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STATE AND LOCAL

Department Editor: Madeline C. Dinu*

NASAO ANNUAL MEETING

STATE aviation officials from 40 states convened in the Annual Meeting of NASAO at New Orleans, Louisiana, on October 31-November 3, 1949. Not only state aviation directors, but, because of the interest in national issues involved, many Chairmen and Members of state aeronautics commissions and heads of State Development Commissions and other state public agencies, attended. Representatives of the CAA, CAB, U.S. Weather Bureau, A.T.A., Association of American Railroads, American Association of Airport Executives, the Airport Operators Council, U.S. Air Force, universities, oil companies, aviation insurers, several airlines, manufacturers of aviation products, and the aviation press also attended.

All of the Committee Reports presented contained both legal and economic questions for continuing consideration and study, as indicated by the Resolutions adopted. These were:

- (1) That the Veterans Administration be urged to recognize and honor aeronautics courses, particularly flight training, being offered in colleges and universities, by authorizing veterans who are studying on the college level to take such courses offered by these institutions on the same basis as any other college course, and that Paragraph 2g of Veterans Administration Instruction 1-b be appropriately amended.
- (2) That the NASAO strongly urges all manufacturers and designers of new commercial aircraft to consider carefully the available airport runway lengths and pavement loading capacity from an economic standpoint in the design of new feeder or transcontinental aircraft, and if possible, to improve take-off performance and reduce the necessary landing run in the safe operation of new equipment.
- (3) That the Federal Communications Commission and the Civil Aeronautics Administration be urged to assign at least one national transmitting frequency suited to the radio equipment appropriate to itinerant aircraft for ground to air radio communications primarily for the purpose of communicating between fixed base operators, small airports, and itinerant pilots.
- (4) (a) That the NASAO concur in the principles of the recently announced policy of the CAA limiting federal participation to monodirectional runways.
(b) That the CAA accommodate the administration of this policy to take into account commitments entered between potential airport project sponsors and the governmental agencies prior to the adoption of the policy.
(c) That the CAA immediately bring its operational requirements insofar as they affect air carriers and its appropriate technical standard orders into conformity with the implications of the new policy.
(d) That all public authorities responsible for the construction or operation of airports adopt a similar policy to the extent feasible.
- (5) That the CAB review its Parts 03 and 06 at once, substitute therefor simpler, more realistic and technically sound regulations, and consider replacing academic standards with proven results of actual flight tests.
- (6) That wherever a continuing military need for municipal landing areas exceeds the civilian needs, the appropriate military agency should pay the cost of the maintenance of the excess; otherwise appropriate changes should be made in federal laws, regulations, and agreements to permit municipalities concerned to close such portions of the landing area as are not required.
- (7) That the CAA be urged to make all air traffic radio transmissions from control towers simultaneously on normally used aircraft receiving frequencies whenever feasible.
- (8) That, 1. Congress be urged to appropriate funds to the CAA, in the amount of \$500,000 annually for the period of 5 years, for an air

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- marking program. These funds to be allocated to the individual states on a matching basis, and all funds so allocated to be administered by the respective states.
2. The airmarking program as such will consist only of the installation of visual navigation aids of a standard form in conspicuous locations, and the installation of standard airport markers on hangar roofs or other suitable areas.
 - (9) That the CAA be requested to revise its nomenclature so that the present Private Pilot rating would henceforth be designated as PILOT, and that all present privileges and restrictions accruing to the holder of such a certificate shall continue to apply.
 - (10) That: 1. The Air Coordinating Committee which is understood to be drafting legislation to accomplish simplification of border crossings requirements consult with representatives of the NASAO to see that the interests of all classes of aircraft are protected.
2. That Congress be urged to enact appropriate legislation as soon as it is produced.
 - (11) That a program be sponsored by the military services through fixed-base operators, providing a training course covering the specialty categories of value to the military services, and that qualifying students be required to agree to accepting a reserve status upon completion of such a course and to serve a minimum of three years in an active air reserve unit.
 - (12) That: 1. The CAA expand its Aviation Education Program, even if this necessitates the shift of emphasis from some of their other activities.
2. The CAA establish a short course at the Aeronautical Center in Oklahoma City to indoctrinate all their in-training personnel in aviation education so that CAA field representatives may assist the aviation educational specialists in this program.
 - (13) That: 1. The content of the "Area Weather" and the "Airway Weather" Broadcasts be determined by querying the users; that the final contents be jointly agreed to by the CAA and the Weather Bureau and reviewed periodically for adequacy. Further that the contents of these broadcasts be publicized in the Flight Information Manual and the Airman's Guide.
2. The CAA provide a means of including in the "Area Weather" Broadcast all the significant hourly and supplementary aviation weather reports within 150 miles of the local range station and that the "Airway Weather" Broadcasts be more comprehensive and not extend for more than 350 miles from the local range.
3. The Auxiliary Weather Reporting Program now operating in the State of Pennsylvania on an experimental basis be expanded to other States requiring additional Off Airway Weather Reports, and that the Congress of the United States be urged to provide the Weather Bureau with sufficient funds for this expansion in addition to the funds made available to maintain the present Weather Bureau establishment.
4. An additional teletype circuit for the distributions of long haul WX reports be provided to relieve the congestion on the present service A so that time will be available to provide for the distribution of local weather report, pireps, and forecasts through relay from the circuit of origin to adjoining circuit.
5. A drastic reduction be made in the verbiage of weather information and necessary notams, and that the broadcast of irrelevant weather report elements and notams be discontinued.
6. The Flight Advisory Weather Service maintained by the Weather Bureau be expanded to serve aviation directly in the same manner that it now serves the Air Route Traffic Control Centers.

The somewhat surprising increase in operation of aircraft for agricultural purposes focused attention on the proposed draft of a uniform Act relating to the application of insecticides, fungicides and herbicides. The draft was prepared by the U.S. Department of Agriculture at the suggestion of the Council of State Governments, and has been approved by the NASAO after making a number of suggested changes. Information received at the New Orleans meeting indicates that the proposed model Act was approved by the Drafting Committee of the Council of State Governments at its meeting in Washington, D. C., Oct. 13, 1949, and will be incorporated in the Council's suggested legislative program for 1950. It is to be used by the

states in enacting legislation during their forthcoming legislative sessions to provide both proper protection and control over such operations. Under the Act, the State Agricultural Commissions will have licensing and other regulatory powers governing of application of materials, with mandatory requirements that the Commissioner "shall consult" with the state aviation official respecting aircraft safety requirements.

Section 1. Declaration of Purpose, reads as follows:

"The purpose of this Act is to regulate, in the public interest, the custom application of insecticides, fungicides, and herbicides (weed killers). In recent years a great many new materials have been discovered or synthesized which are valuable for the control of insects, fungi, and weeds. However, the use of such materials may involve serious injury to health, property, or wildlife if not properly applied. Insecticides may injure man or animals, either because of direct application or because of residues, and may also harm crops. A herbicide applied by aircraft or ground equipment for the purpose of killing weeds in a crop which is not itself injured by the herbicide, may drift, sometimes for miles, and injure other crops with which it comes in contact. The drifting or washing of insecticides into streams or lakes can cause appreciable damage to aquatic life. Knowledge of the effect of many of the newer materials is still very limited. For these reasons it is deemed necessary to provide for regulation of operators engaged in the custom application of insecticides, fungicides, and herbicides."

As another economic sidelight to this movement, were the points brought out by the representative of aviation insurers, that such an Act passed by the States would assist materially in not only preventing increased premium costs for this type of operation which is contemplated for 1950 because of loss ratios last year, but would also tend to stabilize all manner of liability for damage and lower such costs in the future.

Considerable discussion was had on the ever present subject of Enforcement of safety regulations upon the report of the Committee on Safety and Enforcement under Clarence F. Cornish, Chairman, Director of Aeronautics for Indiana. The work of a Committee composed of representatives of NASAO, CAA and CAB during the past year resulted in the drafting of a Bill, and the introduction of S. 1836 and H.R. 5468, as companion bills, in the 81st Congress, amending the CAA of 1938 to give state courts and state agencies authority to enforce federal civil air regulations, with certain limitations. Among those limitations is an exemption in favor of scheduled interstate carriers, or their intrastate segments, holding federal certificates of public convenience and necessity, or a foreign carrier, from such state or local enforcement. It was felt at the annual meeting that these Bills incorporated the fundamental principles voiced by the NASAO as its policy in the subject, but that there were still remaining certain details of the procedure to be followed under the bills which require further study and working out between state and federal officials.

Accident prevention, as part of state enforcement programs, was treated in the following manner in the Committee's Report:

"Accident prevention is developed through the promulgation of various regulations, enforcement and an education program coupled with aircraft accident investigation. Many states have either adopted a system similar to the ones briefly outlined above or conduct safety and enforcement programs in varying degrees of completeness. An analysis indicates that 26 states require the state registration of aircraft, while 24 states require state registration of airmen. In the field of enforcement, aviation departments of 23 states enforce their state reckless flying laws, while 30 cooperate with the Federal Government in enforcement of Civil Air Regulations.

"According to a recent survey, twelve states have special aviation police. The State Police in 34 states participate in aviation law enforcement programs.

"Accident investigation is conducted at the state level in 24 states, while 26 states conduct accident investigation to a lesser degree in coop-

eration with the Federal Government. (Note: NASAO membership includes the territories of Hawaii and Puerto Rico, hence the total figure of 50 states in some of these figures.)

"The Committee has long recognized the necessity for a practical cooperative Federal-State procedure in aircraft accident investigation. Some progress has been made in this regard, but not to the degree considered adequate or necessary.

"Representatives of the Safety and Enforcement Committee of the NASAO met on September 27, 1949, with representatives of the CAB for the purpose of discussing a state coordination program in aircraft accident investigation. It was learned that the CAB has only 103 employees available to investigate aircraft accidents in the United States and its possessions. From that conference it appears that the CAB believes the state's role in accident investigation should be as follows: (1) State personnel to make a preliminary investigation of the accident for the purpose of determining certain minimum information to be forwarded to the CAB Regional Investigators; (2) State personnel to safeguard the wreckage of the aircraft until the arrival of the CAB investigator, or receipt of notification from the CAB investigator that the wreckage may be disposed of due to the fact that he will not make an investigation."

STATE ENTRY INTO AIRLINE ECONOMIC REGULATION

The question of federal-state jurisdiction of the economic regulation of scheduled air carriage where such carriage is between two points within the same state, progressively increases in importance and scope. The Report of the Committee on Economic Regulation of Air Commerce, by Clarence F. Cornish, Chairman, Director of Aeronautics for Indiana, gave a comprehensive picture of the important steps taken by both the NASAO and the federal government in this subject during the past year. Its recommendation "that the NASAO foster and encourage Congressional legislation amending the Civil Aeronautics Act of 1938 so as to permit the states to intervene with full rights of any other party to proceedings involving air route patterns, *safety regulation* (Italics author's) and the development of adequate and more efficient air transportation, as voiced at previous times, and that immediate action be initiated to accomplish this objective," was approved and adopted.

The staff members of federal agencies affected indicated the intent behind the recent amendments to the CAR's, but an agreement could not be reached in the discussion on the ultimate effect of safety regulations on economic aspects. The Report of the NASAO Committee is clear in the exposition of the interrelationship. The report reads in part as follows:

NASAO has long concerned itself with the problem of state participation in economic control and regulation of intrastate air carriers. Investigation into this field of activity has varied in degree of intensity from time to time.

Formal study of the problem was initiated by Indiana in 1947 in the conduct of an investigation of the "Position of the State in Economic Control and Regulation of Air Commerce." The study as prepared by Dr. George W. Starr of Indiana University appeared in the 1948 Spring issue of the JOURNAL OF AIR LAW AND COMMERCE and was distributed to various NASAO members and others at the 1948 convention of the NASAO.

In further determination of the matter, the Indiana Aeronautics Commission appointed a Technical Advisory Committee for the purpose of conducting a hearing on the subject. Public hearings were held after due general notice to all interested parties, at Indianapolis, Indiana, on September 14, 15 and 17, 1948. Ample opportunity was given to anyone appearing to be heard. Various representatives of air carriers appeared and presented evidence and testimony in the matter. No one appeared,

nor was any evidence presented, although requested, by the competing forms of transportation — namely, railroads and highway carriers.

Since the final report of the Technical Advisory Committee was not completed prior to the 1948 convention of NASAO, the Economic Regulation Committee deems it worthwhile to report the findings of that advisory group.

The principal question explored by the Committee was whether there is a need for the state to exercise its jurisdiction over economic regulation of intrastate air transportation, and if so, by what agency. Another definite but relative 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.

In discussing the evidence before the Committee, the Advisory group stated that:

“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.”

“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 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 regulations.

“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 intra-

state 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."¹

The problem of what the State should do in the interest of air transportation so far as intrastate air carrier operation is concerned presented itself in very concrete form in the State of California where intrastate carriers became especially active in 1949. In July of 1949, 5 intrastate operators were making scheduled, daily flights in California and doing so in competition with scheduled, certificated (interstate) air carriers. The activity of the intrastate air carriers precipitated a clamor by the certificated interstate air carriers and others in support of action by the California Legislature to effect the regulation of the intrastate carriers. These attempts, however, were not successful. The proponents then turned to the Federal Government for assistance. They claimed that the intrastate carriers were operating over the Federal airways according to one set of safety rules while the interstate carriers were forced to follow much stricter safety regulations while flying the same route.

As a result, the CAB released on July 13, 1949, a proposal for "Change in Safety Regulations for Intrastate Scheduled Commercial Passenger Operation." The Bureau of Safety Regulations proposed that scheduled intrastate operators comply with the same safety regulations as those which apply to scheduled interstate air carriers. The Bureau of Safety Regulations pointed out that intrastate carriers were subject to Part 45 of the CAR. Part 45 provided that intrastate operators comply only with Part 42 of the CAR applicable to irregular or non-scheduled air carriers. The Board therefore proposed to amend Part 45 so that the intrastate scheduled operators would be subject to Parts 40 and 61 of the Regulations, the rules which govern the operations of certificated interstate air carriers. . . .

The NASAO Board of Directors in Executive Session at Mackinac Island in July of 1949, considered the above indicated CAB proposal in the light of the State's position in the participation of economic control and regulation of air commerce. As a result, a formal statement of policy of NASAO was prepared and presented to CAB in the matter. The formal statement is quoted as follows: . . .

"The position of the National Association of State Aviation Officials relative to CAB Release 49-57 is set forth as follows:

"1. NASAO supports the basic principle that there should be uniformity in safety regulation as between operations of intrastate and interstate air carriers whenever or wherever such operations are conducted in the same general areas under similar or identical flight conditions. It appears therefore that such flight operations, both owing an equal duty to the safety of the passenger, should meet the same reasonable and necessary minimum safety operational standards.

"2. Even though NASAO is in favor of the principle that certain safety regulations be promulgated at the Federal level, it believes that the states should have a voice and be given an opportunity to be heard in the promulgation of any such regulation, either through the Association or by the individual states themselves. Therefore, the Association or the individual members thereof should

¹ For complete text, see 16 J. Air L. & Com. 111.

be given ample opportunity and sufficient time by the Civil Aeronautics Board for consideration of and comment on any proposed safety regulation affecting intrastate air carrier operations prior to the adoption and publication of any such proposed regulation.

"3. The Civil Aeronautics Board should in no way invade the rights of the states in the economic regulation of intrastate air commerce, either by inference or otherwise. *No safety regulation promulgated at the Federal level should either directly or indirectly transgress the principle that the states have original jurisdiction over intrastate air commerce.*

"Nevertheless, and pursuant to the above indicated proposal of the Bureau of Safety Regulation, the CAB amended Part 45 of CAR on October 4, 1949, 'requiring commercial operators who are conducting an intrastate operation with the degree of regularity or frequency set forth in Par. 45.3 (a) of the amended Part to comply with the certification and operation requirements generally comparable to those required of the feeder air carriers to whose operations these intrastate commercial operations bear close resemblance, at least from a safety standpoint.'

"This amendment will, as of November 10, 1949, require the operators thereby affected to establish company communications and dispatching systems, qualify their pilots over the routes, and establish a company owned maintenance organization, unless the Administrator finds that other certification or operating requirements will provide an appropriate level of safety for the operation proposed . . .

"Some people believe that this new federal regulation will be the final extinguishing blow to many intrastate operations, which may or may not be operating parallel to or in direct competition with certificated interstate carriers . . .

"Any state's transportation system represents that state's metronome of commerce. These are grave matters of state responsibility. Any federal agency contemplating action which so precisely affects the completeness of a state's air transportation facilities should consider the state's position in the matter . . . We maintain that the states have never been able to participate at the federal level in matters affecting air commerce to a degree commensurate with their interest and responsibility . . ."

The Report continues with the indicated trend on the part of other forms of transportation to obviate competition from air transportation by the medium of establishing a single state agency control of all forms of transportation. There is the added thought that there is some indication of new life in the Bill sponsored for enactment by the States by the National Association of Railroad and Utilities Commissions.

Attention is called to the glaring fact that by safety amendments to federal regulations which require considerable outlay of funds by intrastate carriers for communications, dispatching, and maintenance systems comparable to feeder carriers or scheduled interstate carriers, without the compensating factor of mail pay, is obviously merely a means to a definite end — killing the intrastate carriers!

AIRPORTS AND AIRWAYS

The recommendations made by the Airport and Airways Committee under Charles H. Gartrell, Chairman, Director of Aeronautics for Kentucky, covered the two subjects of federal participation up to 50% of land costs in airport projects, urging the NASAO, through its officers, and full membership, to support the adoption of S. 1281, 81st Congress, and a clarification or modification of the Civil Aeronautics Administrator's ruling recently issued respecting construction of single strips on airports. A unique proposal was made by the Director of Aeronautics for Oregon, for the development of a single project at the state level combining the construction of a number of flight strips, 2000 ft. long and 200 ft. wide, under engineering plans simplified as though for only one such strip, entailing the processing of all of them as only one project under the Federal Airport Act. The local political subdivisions to contribute the land, the state part of the funds and

part construction services through other state agencies such as state or local highway or road divisions, and federal participation with funds allocated to the state. Decentralization of procedures to the District Engineer level, rather than clearance through the Region or the Washington CAA Airport offices, is part of the plan. The purpose is to provide a number of flight strips adjacent to or in the neighborhood of strategic recreational areas, within, if possible, walking distance of the main street of a community, or usable for agricultural purposes as a base from which spraying, dusting and allied services by air may be done more expeditiously. There are legal questions of joint sponsorship, obligation for maintenance and operation, and certain liability aspects, which are to be studied and resolved between the General Counsel for the CAA and the NASAO, for the implementation of such a program.

Assistant Postmaster General Paul C. Aiken outlined the policy which will be followed in the contracting for Air Star Routes by aircraft, recently authorized by Congress. This will be done carefully and slowly so that only such areas which are remote and not accessible by other means of transportation will be provided with carriage of mail by such air star routes. Nonetheless, these contracts will be of much economic benefit to some of the fixed-base operators.

Border crossing simplification for aircraft received considerable attention both in Committee and by the membership. S. 421 and H.R. 421, companion bills, had been introduced in the 81st Congress, for the purpose of exempting certificated scheduled airlines from payment of customs, immigration and other such fees. Amendment to the Bills had been proposed to include private aircraft as well, to negative the discrimination, but the legislation was not passed. A comprehensive draft is being prepared by the Committee selected under the Air Coordinating Committee for the project, upon which representation was had from various affected federal agencies and some segments of industry. The NASAO had no opportunity to participate in such drafting, although it is understood that a Bill based on such draft will be introduced in Congress when it reconvenes in 1950. Substantiating documentary evidence was gathered by NASAO members from a large number of private and industrial pilots who have been subjected to extremely excessive fees and charges at the borders, ranging from a reasonable figure to as high as \$78.00 for a single private aircraft. Great stress was laid upon continuing vigorous efforts by NASAO membership through their Congressional representations to enact suitable legislation which will ameliorate this retarding imposition.

A legal question which will receive much study and research during the coming year will be that of clarifying when an airport is being operated by a political subdivision in its governmental capacity or in a proprietary capacity. It has arisen recently in connection with taxation of the facility and its operations by either the state or the superior political subdivision. Obviously, the question affects in great degree the financial obligations of ownership. Another legal question of comparable importance concerns ways and means of some public assistance to public airports which are privately owned by either public funds or use of public powers in providing aids to navigation at such airports for their safe operation. An experiment of the latter nature is being conducted in some of the New England states under recently enacted state legislation. The experience there had is expected to be followed by other states wherever feasible under constitutional limitations which may be the subject of modifying test case interpretations.

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