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THE STATE AERONAUTICAL REGULATION OF 1930

FRED D. FAGG, JR.*

The state control of aviation developed during 1930 is to be divided into two parts: (1) legislative enactments, and (2) regulations promulgated by the various state commissions. Since few legislatures met in 1930, there is but a minimum of statutory change, while the number of regulatory measures established by state bodies increased greatly. In an earlier paper¹ a survey was made of the important features of state aeronautical legislation, and this article merely adds a few observations to those already made upon that subject. A subsequent paper will deal with the changes made during 1931, although the copies of the bills now being considered in the various legislatures and published in the present issue of the Journal will indicate the general nature of the proposals.

LEGISLATION

The most important legislative changes are to be found in Kentucky,² Massachusetts,³ New Jersey,⁴ New York,⁵ and Virginia.⁶ In empowering the state regulatory body with authority to prescribe air traffic rules, two methods are in evidence. The Kentucky law reads as follows:

"The Air Board of Kentucky shall, from time to time, promulgate air traffic rules applicable to the operation of aircraft within the Commonwealth: Provided, however, that such air traffic rules shall be *identical* with the air traffic rules adopted by the United States Government *as nearly as may be and in so far as same are applicable*: which said air traffic rules shall be maintained in current condition by likewise promulgating any amendments which may be made effective *by the United States Government*."⁷

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1. See *Fred D. Fagg, Jr.*, "A Survey of State Aeronautical Legislation" 1 JOUR. AIR LAW 452-482.

2. L. 1930, Ch. 11.

3. Acts of 1930, Ch. 33.

4. L. 1930, Ch. 94.

5. L. 1930, Ch. 289, Ch. 334, Ch. 391, Ch. 395.

6. L. 1930, Ch. 291.

7. L. 1930, Ch. 11, Sec. 6. Italics ours.

The Virginia law states:

"The State Corporation Commission shall administer the provisions of this act and for such purpose is authorized to promulgate such rules and regulations relating to air traffic, . . . as the commission may deem proper and necessary . . . ; provided such rules and regulations shall *conform to and coincide with, so far as possible, the provisions of the Air Commerce Act of 1926 and amendments thereto*, passed by the Congress of the United States and Air Traffic Regulations and Air Traffic Rules issued pursuant thereto by the *Department of Commerce*."⁸

While it has been the common practice to refer specifically to the Air Commerce Act of 1926,⁹ and amendments, it is believed better to make reference to the federal regulations more generally. To that extent, the Kentucky law seems preferable, although it is submitted that the following language meets the objective in a more satisfactory way:

"all rules and regulations prescribed by the Commission under the authority of this section shall be consistent with and conform to the then current Federal legislation governing aeronautics and the regulations duly promulgated thereunder,"

New York, on the other hand, has incorporated the federal air traffic rules into its legislation in Section 245, following the practice of some of the other states.¹⁰ In view of the fact that changes must be expected, from time to time, in the federal rules, it would seem better to provide for the desirable uniformity by the more flexible system of giving the state commission power to promulgate rules which are consistent with the then current federal regulations. Of course, where there is no commission established, incorporation into the legislation is the only method.

In adapting the federal licensing draft to suit its needs, New Jersey had chosen the following language:

". . . it shall be unlawful for any person to *avigate* an aircraft within this state unless it is registered pursuant to the rules and regulations of the United States government then in force, if the circumstances of such *avigation* are of a character that such registration would be required in the case of interstate navigation."¹¹

The two words used in the federal draft relative to aircraft and airmen are *operate* and *navigate*. The term *avigation* is a sub-

8. L. 1930, Ch. 291, Sec. 3775-b. Italics ours.

9. Cf. the laws of Maine, Maryland, Michigan, Minnesota, and New Hampshire.

10. See, for example, the laws of Delaware, Iowa, Nebraska, and Washington.

11. L. 1930, Ch. 94. Italics ours.

stitute for *aerial navigation*.¹² But it is submitted that the term *operate* is better in both the case of aircraft license and license for airmen. It is a more inclusive term and would permit the holding of the owner, or lessee, liable as well as the pilot. The validity of using the term *avigate* in case of aircraft license is far greater than in the case of a license for airmen. The reason is that a structurally unsound plane is only dangerous when it is in the air (when flying), while an unskilled pilot is a menace while *operating* a plane on the ground prior to his leaving the ground. For this reason, and for the liability reason, it would seem that the term *operate* is preferable.

None of the states deal directly with the question of liability, but New York makes an indirect provision through the medium of insurance.¹³ The language is as follows:

"Sec. 110. Incorporation. Thirteen or more persons may become a stock corporation for the purpose of making insurances on . . . including insurances upon automobiles and airplanes, seaplanes, dirigibles or other aircraft, and the breaking of glass therein, . . . which shall include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles and airplanes, seaplanes, dirigibles or other aircraft; loss or damage to property resulting from the maintenance and use of aircraft, and . . ."

One of the problems not dealt with in the earlier legislation dealing with airport enabling acts concerns the authority of a municipality to acquire and police an airport outside the municipal limits. The legislation of New York and of Virginia, however, makes such provision. The New York law reads:

"The local legislative body of a city, or board of supervisors of a county, or the board of trustees of a village of the first, second or third class, or the town board of a town, by resolution, may determine to establish, construct, equip, maintain and operate for such county, city, village, or town an airport or landing field for the use of aeroplanes and other aircraft, and may direct an appropriate officer, board or body of such county, city, village or town to acquire or lease for such purpose real property within such county, city, village or town *or within ten miles of the boundaries thereof*. . . ."¹⁴

The Virginia law is stated in even broader terms, and states:

12. See New Jersey, L. 1928, Ch. 63, Sec. 2, "Avigation", as used in this act means the steering, directing or managing of an aircraft in or through the air; and such term is here used as a substitute for "aerial navigation."

13. See L. 1930, Ch. 391, Sec. 110, and L. 1930, Ch. 395, Sec. 9. Both of these acts are reported in 1930 U. S. Av. R. 452-455.

14. L. 1930, Ch. 488, Sec. 350 (1). Italics ours.

"That all cities and incorporated towns or one or more cities or incorporated towns jointly within this Commonwealth are hereby authorized and empowered to acquire, establish, construct, own, control, lease, equip, improve, maintain and operate airports for the use of airplanes *within or without the limits of such cities or towns*, . . . provided, however, that no such city or town shall operate any airport without the permission of the state corporation commission first had and obtained."¹⁵

The power to zone the property in the vicinity of the airport is not mentioned in the legislation of either side, and the question might well be raised whether or not there would be power to zone land surrounding an airport lying outside the municipal limits. If within the municipality, the power need not be mentioned in the same statute. In the opinion of the writer, such specific authorization would not be requisite even in the former case. The authority to acquire without the police power to protect the enjoyment could well render the acquisition futile.

REGULATIONS

The regulatory bodies of several states¹⁶ have issued a series of provisions to control aeronautics and these regulations cover a wide range of subjects including (1) aircraft, (2) personnel licenses, (3) air traffic rules and operation regulations, (4) airports, and (5) air schools. The subject of liability, as dealt with in New Mexico, will be included in the first division mentioned.

(1) Relative to aircraft, there are the customary regulations as to marking, and auxiliary apparatus to be carried,¹⁷ but those dealing with repairs are more important. Massachusetts requires, by order of the Registrar of Motor Vehicles, that "all persons who make repairs on aircraft, whether or not their business is to repair aircraft, shall notify the Registrar"¹⁸ And the New Hampshire regulation reads:

"The repair or reconstruction of aircraft used in the transporting of passengers or freight for gain or hire, shall be done under the direct supervision of an airman duly licensed by the United States Department of Commerce."¹⁹

15. L. 1930, Ch. 344, Sec. 3074-a. Italics ours.

16. Connecticut, Aviation Regulations, 1930. 1930 U. S. Av. R. 383-6; Massachusetts, Glider Regulations, Airplane Repair Regulations, and Minimum Age Regulations, 1930. 1930 U. S. Av. R. 400-2; Michigan, Air Traffic Regulations, Airport Field Regulations, Aviation School Regulations, 1930 U. S. Av. R. 403-26; Minnesota, 1930 U. S. Av. R. 427-32; New Hampshire, 1930 U. S. Av. R. 433-7; New Mexico, 1930 U. S. Av. R. 439-43; North Dakota, U. S. Av. R. 457-8; Pennsylvania, 1930 U. S. Av. R. 461-498.

17. Connecticut Regulations, Sections 1, 6 and 7.

18. Order approved January 14, 1930.

19. New Hampshire Regulations, Art. XI.

Wisconsin, by legislation, has an even more strict provision and the experience there seems to have been unsatisfactory. There is now an attempt to bring about a change in the law so that repair work may be done by unlicensed mechanics providing the work is supervised by a licensed mechanic.²⁰ Instead of requiring that all repair work should be so done, it would seem better to make a distinction between major and minor repair work, and major and minor overhaul work on the aircraft motors, although it is recognized that this distinction may lead to undesirable loop-holes in the regulation.

The Massachusetts requirement as to gliders will also be found to be quite strict. It provides that:

*"Only such gliders as are built by a manufacturer of aircraft or under the direction of an airplane mechanic licensed by the United States Department will be registered. Before a glider is registered the Registrar of Motor Vehicles may require the submission of a stress analysis or analyses of any of its parts."*²¹

The regulations of the State Corporation Commission of New Mexico require a certificate of convenience and necessity for common carriers by air,²² and the same regulations also provide for a compulsory policy of insurance which shall contain the following provisions:

*"Each passenger-carrying aircraft must be insured against injury to persons in an amount equal to a minimum of Five Thousand Dollars (\$5000.00) for any one person, and subject to the same limit for each person, a minimum of One Thousand Dollars (\$1000.00) for each passenger seat plus Four Thousand Dollars (\$4000.00) for any one accident, each policy to contain the provisions heretofore prescribed by the Commission."*²³

(2) Relative to personnel licenses, Massachusetts establishes a limit for pilot's licenses at sixteen years and this regulation also applies to licenses issued to glider pilots.²⁴ By Section 49 of the Federal Regulations, the minimum age requirement for a glider pilot is 14 years. Further, in Massachusetts, it is necessary to obtain a permit from the manager of a glider flying field before one may operate a glider from or upon such field.²⁵

20. "Another section we intend to repeal is the one requiring Department of Commerce mechanic's licenses for persons adjusting, or repairing a plane. This is entirely too stringent and means that a pilot can not even adjust his own contact points under the present law. We will cover repairs to airplanes by satisfactory regulations." From a letter to the writer by Colonel John M. H. Nichols of Milwaukee, Wisconsin.

21. Massachusetts Regulations on Gliders, Sec. 1.

22. New Mexico Regulations of March 17, 1930.

23. Cf. Louisiana, L. 1926, Act No. 52, and Virginia, Regulations of the State Corporation Commission.

24. Regulations of Registrar of Motor Vehicles, May 7, 1930.

25. Massachusetts Regulations of July 1st, Sec. 3.

For any violations of the laws and regulations of New Hampshire, the Public Service Commission is authorized to ground any airman or aircraft, and the grounding order, to be effective at once, may be made orally, by telegram, or in writing.²⁶

(3) The greatest number of regulations, of course, deal with the flying rules and conditions of operation generally. The Connecticut regulations provide that two student pilots may not be permitted to fly together,²⁷ and that no aircraft shall be flown with more persons or passengers than the seating capacity of the aircraft provides.²⁸ Both Connecticut and New Hampshire allow photographic flights below the minimum altitude provided special permission is obtained in advance.²⁹

Connecticut also provides that no pilot shall operate any aircraft commercially with gasoline that has not been approved by the Commissioner of Aeronautics.³⁰ The purpose of such a regulation is entirely sound, but its usefulness will depend upon its administration.

Both Connecticut and Pennsylvania have regulations concerning the use of parachutes,³¹ but the provisions of the former are more complete. Accordingly, one making an exhibition jump must be equipped with a double-pack parachute of an approved type; the jump must be made from an altitude not less than eighteen hundred feet, and there must be no delay in opening the parachute, more than is necessary to properly clear the aircraft.

New Hampshire and Pennsylvania have provisions relative to flying over water. In the former, except in case of taking off or in landing, it is unlawful to operate aircraft at an elevation of less than 500 feet above the water, and the take-off and landing shall be made only when it can be accomplished without hazard to bathers or those engaged in boating or fishing.³² For the safety of those on board the aircraft, Pennsylvania provides that:

"An aircraft flying over large bodies of water must be provided with an adequate supply of food and potable water, and, if engaged in carrying passengers for hire, it must be equipped with a Very's pistol or approved equivalent and life preservers or other flotation devices approved by the Commission."³³

26. New Hampshire Regulations, Article XVI.

27. Connecticut Regulations, Sec. 3.

28. Same, Sec. 4.

29. Same, Sec. 5; New Hampshire Regulations, Art. XIV.

30. Connecticut Regulations, Sec. 18.

31. Same, Secs. 20-28; Pennsylvania, Ch. III, Sec. 8.

32. New Hampshire Regulations, Arts. XII and XIII.

33. Pennsylvania Regulations, Ch. III, Sec. 6.

For the safety of those carried at night, Pennsylvania also provides that

"Licensed aircraft, when engaged in carrying passengers for hire any time between one-half hour after sunset and one-half hour before sunrise, must be equipped with electric landing lights in addition to the navigation light required . . ." ³⁴

Provisions for the reporting of aircraft accidents are quite general and offer nothing new. ³⁵

In Massachusetts, it is unlawful to operate a glider from or upon any flying field while other aircraft is being operated from the same field, ³⁶ and it is also unlawful to tow a glider by airplane, automobile, motor boat or by any means other than by hand power, without having secured permission from the Registrar of Motor Vehicles. ³⁷

(4) Relative to airports and flying fields, the same Massachusetts regulations provide that:

"No person shall operate a glider from or upon any flying field unless said field conforms to the following conditions: It shall be in good condition for landing and have at least 1,320 feet of effective landing area in all directions, with clear approaches. If landing strips are resorted to, they shall not be less than 500 feet wide. There shall be no obstructions such as trees, wires, houses, etc., in the take-off direction in said field, nor any road crossing the field in the direction of the take-off." ³⁸

There is a rather general tendency to place the burden on the operator of aircraft in the case of failure of obtaining an airport license. The provisions are as follows:

"It shall be unlawful for any licensed or unlicensed aircraft to operate for hire or reward from an unlicensed airport or landing field, excepting in the case of a forced landing." ³⁹

"No landing field or airport in the state shall be used as a base for transporting passengers or property for gain or hire except such as have been approved by the commission." ⁴⁰

In connection with the requirement of field regulations, Connecticut insists that:

34. Same, Sec. 5.
 35. See Connecticut Regulations, Sec. 15; New Hampshire, Art. X, Pennsylvania, Ch. III, Sec. 1.
 36. Massachusetts Glider Regulations, Sec. 4.
 37. Same, Sec. 5.
 38. Same, Sec. 2.
 39. Michigan Regulations, Sec. 4.
 40. New Hampshire Regulations, Art. VII (a). Cf. the legislation enacted on this subject as mentioned in article, Note 1, *supra*, 1 *JOUR. AIR LAW*, 469.

"No aircraft shall be flown from any airport or landing field in the State of Connecticut until an approved copy of the field regulations has been filed with the Commissioner of Aeronautics and a copy of the regulations posted on the landing field or airport."⁴¹

In the exercise of its authority to license airports,⁴² the Michigan Board of Aeronautics has provided that once an airport or landing field has been given a permanent airport license, no major changes in equipment or of the field proper may be made without the approval of the board.⁴³ Further that:

"In the case where a new airport or landing field is planned, the prospective airport or landing field operator is advised to obtain permission from the Board to convert his property into an airport or landing field. The Board will approve the site, the equipment planned to be used, and in general pass on the entire project."⁴⁴

In Pennsylvania, the airport licenses are valid for one year from the date of issuance, subject to such conditions and requirements as to safety, size, equipment, etc., as the commission deems necessary.⁴⁵

(5) The aviation school regulations of Michigan⁴⁶ are very comprehensive and merit considerable attention. The schools are divided into two main divisions: flying schools and ground schools. The former are of three kinds: (a) Transport Pilot's School, (b) Limited Commercial Pilot's School, and (c) Private Pilot's School. Licenses vary from \$100 for transport pilot's schools to \$10 for private pilot's schools and ground schools.

No school may operate without an approved license, and it is provided that:

"Every applicant for an Approved School License shall file with the Board a written application stating the name and address of the applicant, the kind of license desired, the location of the school proposed to be operated, the name of the person who is to have the general management or superintendence thereof, the names of all those financially interested therein, the name under which the school is to be carried on, and whether or not the applicant is financially interested in any other flying school or ground school, and if so, at what address and in what city, village, or township it is carried on. Such application shall also state whether or not the applicant or applicants or any others financially interested in said school have at any previous time been engaged or interested in or employed by anyone engaged

41. Connecticut Regulations, Sec. 17.

42. Pub. Acts 1929, No. 177, Sec. 3.

43. Michigan Airport Field Regulations, Sec. 3.

44. Same, Sec. 4.

45. Pennsylvania Regulations, Ch. VIII, Sec. 9.

46. Issued under authority of Pub. Acts 1929, No. 177, Sec. 2, 1930 U. S. Av. R. 419-26.

in the business of conducting a flying school or ground school or both and if so, where and when.

"Such application shall also give as references the names and addresses of at least three persons of reputed business and professional integrity and shall also state whether or not the applicant or any persons financially interested in the school have at any time been involved in litigation of any kind relating to the operation of a flying school or ground school or both or relating to the operation of aircraft of any kind, and if so, full details of such litigation shall be given.

Further, it is provided—with regard to flying schools—that the total number of planes engaged in actual instruction from a given field shall not exceed ten per hundred acres at any one time, and that not more than fifteen students shall be enrolled in flying courses for each airplane normally available for flying instruction purposes.

The equipment of ground schools and the competency of the instructors are specified. The entire course, ground and flight, must be completed within a maximum allowable time which is: for transport schools, 18 months, for limited commercial schools, 6 months, and for private schools, 4 months. Further, the minimum curriculum requirements are specified.

Regulations are established which govern the advertising of the air schools, and every school must file with the board of aeronautics a financial statement of its condition on June first of each year.

The growing tendency seems to be toward less statutory legislation and more flexible control by means of regulations established by the various state bodies. The existing regulations show that the subject can well be controlled in such a manner. It is believed that the legislation which will be passed in 1931 will be less specific in character and will place the control of aeronautics in some state commission—new or existing. The movement toward uniformity is already strong; the movement for adequate and flexible control is steadily growing.