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## NASAO Activities

Madeline C. Dinu

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# STATE AND LOCAL

Department Editor: Madeline C. Dinu\*

## NASAO ACTIVITIES

### REPORT ON EXECUTIVE BOARD MEETING<sup>1</sup>

FOR a number of years efforts by the NASAO to facilitate border crossing impedimenta to personal aircraft resulted in stirring administrative and Congressional attention to the inequities experienced by aviation users. As previously reported, Bills had been introduced in Congress to exempt *air carriers* from the statutory provisions requiring payments for compensation for customs and related services employees overtime, the latest being H.R. 421 and S. 421 introduced in the first session of the 81st Congress. NASAO takes the position that personal aircraft should be exempt along with carrier aircraft in any such legislation.

As a result of continued studies and surveys of conditions throughout the country, the Air Coordinating Committee Sub-Committee on Facilitation recommended in its Report that an Inter-Departmental Committee be organized by the ACC, comprising representation from affected federal Agencies, industry and labor groups, to draft a comprehensive Bill which would be equitable to both inspectional personnel and to users of their services. Such a Bill was accomplished, after hearings on preliminary draft, and circularization was recently made to interested groups, including the NASAO. The draft proposes to establish rates on man-hour basis under outlined schedules which will be published in advance at ports of entry, so that users of services will know what to expect in charges. Thus, one of the grievances is partly ameliorated. But the imposition of charges for services is still considered too burdensome, since the draft contains provisions for recovery of charges for overtime, Sunday, holiday, and night hours differential pay. The NASAO feels that since the majority of border crossing by personal aircraft is accomplished over week-ends and at times before or after "day-hours," there is room for considerable improvement in this attempt to solve the over-all problem by a broad Bill. Since the draft bill has not yet been introduced in Congress, the Executive Board moved to take the position that the NASAO would not oppose H.R. 421 and S. 421 provided those Bills were amended to include personal, charter and industrial aircraft. It further moved that when the ACC draft bill is introduced, it will review its position at that time in the light of provisions of the Bill as introduced.

Recognizing the important developments in state and local aviation in the past several years, and the experience had by state agencies and local municipalities with certain "Uniform Model State and Municipal Acts," President James Ramsey (Nebraska) appointed a special NASAO Committee to review and study such Acts, with recommendations for amendments as may be deemed necessary or desirable. These Model Acts are:

- (a) State Aeronautics Commission or Department Act
- (b) State Airport Enabling Act
- (c) Airport Authorities Act
- (d) State Airport Zoning Act

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\* General counsel, NASAO.

<sup>1</sup> Washington, D.C., January 30, 31 and February 1, 1950.

- (e) Airport Condemnation Amendment
- (f) Out-of-State Airport Act
- (g) Municipal Airports Act
- (h) State Channeling of Federal Airport Fund Act
- (i) Harmless Flight of Aircraft Act
- (j) National Railroads and Utilities Commission Act (NARUC Bill)

It will be of much interest to the aviation industry that the subject of "liability" of the aircraft owner, under the old Uniform State Act of 1923 provision for "absolute liability," crystallized the need for a review of the various Model Acts. In the words of one of the NASAO members:

"As a further sidelight on this matter of liability, our Deputy Attorney General was not aware of this section in our state law; when I called it to his attention for purpose of discussion, he gave a quiet whistle and commented: 'Why is anyone crazy enough to own an airplane in this state?'"

That there are other implications and questions of interpretations of the "liability" provision of law is noted in the following situation:

"We had a condemnation proceeding for the purpose of clearing away trees in the approach zone of an airport being improved under the Federal Airport Program. The counsel for the municipality was a former Attorney General of this State. During the course of the proceedings, he emphasized that it was only the responsibility of the municipality to clear the approach zone of obstructions, and that any action brought by land owners or occupants within this zone on a nuisance basis would be toward the *owner* of any aircraft passing through this zone while landing or taking off, because of the specific and 'absolute liability' referred to in our State law."

Aviation Insurance people have for several years carried on a campaign to the effect that one of the contributing factors to high insurance rates on aircraft was the imposition of "absolute" liability on aircraft owners although no supporting statistics have been submitted. The subject has also had the attention of the Commissioners on Uniform State Laws during the past two years, although no action has been taken officially by them. It is hoped that all interested groups will work closely together in arriving at an acceptable amendment to eliminate the hardship provision, now existing in 13 states, despite recent developments in the international field wherein the "absolute liability" rule has gained headway.

After many months of discussion, study and review of the Federal-State Enforcement Bills, S. 1836 and H.R. 5468,<sup>2</sup> it was felt by the Executive Board of NASAO that better results would ensue if all parties affected would forego support of these bills and recommence efforts toward a more realistic and practical approach to the subject. Salutary discussions and agreements were achieved during the Winter Meeting of NASAO at Washington with federal representatives and representatives of aircraft owners and operators, with the objective of arriving at recommendations acceptable to all groups affected.

#### AIR SPACE RESERVATIONS BY EXECUTIVE ORDER

Of much significance and of grave import to the aviation industry is the recent use of the medium of Executive Order by the President of the United States in a taking of personal and property rights of individual citizens in favor of a *class of citizens*. Overruling or disregarding the recommendations of practically every aviation organization, federal, state and personal groups, including the very powerful Air Coordinating Committee,

<sup>2</sup> See, Black, "Uniformity in Air Safety Regulations Cooperative Federalism Applied" 15 J. Air L. & C. 181 (1948).

President Truman, on December 17, 1949, issued Executive Order No. 10092, Establishing an Airspace Reservation Over Certain Areas of the Superior National Forest in Minnesota." (Quetioc-Superior National Forest.) Acting under authority vested in the President by Section 4 of the Air Commerce Act of 1926 (44 Stat. 570; 49 U.S.C. 174) the Order provides:

"By virtue of the authority vested in me by Section 4 of the Air Commerce Act of 1926, and as President of the United States, it is ordered as follows:

1. The airspace below the altitude of 4,000 feet above sea level over the following-described areas in the counties of Cook, Lake, and St. Louis, State of Minnesota, is hereby reserved and set apart as an airspace reservation: . . . .
2. After January 1, 1951, no person shall navigate an aircraft within this airspace reservation except in conformity with the provisions of this Order and as permitted by or under the authority of regulations prescribed by the Secretary of Agriculture.
3. Aircraft may be navigated within this airspace reservation when necessary for any of the following-described purposes:
  - (a) Making an emergency landing,
  - (b) Navigating when low-level flight is necessary for safety,
  - (c) Conducting or assisting in the conduct of official business of the United States, the State of Minnesota, or of Cook, St. Louis, or Lake County, Minnesota,
  - (d) Conducting rescue operations.
4. Subject to general regulations of the Secretary of Agriculture, aircraft may be navigated within this airspace reservation until January 1, 1952, for the purpose of direct travel to and from underlying private lands; provided that air travel was a customary means of ingress to and egress from such lands prior to the date of this Order.
5. The Secretary of Agriculture shall carry out the provisions of this Order, and for such purpose he is authorized to prescribe appropriate regulations.
6. Any person navigating an aircraft within this airspace reservation in violation of the provisions of this Order will be subject to the penalties prescribed by the Civil Aeronautics Act of 1938 (52 Stat. 973) as amended."

It is generally known, through concerted and rather dramatic releases in the press of the country, that the hunting and fishing sportsmen's organizations were the moving force seeking such Executive action and using this method rather than seeking legislation from Congress. The Order clearly establishes a most dangerous precedent, for if the instant reservation over one National Forest can be justified, the movement can very easily reach proportions to cover all the National Forests, and one segment of the population may seek further Executive action in furtherance of prejudiced interests against another.

#### PENNSYLVANIA AIDS AIRPORT SAFETY

Turning to a more happy picture, the Pennsylvania Aeronautics Commission announced on December 14, 1949 that as of January 1, 1950, the licensee of any commercially licensed airport in Pennsylvania will be eligible to receive state financial assistance for projects in the interest of safety carried out on such airports. Funds used will be those derived from taxes paid on liquid fuel used in aircraft; the amount of assistance for any one airport not to exceed 50% of the liquid fuel taxes paid on aviation fuel delivered at such airport, but in no event will the amount of assistance for any one project exceed 50% of the total cost of that project. This is to be accomplished under contracts between the airport owner and the Commission, on a yearly basis, under authorization of Act No. 3 of the 1949 Pennsylvania General Assembly providing as follows:

"The Commonwealth airways system is hereby declared to consist of all air navigation facilities available for public use, now existing or hereafter established, whether publicly or privately owned, and whether natural or man-made, except those under the jurisdiction of the United States Government. It is hereby declared that jurisdiction over the Commonwealth airways system is vested in the Pennsylvania Aeronautics Commission and that expenditure of public funds in the interest of safety on any or all of the facilities of the airways system serves a useful public purpose and satisfies a public need."

The State of New Hampshire also extends such financial assistance to commercially-licensed privately-owned airports in the interest of safety. The philosophy guiding state aviation agencies is to *encourage* development of aviation and aircraft use!