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## STATE AERONAUTICAL LEGISLATION OF 1933\*

GEORGE R. SULLIVAN†

The field of aviation, in the majority of states, finds itself under the control, in part, of a regulatory body, and, in part, of the legislature itself. No clear line can be drawn between the pronouncements of these two different types of bodies; legislatures do not hesitate to enact statutes dealing with minor matters which are more properly the subject of regulation by the specialized commission created for that purpose. Nevertheless, this study is limited to *legislative* enactments, although among them might be found a few matters less important than some of the regulations set up by aeronautical commissions or commissioners.

Because of the wide scope and diversity of the matters covered by such legislation, no attempt has been made to comment upon the wisdom or relative value of specific acts. The subject of airports has been omitted from this discussion, since another study devoted entirely to that topic will be found in the present issue of the JOURNAL OF AIR LAW.

### *The Regulatory Body:*

Important changes have been made with reference to state aeronautical regulatory bodies. Minnesota<sup>1</sup> has, in connection with its adoption of an extensive aeronautical act, established a state aeronautics commission<sup>2</sup> of five persons, with powers and duties broadly stated to permit a flexible administration of the act. It is empowered to prescribe reasonable rules and regulations governing airports, air schools, air navigation facilities, air traffic.<sup>3</sup> It has the power to hold investigations and conduct hearings in accidents and in other matters pertaining to the enforcement of the act. What state control of aviation existed in Minnesota prior to 1933 was administered by the State Registrar of Motor Vehicles.

In Pennsylvania the powers and duties of the State Aero-

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1. Fagg, Fred D., Jr., "The Minnesota Aeronautics Act," 4 JOURNAL OF AIR LAW 340 (1933).  
2. Laws, 1933, Ch. 430, Sec. 5.  
3. Laws, 1933, Ch. 430, Sec. 10.

navitics Commission, created in 1929,<sup>4</sup> have been transferred, with certain changes, to the Department of Revenue.<sup>5</sup> Attendant upon the present requirement in Pennsylvania of a Federal license for all airmen and aircraft,<sup>6</sup> control of the regulatory body over airmen and aircraft, in certain respects, has been eliminated by 1933 legislation; this is true of Section 201(k), Laws 1929 (new, Section 201(g), Laws 1933), dealing with the supervision and regulation of the safety, adequacy and sufficiency of all aircraft, airmen, airports and so forth, and also of Section 201(m), Laws 1929 (new, Section 201(h), Laws 1933), concerning the regulation of instruction.<sup>7</sup> A new power which the Department of Revenue has acquired is to "establish by regulation the minimum safe altitudes for flight and including air traffic rules."<sup>8</sup>

In Arkansas<sup>9</sup> and Colorado,<sup>10</sup> the state aeronautics commission has been abolished.

The state airport commission of Connecticut, created in 1929,<sup>11</sup> has by 1933 legislation had its jurisdiction extended by being given entire charge of any airport owned or leased by the state.<sup>12</sup> The provision of the 1929 Act permitting the leasing of space on such airports to individual companies has been repealed.

#### *Financing and Appropriations:*

Few states found themselves in a position in 1933 to make any appropriations for the enforcement of aviation legislation, or for the encouragement of aeronautics in general. In Pennsylvania, funds necessary for the purchase and operation of air navigation facilities and intermediate landing field equipment are permitted to be withdrawn from the Motor License Fund.<sup>13</sup> By another act, approved the same date, the amount of \$50,000 is specifically appropriated for the above purposes out of the Motor License Fund of that state.<sup>14</sup>

4. Laws, 1929, No. 175, Secs. 407, 1208.

5. Laws, 1933, Act. 224, Art. II, Sec. 201.

6. Laws, 1933, Act 224, Art. III, Sec. 301.

7. This sub-section now reads as follows: "It shall be the duty of the Department to (h) Adopt rules and regulations governing the instruction in flight or ground school of student flyers or mechanics and the safety, adequacy, and sufficiency of [airmen, aircraft omitted] airports, landing fields and air navigation facilities and equipment used or to be used in the instruction of student flyers or mechanics."

8. Laws, 1933, Act 224, Art. II, Sec. 201(m). But note that in a later portion of this Act (Art. IV, Sec. 402), Pennsylvania has adopted the proposed American Bar Association Committee's Code section on lawfulness of flight.

9. Laws, 1933, Act. 136.

10. Laws, 1933, p. 65.

11. Gen. Stats., Conn. 1930, Sec. 3097.

12. Laws, 1933, Ch. 120.

13. Laws, 1933, Act. 225.

14. Laws, 1933, Act. 227.

In Idaho, the State Board of Equalization was directed to report and recommend to the Governor concerning proposals for new revenue legislation for aeronautical purposes.<sup>15</sup> The New York legislature made an appropriation of \$5,000 to continue a temporary commission appointed in 1930 for the purpose of studying new aeronautical legislation.<sup>16</sup> One of the changes made by the Illinois Aeronautics Act of 1933 is that the members of the commission shall receive no compensation, other than for actual expenses.<sup>17</sup> Previously they were allowed \$15 per day for each day actually engaged in service, with a maximum of \$500 per year.<sup>18</sup>

#### *Licenses and Registration:*

The three states of Georgia,<sup>19</sup> Minnesota,<sup>20</sup> and Pennsylvania<sup>21</sup> have, in 1933, joined the ranks of those states requiring Federal licenses for all aircraft and airmen.<sup>22</sup> Connecticut, which has not yet declared that Federal licenses are necessary, has extended her non-resident pilot licensing act to include other countries, as well as other states.<sup>23</sup> Connecticut has also enacted that the pilot of any glider must secure a license from the Commissioner of Aeronautics.<sup>24</sup>

In California the operation of aircraft in intrastate transportation of passengers for hire is forbidden unless the person operating such aircraft holds a Federal certificate of authority (passenger air transport certificate issued by the Secretary of Commerce).<sup>25</sup>

#### *Fees:*

Various changes have been made in schedules of fees charged. Previously Connecticut charged \$25 yearly for the registration of aircraft.<sup>26</sup> This has now been changed to 2½c per pound of gross load, with a minimum of \$16.<sup>27</sup> For a license to operate

15. Laws, 1933, Ch. 196, Sec. 3.

16. Laws, 1933, Ch. 265.

17. Laws, 1933, S. B. 686, Sec. 5.

18. Cahill's Ill. Rev. Stats., 1931, Ch. 5a, par. 5.

19. Laws, 1933, Act 206, Secs. 2, 3.

20. Laws, 1933, Ch. 430, Secs. 2, 3.

21. Laws, 1933, Act. 224, Secs. 301, 302.

22. In each of these three states, the wording of the proposed American Bar Association Committee's Aeronautical Code, tentative draft, has been used in the statute requiring federal licenses.

23. Laws, 1933, Ch. 121.

24. Laws, 1933, Ch. 34, Sec. 1. Such glider pilot licenses are divided into four classes as follows: primary, secondary, soaring, commercial.

25. Laws, 1933, Ch. 515, Sec. 52.

26. Gen. Stats., Conn., 1930, Sec. 3066.

27. Laws, 1933, Ch. 134.

aircraft, the fee remains at \$5. The previous charge of \$15 for initial physical examination of pilots has been reduced to \$10.<sup>28</sup> Other fees are newly stated as follows:

Primary glider pilot's license.....	\$0.50
Secondary glider pilot's license.....	.50
Soaring glider pilot's license.....	1.00
Commercial glider pilot's license.....	5.00
Parachute rigger's license.....	2.00
Parachute jumper's license.....	5.00

In addition, there are set out the charges for various services, as for issuing duplicate licenses, and so forth.

Michigan has effected a downward revision of a portion of its fees. Legislation in 1933<sup>29</sup> amends that of 1931<sup>30</sup> as follows:

	1931	1933
Aircraft registration fee	2½c per lb., net empty weight	½c per lb., net empty weight
Fee for transfer of registration certificate upon sale of aircraft.....	\$ 2.00	\$1.00
Registration of aircraft owned by manufacturers and dealers, and not used in commercial activity:		
For first three numbers.....	45.00	9.00
Additional numbers .....	5.00	3.00

Extensive changes have been made in New Hampshire with reference to fees. By 1931 legislation, a fee of \$10 was charged for registration of all aircraft used commercially.<sup>31</sup> This has been substituted by the following schedule of fees:<sup>32</sup>

Resident owners of powered aircraft.....	\$10.00
Resident owners of gliders.....	3.00
Non-resident owners using aircraft in the state commercially .....	15.00
Non-resident owners using 5 or more aircraft in the state commercially, for not more than 5 days in one year, each aircraft.....	10.00

The 1931 fee of \$5.00 for registration of airmen<sup>33</sup> has been replaced by the following schedule:<sup>34</sup>

Resident airmen .....	\$3.00
Non-resident commercial airmen .....	5.00
Mechanics .....	1.00
Glider pilots .....	3.00

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28. *Ibid.*  
 29. Laws, 1933, No. 169, Sec. 2.  
 30. Laws, 1931, No. 63, Sec. 2.  
 31. Laws, 1931, Ch. 36, Sec. 1.  
 32. Laws, 1933, Ch. 100, Sec. 1.  
 33. Laws, 1931, Ch. 36, Sec. 2.  
 34. Laws, 1933, Ch. 100, Sec. 2.

The fee of \$25.00 set in 1931<sup>35</sup> for registration of airports has been lowered to \$10.00.<sup>36</sup> In addition, the 1933 act provides for the registration of areas of inland water in the state from which aircraft is commercially operated (\$10 for first area registered, and \$2 for each additional area registered). Also, a fee of \$3 is charged for registration of any area within which aircraft is commercially operated from the ice in any inland waters of the state.

In Idaho, the \$1.00 state registration fee for airmen has been eliminated.<sup>37</sup>

Registration fees in Maine are now as follows:<sup>38</sup>

Resident pilots .....	\$ 1.00
Aircraft owned by residents.....	1.00
Aircraft owned by non-residents.....	15.00
Non-resident commercial pilots .....	10.00

Previously the registration fee for all aircraft was \$5.00.<sup>39</sup>

The only fees provided for in the new Minnesota act are those for the issuance of licenses for airports, landing fields, and air schools; each is \$10 annually.<sup>40</sup>

Illinois effected a reduction in fees for airports and air schools from \$25 to \$2. The fee of \$25 for each air beacon license and the fee of \$10 for each other air navigation facility license, have been eliminated. Added to the fees charged is that for a landing field license at \$2.<sup>41</sup>

#### *Regulatory Provisions:*

*Air Traffic Rules*—Generally, the state regulatory body is given power to promulgate air traffic rules, and no attempt to cover this field is made in the legislature. A representative provision is that contained in the new Minnesota act:<sup>42</sup>

The commission is further empowered to prescribe such reasonable air traffic rules and other regulations as it shall deem necessary for public safety, and the safety of those engaged in aeronautics and for the promotion of aeronautics . . . not inconsistent with current federal legislation.

Following the same trend, the Pennsylvania regulatory body (now the Department of Revenue) has newly been empowered "to

35. Laws, 1931, Ch. 36, Sec. 3.

36. Laws, 1933, Ch. 100, Sec. 3.

37. Laws, 1933, Ch. 203, Sec. 1(d).

38. Laws, 1933, Ch. 265.

39. Rev. Stats., 1930, Ch. 30, Sec. 8.

40. Laws, 1933, Ch. 430, Sec. 12.

41. Laws, 1933, S. B. 686, Sec. 11.

42. Laws, 1933, Ch. 430, Sec. 10.

establish by regulation the minimum safe altitudes for flight and including air traffic rules."<sup>43</sup>

However, various legislatures have seen fit to incorporate certain traffic regulations in the statutes. Connecticut has declared that flight over congested areas, or public gatherings shall not be less than 2,000 feet, that otherwise no aircraft shall be at less than 1,500 feet.<sup>44</sup> Connecticut has also made it a misdemeanor, punishable by fine or imprisonment, recklessly to operate aircraft,<sup>45</sup> or to engage in acrobatic flying of aircraft while carrying passengers.<sup>46</sup> That state has also forbidden by statute the dropping of any objects from aircraft in flight.<sup>47</sup>

Georgia has adopted the proposed American Bar Association Committee's Aeronautical Code (tentative draft, not yet adopted by the Association) provision that flight is unlawful when so low as to interfere with the reasonable use of the space beneath, or when so conducted as to be imminently dangerous to persons or property beneath.<sup>48</sup>

*Aircraft and Equipment*—The use of safety belts by both pilot and passengers is required at all times by Connecticut statute.<sup>49</sup> She has also declared that overloading of aircraft is a violation of law punishable by fine or imprisonment or both.<sup>50</sup> In another statute,<sup>51</sup> extensive regulations are made concerning the use of parachutes, their packing, inspection, the adjustment of the harness on the person wearing the parachute, the repacking of parachutes which have become wet, and so forth.

*Air Instruction*—In the Illinois type of aeronautical code, the subject of air instruction is placed entirely within the regulatory power of the Aeronautics Commission.<sup>52</sup> This has been followed in the new Minnesota act.<sup>53</sup> Connecticut has, in connection with air instruction, declared that aircraft used in student instruction shall be equipped with dual controls.<sup>54</sup>

A 1929 act of the Tennessee legislature<sup>55</sup> provided for instruction in aviation under the supervision and control of the state

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43. Laws, 1933, Act. 224, Art. II(m).

44. Laws, 1933, Ch. 70.

45. Laws, 1933, Ch. 228.

46. Laws, 1933, Ch. 247.

47. Laws, 1933, Ch. 70, Sec. 1(g).

48. Laws, 1933, Act 206, Sec. 1.

49. Laws, 1933, Ch. 70, Sec. 1(e).

50. Laws, 1933, Ch. 70, Sec. 1(d).

51. Laws, 1933, Ch. 243.

52. Rev. Stats. (Cahill, 1933), Ch. 52, Sec. 10.

53. Laws, 1933, Ch. 430, Sec. 10.

54. Laws, 1933, Ch. 70, Sec. 1(f).

55. Code, 1932, Secs. 2552, 2556, inc.

board of education, and appropriated moneys for equipment, a hangar, and so forth. This was repealed by 1933 legislation.<sup>56</sup>

*Miscellaneous*—Minnesota has extended its statute prohibiting hunting by airplane, to the use of aircraft for "concentrating, driving, rallying, or stirring up migratory water-fowl."<sup>57</sup>

North Dakota has added to its statute prohibiting, with certain exceptions, the hunting of game by aircraft, by placing the regulation of so hunting in the excepted circumstances under the control of the Game and Fish Commissioner, and requiring the posting of a bond.<sup>58</sup> Wyoming has supplemented a simple statute prohibiting the hunting of game by airplane<sup>59</sup> by forbidding the transporting of game by air, and the landing of any aircraft in any wilderness area of the state.<sup>60</sup> A similar statute prohibiting the transportation of game by airplane in Idaho was repealed in 1933.<sup>61</sup>

*Codification of General Law with Reference to Aeronautics:*

A considerable portion of the proposed American Bar Association Committee's Aeronautical Code (tentative draft) is made up of the application of the common law of torts to aeronautical activities. Specifically, Section 5 of that proposed code deals with damage to persons and property on the ground; Section 6, lawfulness of flight; Section 7, collision of aircraft; Section 8, liability to passengers; Section 9, jurisdiction over contracts; Section 10, jurisdiction over crimes. Some states have entirely avoided any attempt at such codification. Illinois is such a state. But in one form or another, several or all of the above provisions have been adopted in about two-fifths of the states.<sup>62</sup> This tendency continued in 1933 with the adoption by the Georgia legislature of the entire code (with the exception of the provision for an aeronautical commission) as set out in the tentative draft of the American Bar Association Committee.<sup>63</sup>

In Connecticut, a previous enactment that the pilot and employer of any plane shall be responsible for all damage caused to

56. Laws, 1933, Ch. 34.

57. Laws, 1933, Ch. 314.

58. Laws, 1933, Ch. 148.

59. Rev. Stats., 1931, Ch. 49, Sec. 176.

60. Laws, 1933, Ch. 39, Sec. 21.

61. Laws, 1933, Ch. 115, repealing Sec. 35-803, Idaho Code, 1932.

62. See Fagg, Fred D., Jr., "A Survey of State Aeronautical Legislation," 1 JOURNAL OF AIR LAW 452 (1930).

63. Laws, 1933, Act 206.



persons or property through the negligence of the pilot,<sup>64</sup> was repealed in 1933.<sup>65</sup>

*Miscellaneous Statutes:*

Florida has enacted that all persons, firms, or corporations engaged in air transportation of mail, freight, express or passengers, between fixed termini and on fixed schedules shall be delegated the authority to exercise the power of eminent domain for the purpose of securing land for airports, seaplane bases, landing fields, and so forth.<sup>66</sup>

In three states, railroads are permitted by 1933 legislation to engage in the operation of aircraft. Rhode Island has simply declared that any railroad incorporated under the laws of that state "may acquire, own, maintain, and operate, either directly or through subsidiary corporations, aircraft for the transportation of passengers and property, subject to provisions of laws of this state relating to the operation of aircraft."<sup>67</sup> The enactments in New Mexico<sup>68</sup> and Kansas,<sup>69</sup> similar to each other, are more elaborately stated; each provides that railroads shall have power to transport by highway, air, or water, that they may exercise this power (a) by direct operation of equipment owned or otherwise controlled by the railroad, (b) by operations conducted by a subsidiary corporation, (c) by operations conducted under contract with another corporation.

With reference to fuel taxes, Texas has declared that refunds shall be allowed of all taxes paid upon fuels used in the operation, among other things, of aircraft.<sup>70</sup> The procedure attendant upon the receiving of such refund is elaborately stated. Connecticut acted similarly, requiring that applications for such refund shall be made within ninety days from date of purchase.<sup>71</sup> Other states which have by 1933 legislation allowed a refund of motor fuel taxes paid for fuel used in aircraft, are Colorado,<sup>72</sup> Kansas,<sup>73</sup> New Mexico,<sup>74</sup> and North Carolina.<sup>75</sup> A motor fuel tax of one cent was enacted in Ohio<sup>76</sup> to apply on the "use, distribution, or sale" of liquid fuel. No exemption from this tax is provided for

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64. Gen. Stats., 1930, Sec. 3077.  
 65. Laws, 1933, Ch. 146.  
 66. Laws, 1933, H. B. 1082, Ch. —.  
 67. Laws, 1933, Ch. 2049.  
 68. Laws, 1933, Ch. 183.  
 69. Laws, 1933, H. B. 78.  
 70. Laws, 1933, H. B. 247.  
 71. Laws, 1933, Ch. 303, Sec. 3.  
 72. Laws, 1933, Ch. 149.  
 73. Laws, 1933, Ch. 317.  
 74. Laws, 1933, Ch. 162.  
 75. Laws, 1933, Ch. 211.  
 76. Laws, 1933, S. B. 354.

fuel used in aircraft. South Dakota has provided a partial refund of the fuel tax on fuel used in aircraft.<sup>77</sup>

In Idaho, a 2½¢ tax per gallon has been imposed upon all aircraft engine fuel "sold or used" in the operation of aircraft in Idaho.<sup>78</sup> Revenues so derived are to be paid into the State Aeronautic Fund, the purpose being "to encourage the development of aviation in the state."

An act concerning abandoned aircraft has been passed in Connecticut<sup>79</sup> declaring that any police officer may take such aircraft into custody and, if not called for within ninety days, may sell the same.

The advisability of establishing an aviation unit in the military forces of Rhode Island is the subject of study by a commission created in Rhode Island in 1933.<sup>80</sup>

Definitions continue to play an important part in state legislation. But for the most part, these have, in 1933, been merely reiterations of what has previously been defined in other states, or the variations have been unimportant.<sup>81</sup>

#### *Conclusion:*

The fragmentary character of the legislation in most states is at once apparent. Another significant observation is that fifty per cent of the states passed no acts relating to aviation whatsoever; this is explainable in part by the fact that no regular sessions of the legislature met in many states in 1933, and in part by the limitations of the calls for special sessions.

Scarcity of appropriation statutes is explainable of course by the financial stress of local governments generally.

Some important subjects found no treatment in 1933 legislation whatsoever. Among these are compulsory insurance and the whole question of liability.

With the new proposals of the American Bar Association Committee on Aeronautical Law and the Aviation Committee of the Conference of Commissioners on Uniform State Laws which will be presented at the Milwaukee meeting of the Association during the latter part of August, a new and quite complete code will be available for state adoption at the next session of the various legislatures. Such a move for uniformity will be tremendously helpful to the industry and the public at large.

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77. Laws, 1933, Ch. 13.

78. Laws, 1933, Ch. 196.

79. Laws, 1933, Ch. 129.

80. Laws, 1933, Res. 28.

81. A comparison and discussion of definitions will be found in the following articles: *Fagg, Fred D., Jr.*, "A Survey of State Aeronautical Legislation," cit. note 62 *supra*; *Fagg, Fred D., Jr.*, "The Minnesota Aeronautics Act," cit. note 1 *supra*.