

1930

Aircraft as Common Carriers

Carl Zollmann

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

Recommended Citation

Carl Zollmann, *Aircraft as Common Carriers*, 1 J. AIR L. & COM. 176 (1930)
<https://scholar.smu.edu/jalc/vol1/iss2/3>

This Article 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>.

AIRCRAFT AS COMMON CARRIERS*

CARL ZOLLMANN†

The great war though it came to an end in 1918 had an important bearing on the development of the aeroplane as a common carrier in Europe. When the armistice came the various warring governments had on hand a large number of planes which were adaptable for ordinary transportation purposes and serviceable for a few years to come. Of greater importance was the fact that during the war a large number of pilots had received a training which admirably fitted them for peace time services in the air. Certain industries had been built up during the war which could easily be adapted to the production of passenger planes. The inventive genius of all the warring countries had gone freely into the development of the aeroplane and was organized for peace time endeavors. Last, but not least, the various governments with a view to future possible wars began to stimulate the infant service by subsidies which made it possible profitably to operate the planes without charging prohibitive rates. The consequence of these various factors is that the city of Berlin, enjoying as it does not only a very central location, but having in its former parade grounds the Tempelhofer Platz, the finest airport of all Europe, is today the center of a huge net of airlines extending to the North to Stockholm, and Oslo, to the South to Rome and Constantinople, to the East to Warsaw and Moscow, and to the West to London and Paris. A service is maintained today on these lines which is as regular as is the railroad service and charges a rate which is but slightly more than first class railroad passage between the same points. Many of these lines have never had a serious accident and all of them taken together compare very favorably with the railroads in regard to the proportion of passengers carried and passengers killed or seriously injured. A passenger travelling by air in Europe experiences a feeling of safety which he frequently lacks while on the European railroads.

Some of these prerequisites were present in the United States during and after the war. A vast amount of money was expended

*Prepared for The JOURNAL OF AIR LAW and read at the Legislative Air Parley of Midwest States, at Milwaukee, Wisconsin, February 25, 1930.

†Professor of Law, Marquette University Law School, and member of the Advisory Board of the AIR LAW INSTITUTE.

A terrible week three years ago precipitated the active starting of our program. Seven people were killed in as many days—all in unlicensed aircraft flown by unlicensed pilots. As a matter of fact, with seventeen people killed in the last two years in Cook County, only one ship and one pilot were licensed, and they were hit in the air by an unlicensed crock flown by an unlicensed pilot, taking off cross wind from a farmer's field in the landing area of the airport on which the licensed ship was about to land.

With no legal background other than the general police powers of the county, we persuaded the county commissioners to order that none but licensed aircraft and pilots could carry passengers for hire in the county. A volunteer committee, small but serious, of airmen made the round of the airports explaining the ruling and the things which caused it. In practically every case, the owners of the old crates saw the light and voluntarily scrapped them—or went elsewhere. There were a few obstreperous customers. At least, one of them drew a black eye during the educational campaign.

During the balance of that summer, flying in Cook County was pretty sane. There were no more casualties, but we knew that the "gymps" were still operating behind cover of private ownerships, from farmers' back yards and similar improper airports. It was almost impossible to catch them being paid for passenger hops. It's amazing how generous they were in giving away rides!

The Legislature was not in regular session, but the next spring, a special session was called to consider Chicago's traction question. As usual, no solution was found to that problem, but two acts were passed. The first appropriated funds to pay the expenses of the special session, and the second was an Air Regulation Act.

It was practically the model statute recommended by the Department of Commerce—but the old crocks kept on flying—and cracking with resulting scare-heads on front pages of newspapers, and a justifiable suspicion on the part of the public as to the wisdom of patronizing this new form of transport. That second summer of our efforts contributed eleven fatalities to our list. We could find no one to enforce our air law with even partial intelligence. The accidents that year were all investigated by special coroners' juries largely composed of airmen. The recommendations and verdicts of those juries were carefully drawn and as carefully studied, and at the regular session of the Legislature a year ago, some minor amendments were passed improving the air law—and putting teeth into it in the shape of ninety-day jail sentences as well as a fine.

As last winter gave way to spring, and the promise of good flying weather came true, efforts were made to have our sheriff take steps to actively enforce the law he was sworn to uphold. The official involved was a man of advanced years. He did not understand aviation. He had little time for or interest in its problems. No enforcement resulted, save the unofficial pressure brought by the little group of zealots, pilots volunteering their service to make their chosen work safe.

The flying started—more than ever before—and many of the airplanes in use were older and weaker. Finally came a crash—in June. The pilot was killed. One woman passenger was killed, and another seriously injured. Again the faithful few were convened as a coroner's jury—but this time action resulted. The jury saw clearly from the evidence that the flight had been contrary to the state air law. All the chief officials of the county were subpoenaed—and as a result, a special fund was made available to bring Major Royce of the Army Air Corps to Chicago, for a two months' tour of duty as a Deputy Sheriff. Royce arrived. The following day a collision in the air occurred killing four people—and there has not been a fatality since.

Royce first studied the laws, with the very able assistance of Professor Fagg of the Air Law Institute of Northwestern University, himself a pilot. He then inspected the twenty-six so-called airports in the county, then aircraft and then pilots. He found certain obvious violations at once which were stopped. He then ran a series of lectures and exhibitions for several score county police. The regulations and laws were explained to them. Principles of flight, et cetera, were outlined simply. Aircraft demonstrated various legal and illegal maneuvers and illustrated how high is up, and so forth. Several score of intelligent police officers were given information with which to enforce the air law as well as the ordinary laws. They constantly visit our airports, observing and inspecting. They co-operate with the Commerce inspector in relation to federal licenses, et cetera—and practically all of the objectionable activities have disappeared in the Chicago District.

I say practically all—because there are still some things which the present laws do not successfully meet. Among them are the question of improper airports, lack of standardized airport regulations, laxity in controlling ground crowds, low flying over villages, airports located in landing area of each other, et cetera.

There is one more detail of our present activity which I might mention. The coroner of Cook County has sworn me in as one of

Conclusion. The peculiar problems of practice and procedure in radio controversies are, for the most part, all directly or indirectly traceable to one fundamental fact: the total facilities available for radio communication are rigidly limited by the laws of science and the persons desiring to be authorized to use these facilities are much greater in number than can be accommodated without ruinous interference. The process of determining who shall and who shall not be licensed is, therefore, like a huge partition suit in which all the citizens of the United States and all the nations of the world are parties, and each party is, to some extent, an opponent of every other party. The procedure, which has been found suitable in courts of law for the determination of disputes between two or at most a limited number of parties, is totally inadequate for the determination of radio controversies. We are on the threshold of what promise to be tremendously interesting developments in procedure to meet the new situation with which radio regulation challenges legislators, courts and treaty-makers.

Sec. 5 of the Act. He referred the entire matter of radio regulation (so far as it was originally entrusted to the Commission) to the Commission during this period.