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WHAT STATE BODY SHOULD REGULATE AERONAUTICS?

JOHN M. VORYS*

In deciding what state body should regulate aeronautics, we should note that twenty-six states now have persons or bodies empowered to regulate aeronautics. Thirteen are existing bodies which have other functions; thirteen are devoted solely to aeronautics. Twenty-two states have none at all. Of the thirteen existing bodies, three are motor vehicle commissioners, three are corporation commissioners, two are railway commissioners, two are public service commissioners, and we have aeronautical duties devolving upon a commissioner of public works, a secretary of state, and a state comptroller.

The names of the existing bodies fairly connote their other duties. It is interesting to note the variety of names of the newly created officials and bodies. "Aeronautical commission" is the favorite, with three. Otherwise, each one has a slightly differing name, such as "aviation commission," "aeronautical board," "board of aviation commissioners," "air board," etc. We have one "commissoner of aviation" and one "director of aeronautics."

In considering what state body should regulate aeronautics, two things are obvious at the outset—first, that the name of the body is of no great significance, in itself; second, that the people who regulate aeronautics should know a good deal about the matter.

The next step would appear to be to decide what aviation matters need attending to by state officials. For the sake of argument, and considerable argument, since twelve of the states have decided otherwise, I am going to suggest that the licensing of planes and pilots, and the formulation of air traffic rules are not matters for the state at all, but should be left entirely to the federal government, with only such local laws and regulations as are necessary to require federal licenses and the compliance with federal air traffic rules. I am further of the opinion that the federal government has the power to require licensing of all aircraft and pilots, and should exercise this power. The arguments of uniformity and the safety that comes with uniformity, elimination of duplication of effort

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and needless expense in attempting to set up local standards of airworthiness, are too well known to you all to need repetition here. For the purpose of this discussion, we will consider the licensing of aircraft and pilots, and the formulation of air traffic rules, eliminated from state jurisdiction.

If this is done, is there any aeronautics left for the states to regulate? I have tried to group together below all of the aeronautical matters which might conceivably require the attention of officials other than federal officials. I find that many of these matters do not come under regulation, but if we are to consider the setting up of a body to deal with aeronautics for the future, we should consider all of these matters and who can best attend to them.

First. The enforcement of the use of the federal license for aircraft and pilots, and the enforcement of air traffic rules.

Second. Supervision of the surveying, location, construction and maintenance of airways and airports, and the air-marking of the state.

Third. Regulation of rates for aircraft which are intrastate common carriers, and all of the other typical supervision which is given to practically all public utilities, and which is inevitably coming for common carriers in the air whether we like it or not.

Fourth. Supervision of aeronautical education in the public school system, in state universities and, possibly, supervision of flying schools.

Fifth. General aeronautical information, and the promotion of the industry within the state.

In deciding who should do all of this work in the future, we should also remember that almost everybody will soon know as much about aviation as even such wise persons as we do now. The average small boy knows more about automobiles, for all practical purposes, than did the automobile expert of his town twenty years ago. While we decided at the outset that aviation matters should be under the charge of those who know something about it, it will soon be easy to find a number of such persons in every community. We should also remember that the public views with alarm any new "board" or "bureau," and feels that it is in grave danger of being over-experted. With these thoughts in mind when we go over again the list of possible aviation activities in a state, we find that they fit rather logically into existing pigeon-holes.

First. The punishment of illegal flying and the enforcement of air traffic rules could be left to the sheriffs, the police and,

where they exist, the state police. Already in states such as Ohio, where a great deal of flying is carried on at over one hundred airports and landing fields, it is impossible for the federal officials to apprehend and punish even the federal violations; and it is impossible for the Director of Aeronautics to apprehend all violators of the state law. Reliance must be placed upon local officials, and this will be increasingly true as the volume of flying increases. Of course, at present, airport officials are the backbone of law enforcement, through permitting only licensed planes to fly, but some very good work in Ohio has been done by sheriffs and their deputies, and by local prosecuting attorneys.

Second. I believe that the laying out of airways, and the surveying, erection, maintenance and financing by the state of airports, are the most important aeronautical functions for the states. Years ago we graduated from the idea that our highway system could be left to the voluntary development of private and municipal enterprise. We are now realizing, with the Swetland decision before us, that neither private, commercial, nor municipal airports can be depended upon to give us an adequate airway system. The highway analogy of federal aid to the states for airports on federal airways, and state aid to municipalities and counties for the inter-county airways, can be followed with profit. After all, a modern airplane is a motor vehicle running with a gasoline engine, on rubber tires, at the start and the end of every flight; and the providing of this type of "highway" is as much a state function as the providing of other types of highway. In thinking of what state body should do this work, it is as easy to think of putting a few aeronautical experts into the existing highway departments as to think of organizing in an aeronautical division the elaborate engineering, estimating, surveying, and maintenance forces which already exist in the highway divisions. At any rate, the highway pigeon-hole seems to fit this activity. Here again we have a federal standard of uniformity which is now not required but which will, of course, be compulsory, and helpfully so, in case of a state aid program.

Third. The regulation of intrastate aeronautical public utilities, either common carriers or private air terminals in case these are given powers of eminent domain, would naturally fall within the domain of the public utilities commission, public service commission, or whatever such a body is called in the particular state. Again, while such a body would have many new things to learn, their task would probably not be as difficult as the task of a pilot

or aeronautical engineer in attempting to learn the principles and practice of utility regulation.

Fourth. The supervision of aeronautical education would naturally fall within the province of the department of education. Believing as I do that ground training should be taught as part of vocational training in the public school system, that technical training should be provided in the state universities, and that flying schools should be subject to no permanent state regulation, there will then be nothing left for any new body to do in connection with aeronautical education.

Fifth. Information about aeronautics is now asked of every official who has anything to do with it. The promotion of aeronautics is one purpose of every public official who has anything to do with it. As aeronautics is gradually weaned from the infant industry class, the work of supplying information and of promoting this industry will, or at least should, be left to the industry itself, except to the extent that the state, through its libraries and other channels, furnishes information on all industries, and through all of its branches promotes the welfare of all industries.

I have apparently talked myself out of a job. In the future, when flying and knowledge of flying are common, there will probably be no need for any special state body to regulate aeronautics. We are faced, however, with a present condition where states are not over-experted aeronautically, where if any of the five activities are to be carried on there must be someone to get them started and work them out. We are faced, too, with the situation that it is necessary for political purposes, if for no other reason, in embarking in aeronautical activities by the state, to bunch the aeronautical brains in as few heads and over as few pay checks as possible. For the time being, we do need some sort of state body to regulate and to think about regulating aeronautics in these five ways.

If this is the case, then should this body be some sort of commission, or group of persons? In answering this highly controversial question, my local and personal bias will soon become apparent,—so much so that I shall not attempt to present both sides of the question, but only one, and shall leave the other for your discussion.

I do not see the sense in setting up an aeronautical commission composed of a number of persons with equal powers. If they are unpaid, and serve for the honor, most of them will contribute only the honor of being on the commission. If they are paid, you are then spreading out your aviation money too thin. Five \$2,000.00

a year men, whole or part time, may be better than one \$10,000.00 a year man for digging ditches, but not for meeting and solving the baffling problems that arise with this newly created and fast growing field of human endeavor.

Recognizing the delicacy of suggesting for other states, with their own traditions, politics, idiosyncracies, and relics in state government, the sort of body they should have, I would suggest that at present the thing to do would be to create one new official, not in some old department, but directly under the Governor. Call him a "director of aeronautics" or a "commissioner of aviation," or something like that, so that circular letters sent to the aeronautics officials in all of the states will be sure to reach him; pay him as substantial a salary as you can get through the Legislature, having in mind that you wish to secure a man who is competent in an industry where positions are few but those positions are highly paid; give him an office to work in, and assistants for as many of the five branches of aeronautical activity as you cover by legislation; give him an advisory board or commission who receive their expenses for attending meetings, but nothing else; give him the power and the duty to advise with the officials, state, county and municipal, who are charged with the administration of aeronautical matters.

Returning again to the "five points"—

(1) He can assist local officials in explaining the license system and the air traffic rules. For instance, in enforcing the licensing of commercial aircraft and pilots in Ohio, I first issued regulations defining and interpreting these licenses, to all commercial operators and to all sheriffs and prosecuting attorneys. After six months of an experimental stage in enforcement, the Bureau of Aeronautics called the first Air Law Conference of Ohio, and on May 7th we held a school for prosecutors and sheriffs at Port Columbus. Both state and federal laws and regulations were explained, examples of licensed and unlicensed aircraft were there for inspection and were explained, the various air traffic rules were demonstrated, and then the prosecutors and sheriffs took complimentary flights, thus learning air law enforcement from the ground up, as it were. Since that time, I have had increasing evidence of intelligent and efficient enforcement of the law.

Sheriffs have 'phoned me of investigations made, and I have learned from the federal inspectors of co-operation they have received from local officials. As a typical example, I recently was flying from Cleveland to Columbus, and saw two un-marked planes

in a field. I 'phoned back to the sheriff of that county; he investigated that day, and stopped the illegal flying.

(2) Your official should have authority to survey and locate airports, in conjunction with the highway department, and all airway and airport plans and contracts should be subject to his approval. If you cannot yet launch a state airways program, you should at least furnish technical airport information to municipalities, and for this purpose you will need an airport engineer on the staff of your official. You can also take up the matter of air-marking your state. We did this in Ohio, under the first mandatory municipal air-marking law in the world, and although the law had serious defects in its enforcement provisions, we have over 650 air-markers in the state, and have secured valuable experience for the future, in the form and materials most appropriate for air-marking.

(3) Your official can act as technical advisor and "amicus curiae" to your utilities commission in passing upon intrastate rate cases, which may soon be coming on, and in regulating air terminals, which may soon be subject to regulation as utilities.

(4) Your official can act as technical advisor to the department of education, in building up aeronautical courses in the schools and colleges. He might be given power to inspect and rate private flying schools, but he should not be authorized to license such schools. The federal regulations, which will some day include a minimum size field for instruction, will give the state adequate minimum safety requirements for flight training.

(5) Your state official will be called upon for all sorts of information about aeronautics, and all sorts of promotion of aeronautics. He will inform patiently and intelligently, and promote industriously and enthusiastically, always remembering in his promotion projects that he represents the state, and not a single industry.

Let him work and think and dream aviation twenty-four hours a day. At the end of a year or so, you will have your most constructive suggestions for state legislation coming from your state aeronautical official, if you make due allowance, in considering his suggestions, for his natural desire to increase his own authority and appropriations. If you send him to meetings like this, other such officials will help winnow the wheat from the chaff in his suggestions. If the time comes, as it may, as it did with canal commissioners, plank road commissioners, and others, when his job should be abolished, you may have the good fortune to have an official who will recommend this to the state.

As to the title for this official and for his department or section or division of the state government, if you must have a suggestion, I would say to call him "director of aeronautics." Call the body the "bureau of aeronautics." And I only regret that you cannot all use the title "Bureau of Aeronautics of Ohio." (Applause.)

CHAIRMAN NICHOLS: I regret to say the announcement I intended to make about Mr. Vorys can not be made. I recognize my old friend's view with alarm. I think probably the best illustration of the exception that proves the rule is the case of Mr. Vorys himself, who, as I understand, gives up most of his time to the State of Ohio and is paid for part time. Unfortunately, apparently the duties of Director of Aeronautics seem to be something you get more glory for than lucre. I can understand the fervor with which he is pleading for greater remuneration.

I am going to ask that in discussing Mr. Fixel's and Mr. Vorys' papers, first, that you refrain, if possible, from conflicting with two papers scheduled for tomorrow. Let us not get our scope so wide that we begin to intrude upon subjects which have yet to be presented. The addresses tomorrow on "Flying Schools and State Legislation" and "How Shall State Aeronautical Legislation be Enforced" are so closely allied to these two subjects that I am bringing that point to you.

Also, please bear in mind that in discussing the question of what state body should regulate aeronautics we must consider the following phases: Air marking, licensing of planes, licensing of pilots, conduct of planes and pilots, mechanics, landing fields and schools, a rather large subject.

MAJOR REED LANDIS (Illinois): I should like to ask Mr. Vorys two questions in a very friendly sort of way, agreeing with his paper.

First, where should the money come from to pay the bills for the state activity; secondly, on what basis do you justify the competition of state airport experts with private institutions who have set themselves up to provide similar expert service?

MR. VORYS: First, the money for regulation should come out of the general fund or treasury or "kitty" or whatever you call it. I do not advocate any special license, tax or anything like that. One thing which was outside the scope of my paper but which I stuck in anyhow, this matter of airport buildings on a large scale by the states, in conjunction with the federal government, following the highway analogy you should receive most of the money from your general revenue fund. You will eventually receive most of the money from the aeronautical industry by way of a gasoline tax. Whether the time is ripe for such a suggestion, or whether it is a case of hitting a fellow when he is down to talk about any tax on the industry now or not is not involved in answering your question, I hope, but certainly, if you are going to hit him, the fairest way is through a gasoline tax, but I think most of the money should come from the general fund.

We spent last year \$66 a head in the United States for highways, and nobody considered we were subsidizing the motor industry. We did it as a public function because we had graduated from the idea that plank roads,

county roads and anything else except state and federal highway systems were any good whatsoever at all.

In this matter of providing airports, since if the Swetland decision is to be followed there are certain air rights that must be acquired, there are air rights that must be taken away from your surrounding people through zoning laws, and those things can only be done when your airport is so located and operated that it is clothed with the public interest. You cannot have such a thing as a private airport unless you pour countless millions into buying big enough space, under the Swetland decision. If every airport is clothed with the public interest, as it will have to be in order to be there at all, it will then have to be regulated, and I think financed, by the state or its subdivisions. I do not see how the aeronautical industry can afford to support the industry and the airports.

Then, if this were a public function, you would hire an airport engineer the same as you hire a highway engineer today, a man who knows all about the maintenance of the airport, and that sort of thing.

MR. J. D. SULLIVAN (New York): I take it from the remarks of the Chair and from those of Mr. Vorys himself, that his paper was intended to invite discussion. Unfortunately he partially disarmed me, but not entirely. I am a member of one of those unpaid commissions, and I am in thorough agreement with everything he has said on that subject.

We, in the State of New York, have labeled ourselves as a temporary commission. We realize the time will shortly be here, if not already, when we will need a permanent body. In the meantime we have simply an unpaid and temporary commission, a commission to study the needs and the requirements of the state of aviation in New York. I do not know whether or not the Highway Department or Commission is necessarily the place where this work ought to be carried on in the State of New York. I am a little fearful of any attempt at uniformity, for the reason a local condition may exist that in one state may make it necessary to have it somewhere other than in the Highway Department.

With reference to the qualifications of the Commissioner, I am wholly in accord with his idea that the individual, whoever he is, ought to receive an adequate salary, but unless a degree of idealism exists more widespread than I think it does, I should like to see some qualifications set up other than that the gentleman is willing to accept this adequate salary.

I have served on several committees, one of which had a membership of twenty-five, and when the chairman asked which members of the committee had ever been in the air, three had, and which members were pilots, two, and those gentlemen were established to set themselves up as being more or less expert in fixing municipal ordinances and various other regulations to affect flying.

If it is permissible to jump on back to the first paper read this afternoon, I should like to make a comment on that portion of Professor Fagg's paper in which he deals with liability, recited on pages 24, 25, 26 and 27. We have given that a great deal of consideration, and we have no law on the statute books today, but our attitude is expressed in a law we did have enacted by the legislature, but which was vetoed by the governor.

We began on the theory that this is very much an infant industry, and we should not at this time impose the rule of absolute liability on aircraft

operators. We ought to have some rule, to be sure, with the notion if we have any rule at all which begins by at least seeming to be a fair rule, if time shows the rule is either too harsh or lenient, there will be plenty of opportunity to change it. Acknowledging the existence of liability, it will give the insurance companies some rule to go on. As different operators and insurance men in the State of New York have told me, they face this condition today: The aircraft operator, like the aeronaut, must insure, yet the policies recite the companies are insuring against a legal liability. I have yet been unable to find the definite legal liability, with the result the insurance companies do charge a high rate. It means the operating charges are that much higher and the passenger rate has to be that much higher, and the general public is dissuaded on account of the higher fare.

I do not think any of us know at this time just how much we should penalize the industry, nor to what degree of care we should hold them. My own view is that for the present we should not impose the rule of absolute liability, that we should instead make the operator of the aircraft or the airport owner liable only in so far as his negligence, or that of his servants, agents and employees has contributed to the accident.

We have been operating automobiles in this country a great many years, and we are yet not in agreement as to whether we should have compulsory insurance. Two of the states have adopted laws requiring insurance. I am not at all sure the industry is in a position today to carry that burden. We believe, in the State of New York, that we will begin, not by imposing absolute liability, but rather instead, holding them to the ordinary test of negligence.

PROFESSOR FAGG: In that regard, may I suggest to Mr. Sullivan that my whole object in this paper has been to state only, as I believe he knows, what the states have done, rather than what I personally think they should do. Consequently, on page 30, paragraph E, I have suggested that, rather than be too hurried in your action to pass definite legislation, since the important subject of liability is hardly dealt with, a complete re-examination of the principles is necessary.

MR. E. KINTZ (Department of Commerce): On page 15 of Professor Fagg's paper the statement is made that "On the other hand, if state funds are provided in abundance, there is no reason why state officials (provided experts can be obtained in sufficient number) cannot conduct the examinations in an entirely efficient manner."

I should like to call the attention of the Conference to the fact that in conducting examinations of aircraft for airworthiness it is necessary to go beyond the actual physical examination of the plane. As the Department goes into the structural features and determines the safety of the aircraft, it means all manufacturers requesting an approved type certificate, and any person requesting a license for a plane which has not been manufactured under an approved type certificate, must admit technical analysis data in duplicate.

That analysis may run anywhere from five hundred to five thousand dollars, and therefore, if the states are going to require a state license for aircraft, without the prerequisite of a federal license, it would necessitate the submission of forty-eight sets, in an extreme case, of technical data to

the various states. That provision would be quite a burden on the industry as a whole.

MR. GEORGE B. LOGAN (Missouri): I should like to ask Mr. Sullivan a question as to whether, in his proposed New York State law on liability, he makes any distinction between liability to passengers and liability to persons and property on the ground.

MR. SULLIVAN: No, we do not.

MR. LOGAN: I was wondering whether you do not find, as a matter of pure equity, that the person and owner of property on the ground is at a considerable disadvantage in applying the ordinary rules of negligence, the rules of evidence pertaining to the proof of negligence, because ordinarily that evidence is not obtainable in an aircraft case.

MR. SULLIVAN: I do not profess to know accurately. I will state what I believe, that those who have heretofore suggested that we have a rule of absolute liability have had in their minds the idea that when there is an aircraft accident, whether it is a case of the passenger being injured or somebody on the ground being injured, or property on the ground being injured, it is almost impossible to find out what the cause of the accident was, and whether there was negligence.

I think that was perfectly true at the time the rule was first suggested, but I do not believe it is any longer true. Since 1926 the Department of Commerce has been tabulating the causes of accidents, and I think with remarkable accuracy.

I do not think that because lawyers as a class today are unable to marshal the facts and the evidence that we should place such additional burden on the industry. I have seen two of those cases tried wherein in my opinion it would have been entirely possible to prove from facts obtained after the accident, both the pilot and the passengers having been killed, that the pilot had been negligent, and, having talked with the witnesses, the attorney for the plaintiff simply was not aware of the facts in the case, and he did not know how to put those facts together and present them to the jury.

The same man might have tried an automobile negligence case, and tried it beautifully, but I see no reason we should impose the harsh rule on the industry.

I believe, after an accident today, with the exception of very few cases, you can determine, perhaps not with mathematical certainty, just what the cause of the accident was, and whether there was any negligence.

MR. V. MOSELY (Tennessee): In getting that theory across to the jury, you have jury minds that are wholly ignorant of planes in the air. They are not able to understand, as yet. The average layman will not get the fine points, and when it comes to getting information from the Department of Commerce, I notice that two Senators, MacKellar of Tennessee for one, and another, trying to get information as to the cause of an accident, were faced with refusal. I am not sure that that was not best for the industry, but how is the lawyer representing the plaintiff going to get the facts, which must necessarily be facts gained immediately after the accident? What is the Department of Commerce going to say to a plaintiff's attorney who is employed possibly three or six months after an accident, any time before

the statute of limitations runs its course, who then tries to find out how the accident occurred.

MR. E. KINTZ (Department of Commerce): This is a little aside from the papers under discussion, I think. For the information of the Conference, however, we have been continuously called upon to furnish the causes of accidents in civil air commerce. Under the act it is the duty of the Secretary of Commerce to investigate, record and make public the causes of accidents in civil air navigation. The Department does investigate, and it makes public and records the causes of accidents in civil air navigation, through a compilation of statistics, breaking the causes down into material, personnel, supervision of personnel, pilot, and from pilot we go into disobedience of orders, poor judgment, errors of judgment, and then negligence.

If we were to furnish to all who request it that information, the Department could do nothing but appear in civil actions from now until doomsday, because we would be compelled to go all over the United States and furnish the records.

The main objection to furnishing the records for purposes of civil actions is due to the fact that our inspectors investigate and base their opinions sometimes wholly on hearsay evidence. They are, in a great many cases, in the same position that the attorney for the plaintiff would be. They get there after the accident. They have to rely sometimes on statements from lay witnesses; they piece the accident together and furnish the information to the department for the purpose of compiling the statistics.

In that connection, where structural failures have occurred, the Department has taken up with the manufacturer of the particular type of plane involved the question of structural failures. That particular structure has been remedied and the particular type of accident has been prevented in future cases.

But, if we furnish the information, supplied to us sometimes by the pilot of an operating company voluntarily, with at least the intimation that the information will not be divulged, the pilot of the particular line would be fired. He might say that he was ordered to take off in weather when nobody should fly, which gives you the cause of the accident, yet if his name were divulged as a witness he would have no position. If pilots furnishing us information around a field were called upon to testify in a case, they would be out of luck with the other pilots at the field, and we would be flooded with a multiplicity of violations in revenge for the testimony in the particular case involved, consequently the Department has felt that the individual's statements and the cause of the accidents are not public property. We make it public in a statistical form for purposes of preventing recurrences and for insurance purposes, but the individual causes of individual accidents are not divulged, because the information is inadequate and would not be admissible as evidence.

MR. V. MOSELY (Tennessee): In other words, in contradistinction to the Department of Commerce's attitude is that of the Coroner's Committee here in Chicago on the occasion of the plane going into the gas tank. I do not say that the Department's attitude is not fully justified, but here you had the Coroner's Commission giving out the facts, coming from a special board acquainted with air work. Why should they not?

As to the question of how far the Department of Commerce might go in furnishing the plaintiff's lawyer the names of witnesses, you realize how difficult it is six months after the accident to find out who saw it and just what occurred. The Department of Commerce has its men right on the job within a few hours afterward. I wonder if they could go at least so far as to give you the names of parties they did interview in getting their data on the accident, that you might follow along in hot pursuit.

MR. KLINTZ: Our arrangement for that has been that the plaintiff's attorney could more than likely obtain the names of witnesses and any information he required by contacting the airport officials or the people in the locality of the crash.

One other point in connection with my former remarks is that our information at the present time is wholly voluntary. We have no jurisdiction to compel the attendance of witnesses or the taking of testimony. The evidence is not taken under oath, and the particular pilot involved does not have his day in court.

A bill was introduced in the last session of Congress by Senator Bingham giving to the Department of commerce the right to subpoena witnesses and to make public the findings in death cases, but until we have that jurisdiction, the Department can do no more than it does at the present time.

MR. L. HYZER (Florida): The question arises in my mind, would it be possible or advisable to inject into the state legislation a regulation for the inspection and investigation of air accidents, for the purpose of securing such evidence? I merely raise that as a question.

MR. VORYS: The question has arisen in Ohio. Wholly without specific statutory authority, but for the purpose of having complete data on aeronautics, I have been trying to make a collateral investigation into all aeronautical accidents, to determine whether there was a violation of the licensing division, etc. I have had plaintiffs' attorneys write me for the results of those investigations, and have refused to give them that information, saying I had no authority to get that information, but merely got the information for statistical purposes, and have referred them to the Department of Commerce, and I knew what the answer would be there.

I would rather see a rule of absolute liability, or see, as I think is more likely, developed by the courts a sort of dangerous implement doctrine applied to aeronautics, than to see a state or federal official made an organ for building cases for plaintiffs' lawyers. This is not a Bar Association, but in Ohio and possibly in other states the only question is that the plaintiffs get their dues, but the whole matter of plaintiffs' attorneys is a problem in itself, and I certainly would not want to see any legislation or any recommendations here which would tend toward making some aeronautical institution a happy hunting ground for plaintiffs' attorneys, or would-be attorneys, to write to, and then, armed with the facts, go to the plaintiffs to solicit the cases.

MR. LOGAN (Missouri): Could not an arrangement be made for the plaintiffs' attorneys to split with you?

MR. JOHN J. WICKER, JR. (Virginia): I want to say two things. First, in Major Fixel's very interesting paper he gave the names of several states that have enacted legislation authorizing municipalities to acquire by purchase, lease, condemnation or otherwise, land and property necessary for

airports inside or outside the limits of the municipalities, and just for the sake of my own state, because we are rather proud of getting this act through in a state that has not progressed very far in aviation so far, I want to add the name of Virginia to that list. We passed an act at the session of 1930. The act went through as an emergency act, because a case had already arisen with the City of Roanoke. There being no land within the city limits suitable for an airport, they made arrangements outside, and they were held up on the question of authority.

I believe that the rule of absolute liability, while we have none in Virginia—in fact, we do not know where we are, there. Our statute does not say anything one way or the other as to liability, but we require insurance, insurance on the part of airports, insurance on the part of the operators of aircraft. The law says it is required for protection, but there is no statement in the law as to the standard of liability which will be applied in saying when that insurance will be payable.

As a result, as Mr. Sullivan said, our aircraft operators are being forced to pay to the insurance companies just as high a rate as if we had written into the statutory law of the state absolute liability; because of the uncertainty of it, the insurance companies say, "We will not take a chance." They charge for the absolute liability, and then they hand out a policy which leaves the aircraft operator not knowing exactly where he stands, because it does not specify in the policy just how far he is protected. It leaves a question mark.

I think that, from the standpoint of having accidents investigated by the Department of Commerce or by any state officials and then trying them on the basis of their findings would be pretty soon like the will cases, with alienists and experts on both sides, with the average jury confused and befuddled between the conflicting views brought before them by the aviation experts.

It seems to me, rather than the rule of absolute liability casting any burden on the industry, I rather believe in the long run it would be a benefit, because the thing I think that we need more than anything else to develop aviation is public good will, and I notice, and I think we all notice, and you heard in Professor Fagg's paper, that the public is getting impatient, and complaints are being made more and more.

In Richmond not long ago the Ministerial Association had a resolution up before them against flying because of the racket it made during church time, stating that folks' minds were diverted from the sermon. Likewise, it was proposed by one of the doctors there in the Academy of Medicine that an investigation should be made to see whether the operation of aeroplanes around and over the city was not in some mysterious way damaging the public welfare and public health. It did not get anywhere, but it indicated a trend.

If we have the accidents we are bound to have, and a plaintiff asleep in his home wakes up to find a propeller in his stomach, or wakes up on his lawn and finds his house burning, and he has to go into court and cannot prove his case and loses out, he is going to be a radiating center of hostility toward aviation, and all of his friends and others will gather and will, I think, tend to make the people feel that here is something dangerous and very bad, and something that is going to cause us a loss of money. But if they know

that in case of any accident they can recover, then I believe they will feel more tolerant, and will feel more like putting out in the way of taxes to help the development of the industry.

MR. V. MOSELY: I do not want to continue to talk, but safety is the prime need, and according to the Department of Commerce, 64 per cent of the accidents are due to the human element. Therefore, you are primarily interested in getting a pilot who is not solely a taxicab driver. You require a higher type of individual, and I do think that safety could be secured by possibly a more liberal attitude toward a disclosure at least of who the witnesses were.

Then there is another point as to something Major Fixel mentioned relative to municipal airports beyond the strict territorial limits of the city. In the case of Tennessee they passed an act at the Special Session of 1930, enabling the issuance of bonds by the cities for the purpose of acquiring the airports. They said nothing whatsoever about extending the police jurisdiction of the municipality. The municipalities pass a uniform ordinance suggested by the Department of Commerce.

The point is made that a municipality has no authority to do that, that its police jurisdiction does not extend over the airport for something occurring directly over the airport, but that it is O. K. as to pilots flying over the city when within the territorial limits.

I think the police power should go further, even in the absence of an express authorization in the enabling legislation. If your city charter provides that the commission has authority to pass all ordinances, under the welfare clause, that do not conflict with the constitution or the state law, that should suffice, because an airport two and one-half miles from a city is quite likely to jeopardize the safety of the inhabitants in the city in that the planes nest out there, and from an altitude of fifteen hundred feet they might land in the city, and the city is interested in safe pilots and safe aircraft. Would you say a city had police power by implication in such a case?

CHAIRMAN NICHOLS: So long as the city is authorized by the state to acquire the property, even though outside the city limits, I would contend, if the situation ever should arise, that all of the powers incident to government over city territory would be implied as to the property acquired, even though it were without the territorial limits of the city.

LIEUT. HOWARD KNOTTS (Illinois): I should like to make one observation and then ask for some comment. I want to state, as one of the honorary officials, that I am heartily in accord with what John Vorys has to say about that matter. I think that no matter what enthusiasm you may work up within yourself, you are a pretty poor official if you have not the money and means to carry on as you should.

It seems to me, if this conference is to get the greatest good out of a study of what body or what person shall enforce aeronautical law, or shall be created to handle it, we ought to have something from the people who are here present who are paid officials, whether adequately or inadequately.

My understanding is Colonel Knox of Connecticut is the Commissioner of Aeronautics, Mr. Harding of North Dakota is on their Commission, and there are gentlemen here from Pennsylvania—Mr. Taylor, for instance. I

hope they, out of their better organized groups, will give us the benefit of their experiences as to what ought to be done in creating a Director or a body or a Commission, or whatever he or that group may be called.

CHAIRMAN NICHOLS: May I call your attention to the fact that the ultimate object of this conference is, of course, to go on record as favoring or not favoring certain conditions, certain ideas, and unless you present your ideas in concrete form as resolutions, we shall not be able to go on record.

Second, let me refresh your memory with the fact that the Rules Committee has ruled that no member of the conference shall speak more than twice on the same subject. That rule is being broken. I think we are probably prolonging the discussion a little longer than necessary. If possible, I should like to see us get some discussion on the last two papers. I have yet to hear any discussion of Mr. Vorys' paper.

MR. E. C. WILSON (Illinois): I wish to state that I am the author of the resolution that established this Commission in Illinois. There was a like resolution offered in the Senate, creating or giving \$5,000 for the work, but it was not getting any place, and in the last few days of the session I introduced a resolution in the House and the Senate finally passed it, and to the learned gentleman from Ohio I wish to say this: So far as the personnel of the Commission is concerned it all depends on who appoints them. I have no brief for the Speaker of the House who appointed me, but I do say that the Governor of this State, when he appointed Major Landis and Lieutenant Knotts members of this Commission, did a wonderful job.

And now another crack at the gentleman from Ohio. In Illinois we have a so-called gas tax, but it is not a gas tax whatsoever. It is a tax for the use of the highways, payable so much a gallon of gasoline consumed by propelling the vehicles over the highways, so we would have to have a different law to provide a gas tax to obtain our funds, unless the highways of the air are included.

CHAIRMAN NICHOLS: I should like to call on Mr. Knox, of Connecticut, if he has some views on the subject.

MR. C. M. KNOX (Connecticut): The principle we have worked on in Connecticut is that the whole idea was so new it required voluntary work on the part of those interested to put the thing over as it should be. Connecticut became interested, as was mentioned yesterday, I believe, back in 1911, but things were more or less dormant until after the war, when Major Malone who was in the Air Service, foresaw the conditions coming, and passed a bill through the legislature placing the control of all aviation in the state in the hands of the Motor Vehicle Commissioner. That was some time prior to the federal work.

At that time those of us who were widely interested in it felt that in all probability it was the work of the federal government to handle this particular piece of business, but as we got deeper and deeper into it, it looked as though, in order to handle it properly, it must be carried on by the state. In other words, today we recognize that there is a very definite field for the federal government in the work, as well as for the state.

Mr. Kintz has mentioned a number of times the airworthiness of aircraft. We in Connecticut certainly advocate the federal Department approving all types of aircraft in production. However, a ship may be of an

approved type but may become unairworthy. Just to cite conditions we have met with, and to explain our position in things that the country at large has taken exception to, let me cite one case where, at one field in Connecticut, there were six new ships of an approved type delivered from the factory. There was no question at all but what the ships should be eligible without inspection.

Our experience has taught us that merely because ships are of an approved type does not say they are airworthy, and of the six inspected, five were found unairworthy. True, the structural members were sound, but it was simply a case of carelessness, leaving out cotter pins, and so on, and consequently the ships could not be registered until the corrections had been made. We have found brand new ships coming in with struts bowed an inch and a quarter. That is the reason we take that attitude on new ships.

There is no question at all but what the federal department is going to cope with the situation. When they first took it over it was a titanic task. They had to organize the personnel to handle it, and it was almost a prohibitive job, but, due to the slowing up of the industry and the gradual development of that Department they are improving tremendously, and we will be glad to see the time come when we can leave that entirely to them.

When a ship is put into service it requires frequent inspection. In Connecticut we inspect every ship once every fifteen days. A lot of people say it is not the states' duty to maintain aircraft. That is not our point; it is the psychology of having the operators know there is a regular, frequent inspection.

That is the attitude we take on those things. I do not feel there is time in this conference to talk about and explain the situation and the way things are working in Connecticut, but I think our records do indicate somewhat the effectiveness of the work, in that in the eight years we have carried it on we have had only two fatal accidents under regulated flying.

MR. F. HARDING (North Dakota): I noticed in one of the papers here you referred to us as a "Railroad Commission." That is our official title; however, most of our work is of a utility nature.

I do not understand that we are so much interested in who does the work as the result from those that are doing the work. In North Dakota an act was passed giving the Railroad Commission the power to issue licenses and inspect ships, or in lieu thereof to adopt the federal requirements. There was no appropriation made, therefore we took the Scotch way and adopted the rules of the federal government relative to pilots and aeroplanes.

Now in utility regulations the Commissioner, it is true, hands down the decisions, but they base their decision on the testimony in the case and the expert advice of their employees of the Commission. I can see no reason a Commission with proper funds could not hire an expert in aviation, as well as it could hire a civil engineer or a statistician to go into the books and the property evaluation of utilities, and I think a state body that is now receiving pay from the state government might, with a little extra appropriation, hire an efficient man to inspect, if necessary, or enforce the law. As I understand it, it is desirable that the rules and the requirements of the federal department be enforced, and that is what we are trying to do in North Dakota.

I notice a number of the remarks coming from gentlemen who are from states that have dense population. I was talking with one gentleman here today from Pennsylvania, a Mr. Taylor, and he told me the number of airports they had in Pennsylvania. We have perhaps twenty airports in a state that is two hundred miles one way and four hundred miles the other way. Our largest city is less than 30,000 population. Now it would be an imposition to the tax-payers of our state, and it would be impossible to get any legislation through the legislature, for an extra appropriation establishing a new department for this work, and I think that would be true of a number of western states, where the population is sparse. I wish, in making any resolutions, that that matter may be taken into consideration.

Mr. J. D. Wood (Idaho): In connection with Mr. Vorys' paper, I should like to state Idaho has a similar set-up to that recommended by Mr. Vorys, and we find it working very satisfactorily, even to the gasoline tax, which we use for the construction of state airways. We also have a license tax on the pay load, which goes for the same purpose, but we do not have a direct property tax on a plane operating within the state.

I should just like to read a couple of lines from the preamble to the law setting up the Aviation Division of the Department of Public Works of the state:

"The Commission is authorized to utilize existing facilities and agencies and he shall encourage companies, municipalities and private individuals in the establishment of airports. The Commission may designate airways, routes, which after the proper survey, are found necessary to the promotion of air commerce.

"The Commissioner is authorized to acquire properties necessary for the establishment of air navigation facilities by purchase, right of eminent domain, lease or donation, and is authorized to enter into agreements with other states with reference to the designation and establishment of interstate airways."

The actual activities of the Division of Aeronautics are handled by an Airways Engineer, who works in conjunction with the State Highways Department. We have just completed our first intermediate landing field in connection with a federal aid highway project. I concur with Mr. Vorys' remarks.

CHAIRMAN NICHOLS: I am glad to see some sentiment crystallizing, whether it is in favor of what Mr. Vorys propounds or whether it is not, for the simple reason that unless we have the discussions on the floor now, we are going to be confronted tomorrow afternoon with a great deal of discussion, which will drag out the session, and we will not be as able to obtain the sentiment of the conference. That is why I like to have the sentiment crystallize today as much as possible.

I should like to ask Mr. Taylor of Pennsylvania for a few words.

MR. THOMAS G. TAYLOR (Pennsylvania): I believe it is important that states should be authorized to establish intermediate fields and airways. Pennsylvania, in January of 1930, had two interstate airways. In November of 1930 we will have four, and two completely equipped state airways. We have a State Engineer at the present time in charge of airway construction.

I think the one feature of Mr. Vorys' address that appealed to me most was the authority given to some body in the state to establish airways and