certain formulae have been recommended in arriving at charges which may not be in keeping with good business standards for the proper financial maintenance of such airports. While the international airlines should certainly not be overly-burdened by excessive charges at airports, there is a middle ground which can be reached *if persons or groups who work up such standards are selected to represent all parties in interest*. The NASAO anticipates taking a more direct interest and participation in such ICAO activities through its representation on the Air Coordinating Committee, as well as observing ICAO at work at Montreal. Were the states consulted at the time the Chicago Convention was drafted and adopted? After forceful arguments before the President's Air Policy Commission and the Congressional Aviation Board, the states were admitted to the aviation policy making group of the United States as the State-Local Panel of the Air Coordinating Committee, where their voices may now be heard, four years after the Chicago convention was adopted.

Some of the state aviation agencies have been approached for approval of local helicopter activities in recent months. This is one of the new methods of air use which will require intelligent coordinated attention, not only from the standpoint of carriage of mail or commuter service within metropolitan areas, but from other commercial uses. Safe altitudes, safe routes, heliports, and heli-aids, as well as helicopter air traffic rules and operations at established airports, are matters which will come up for considerable discussion at both federal and state levels during this year. Before any firm policies or rules and regulations are adopted by either level of government, it would be logical to have joint public conferences with the Helicopter Council, of which Mr. L. Welch Pogue is President, in the light of technical and use developments in that field during the past two years. For long-range thinking, aviation agencies could well begin discussions with federal and state highway people *in prospect of use of airspace over road beds and within purview of highway easements for overhead buttressed "heliplatforms,"* so that legal provisions are incorporated in public highway rights being presently acquired.

In the matter of state economic regulation of intrastate air transportation, it is felt that the Report of the Technical Advisory Committee appointed by the Aeronautics Commission of Indiana would be of interest at this time, and is hereinafter reproduced. This Report and its Conclusions are for the guidance and use of the State of Indiana, and it is not to be construed as the stand of the NASAO; several of the states have other factors to consider in their view of the matter, based upon their location in respect to trans-continental air routes, their terrain, available surface transportation, and economic needs and potentialities of air uses by their communities. It is interesting to note, however, that Indiana stresses the importance of greater opportunity for participation in determination of air routes within its borders before and with the Civil Aeronautics Board.

M. C. D.

INVESTIGATION OF STATE ECONOMIC CONTROL AND REGULATION OF AIR COMMERCE — REPORT OF TECHNICAL ADVISORY COMMITTEE APPOINTED BY INDIANA AERONAUTICS COMMISSION*

In the matter of the investigation of the position of the State of Indiana on economic control and regulation of air commerce.

This proceeding is pursuant to Section 8 of the Indiana Aeronautics Commission Act of 1945 and is instituted on the Commission's own motion to determine what, if any, action should be recommended by the Commission to the Legislature dealing with the economic regulation of intrastate air transportation within Indiana.

For the purpose of this proceeding the Commission created an Advisory Committee to consider the evidence and make recommendations as to what the Commission ought to do. The Advisory Committee consists of Mr. Herschel A. Hollopeter, Transportation Director, Indiana State Chamber of Commerce, Chairman; Professor L. L. Waters, Transportation Section, School of Commerce, Indiana University; and C. T. Coy, Traffic Manager, Eli Lilly & Company. The Commission also delegated Director C. F. Cornish to preside at and conduct the hearing.

Public hearings were held after due general notice to all interested parties at Indianapolis, Indiana, on September 14, 15 and 17. Ample opportunity was given to anyone appearing to be heard. Various representatives of air carriers appeared and presented evidence and testimony on this subject. No one appeared nor was any evidence presented, although requested, by the competing forms of transportation, namely railroads and highway carriers.

The principal question to be explored as indicated in the notice and invitation to the various parties, is that of whether there is a need for the State to exercise its jurisdiction over economic regulation of intrastate air transportation, and if so, by which agency. Another definite but related question was whether the State should seek more effective relationship and coordination between state and federal authorities in determination of air route patterns within such state.

THE EVIDENCE

The evidence in the record being largely confined to expressions from representatives of the carriers by air or those to be regulated, is to the effect that the state should not exercise its economic regulatory powers over intrastate air commerce at this time. The evidence on behalf of the smaller air carriers seems to indicate that closer coordination between federal and state authorities with respect to air route patterns is desirable. Evidence from the larger airlines serving the State did not support this position, neither did they definitely oppose it. There was some evidence presented by a member of the staff of the Indiana Aeronautics Commission in support of the latter proposition which will be carefully analyzed and considered later in this report. Such evidence and testimony was not an official presentation on the part of the Commission but merely presented for the record to be carefully weighed and evaluated in the light of all the other circumstances. It has not yet been considered officially by the Commission and does not represent any established view or position with respect to this matter.

In reviewing the record and evidence developed by the hearing, the Technical Advisory Committee first sought out a basic fundamental theory upon which it could make its determination concerning a subject affecting

* Aeronautics Commission of Indiana Docket No. 23. This report was adopted by the Aeronautics Commission of Indiana at its December meeting.

the public interest. We found this fundamental in the famous opinion of Chief Justice Waite in the case of *Munn v. Illinois*, 94 U.S. 113, wherein it was stated that, "Property does become clothed with a public interest when used in such a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

With the above principle in mind we further decided that certain tests should be applied relative to the public interest in intrastate air transportation. These tests turn on (1) the exacting of excessive charges, (2) person or place discrimination, (3) safety, and (4) deleterious effects of unfair or destructive competitive practices on other forms of transportation because of the absence of state regulation.

We have applied the four tests above set out and make these particular findings:

1. There was no testimony or evidence in the record to indicate excessive air transportation charges on Indiana intrastate traffic. No one contended that present intrastate air transportation rates for the transportation of either passengers or property were excessive. On the other hand the record does establish the fact that the charges, being assessed on this Indiana intrastate traffic are on exactly the same basis as the fares and charges maintained and collected by the respective carriers on their interstate traffic. A complicating factor in state regulation of rates for air transportation is the fact that mail pay is statutorily used to maintain airline service.

2. Person and place discrimination which occasioned other forms of regulation has not developed in this state, according to the record, to the point of requiring state regulation.

3. The record indicates that all commercial air transportation within the State is conforming to comprehensive federal safety regulations and there appears to be no need for augmentation of this by intrastate regulation at this time.

4. We find in the facts presented, no evidence of deleterious effects upon other forms of transportation within the State. This view is further strengthened by the fact that the volume of intrastate air transportation, and especially in proportion to interstate air transportation, does not necessitate intrastate regulation. It is a well-known fact that air transportation at present is essentially long distance in character. For example, from this record, the Chicago and Southern Airline, doing the largest Indiana intrastate passenger business of any airline serving the State, averages about \$10,000 per month intrastate passenger revenue. This figure represents approximately 2 per cent of that airline's system total and includes approximately 5 per cent of the total number of passengers it carried.

CONCLUSIONS

Therefore, the Committee concluded that:

1. There is no present need for the State of Indiana to exercise its powers to establish economic regulation of intrastate air transportation.

2. Since no regulation is needed the question becomes moot as to which agency of the State should exercise regulation.

3. We conclude that the record supports the premise that the State should be recognized to a greater extent in air route pattern determination. The Civil Aeronautics Act of 1938 should be amended to permit the States to intervene with the full rights of any other party to proceedings involving air route patterns and the development of adequate and more efficient air transportation. We would recommend that the State Legislature memorialize Congress on this point.