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Editorials

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EDITORIALS

A NATIONAL AVIATION POLICY

By Section 20 of the new air mail legislation, approved June 12, 1934, the President of the United States "is authorized to appoint a Commission . . . for the purpose of making an immediate study and survey, and to report . . . its recommendations of a broad policy covering all phases of aviation and the relation of the United States thereto."¹

The task to be committed to this commission is the most significant in the history of aeronautics in this country, and the report must be presented to Congress "not later than February 1, 1935."

Due to the difficult situation which gave rise to its creation, the commission will undoubtedly devote much of its time to the domestic and foreign air mail problem—the backbone of commercial aviation, to date. From the standpoint of the airlines, no subject warrants more careful consideration. However, much careful thought must be devoted to other matters of a less pressing, but equally significant nature.

Without attempting to discuss the military considerations involved, or the commercial problems associated with non-scheduled and miscellaneous flying operations and activities (ranging from airport operation to air instruction), it seems desirable to indicate some of the larger legal problems that will confront the commission.

Thus far, the United States has occupied a very inferior position as regards the international promotion and control of aeronautics. Though a signatory to the Paris Convention of 1919 (commonly called the C. I. N. A. Convention), this country had little to do with the shaping of an international policy of aviation control and has never ratified the Convention. Similarly, though the International Technical Committee of Aerial Legal Experts (commonly called the C. I. T. E. J. A.), has been functioning actively in an effort to codify international private air law, the United States has only recently manifested an interest in this tremendously important field of regulation.² The great Warsaw Convention, dealing with carriage by air, was drafted and adopted without official participation by the United States. At the Rome Conven-

1. See page 462 of this issue for the complete text of this Act.

2. See *Wigmore, John H.*, "The Federal Senate's Neglect of the Nation's International Interests," 3 *JOURNAL OF AIR LAW* 283 (1932).

tion, relative to third party liability, the country was officially represented for the first time. Significant results were there accomplished. But once more, the work of the American section is being seriously hampered by Congressional lack of understanding and by non-activity. Gradually, but effectively, the international law of aviation is being developed with the United States in the role of a by-stander! The commission must decide whether or not this undesirable situation is to continue!

From a national viewpoint, there are many questions that require attention. From an administrative standpoint, shall aviation remain under the control of a special body—such as the Aeronautics Branch, shall it be added to the already overburdened Interstate Commerce Commission's dominance, or shall all media of transportation within the country be placed under the jurisdiction of a new promotional and regulatory body? The writer favors the ultimate adoption of the last mentioned plan, but believes that, for some time to come, the first is the solution most favorable to a continued growth of the art and industry.

What is the practical boundary between federal and state promotion and control of aeronautics? Or is the federal government, in the interest of uniformity, to occupy the entire field—leaving only the enforcement to the several states? While for a long time a proponent of the doctrine that the federal government may constitutionally occupy most, if not all, of the field, the writer believes that the most practical solution lies in the direction of recognizing the proper functions of each authority, and that there is a distinct place for some state and local control.

Questions of airspace interests, liability, insurance, and workmen's compensation may be left safely and conveniently to the increasing understanding of both bench and bar. They require an evolutionary development that can come only by slow and easy stages.

Economic considerations can hardly be divorced from those that are ear-marked as "legal." Is the airline business to be brought to maturity under the Adam Smith conception of competition or under the guidance of the "newer" economics? To those interested in the investment of capital, the answer to this question is of more than trifling significance.

The few problems enumerated indicate the heroic task that confronts the commission which is to be appointed. In less than eight months, a national policy must be formulated and, upon the

wisdom of that policy, depends much of the future of American aviation!

FRED D. FAGG, JR.

INDEPENDENT AVIATION OPERATORS MAKE PROGRESS

The Independent Aviation Operators of the United States were organized on February 26, 1934, at Washington, D. C., and, at that time submitted a legislative program to Congress.¹ While the proposed bills were not passed at the present session, it is understood that a special Aviation Commission will be appointed to consider, in part, the recommendations of the Association. This program looks toward the promotion of private and miscellaneous flying activities throughout the country.

Through the Independent Aviation Operators Mortgage Loan Corporation, located at St. Louis, the Reconstruction Finance Corporation is now accepting applications for loans to be secured by first mortgages on property and improvements such as airports, hangars, machinery, airplanes, etc. These loans are to be repaid in three years and loans based on equipment in use are to be retired in two years, on a monthly installment basis. The Loan Corporation is also accepting, for rediscounting, contracts of sale on new airplanes.

A national airplane clearing house has been organized, through which credit information is to be exchanged. The Independent Aviation Operators also expect to offer to their members a complete program of aircraft insurance at a greatly reduced rate. Reductions in life insurance premiums are now being sought on behalf of aircraft pilots.

HOME-BUILT AIRPLANES*

Along with Spring housecleaning and the other phenomena of Springtime comes the annual effort of the State Board of Aeronautics to suppress the building of home-made airplanes.

Two main warnings are issued by the Board's officials in this connection. One is that home-built planes are a constant hazard to both the pilot and citizen-at-large; and the other is that the

1. For a preliminary announcement, see 5 JOURNAL OF AIR LAW 296 (1934).

*Combined from an editorial appearing in the Detroit Free Press, Thursday, May 10, 1934, and a press release issued by the State Board of Aeronautics, Lansing, Michigan, Wednesday, May 2, 1934.

home-constructed aircraft is a poor investment from a business standpoint.

These admonitions are voiced by Floyd E. Evans, State Director of Aeronautics, and Sheldon B. Steers, Assistant Director. It is their duty to attempt to keep out of the air in Michigan all planes deemed unairworthy.

The urge to build something with their own hands is deep-seated in many men. Assembling a radio, making a garden or building a summer cottage are ways of satisfying this desire. And there are many others. But when it comes to manufacturing an airplane in the backyard, it is time to express alarm.

Flying machines, for all the ease with which they soar, still are relatively experimental. Factories use every care in making, assembling and testing them to insure that no imperfection of design or material is included. Even so, they are tricky in the hands of the inexperienced.

How much greater, then, is the danger of attempting to fly a home-made machine. Floyd E. Evans, Michigan Director of Aeronautics, is quite right in saying with emphasis that "machines built by novices are bound to have uncertain flying characteristics which cannot be determined until the craft are actually flown." And if such planes do perform successfully at first, the danger that some hidden weakness may develop later always remains.

Under Michigan's aviation laws, not only officials of the Aeronautics Board, but all Airport Managers are empowered to "ground" planes deemed unairworthy, pending investigation by the Aeronautics Board. A pilot makes himself liable to a \$100 fine and 90-day jail sentence, or both, if he flies such a "grounded" ship.

One of the major activities of the Board of Aeronautics this season will be to check the activities of builders of home-made planes and attempt to forestall many unfortunate developments, officials of the Board point out.

From a business point of view, building a home-made plane is shown to be poor policy. Although some firms claim such planes may be constructed complete for \$200 to \$900, the State's Aeronautical officials have found the cost almost invariably to run from \$600 to \$1200. After this type of aircraft is complete, its airworthiness is a highly uncertain factor. For the same amount of money a suitable used aircraft, bearing a federal license, could

have been purchased, and the uncertainties eliminated, it is pointed out.

After all, it is only about thirty years since men first began to fly. And while advances in the air have been phenomenal, home-made wings are still risky things.

RICHARD S. PAULETT

The untimely death of Richard S. Paulett on April 22, 1934, came as a distinct shock to all those acquainted with aeronautical law. Following his activities as a pilot during the war, he became associated with the legal division of the Aeronautics Branch and later succeeded E. McD. Kintz as Chief of the Enforcement Section. For several years, he served as a Department Editor of the *JOURNAL OF AIR LAW* and, in January of this year, was appointed by President Roosevelt as one of four to represent the United States on the International Technical Committee of Aerial Legal Experts.

Those of us who were privileged to know him feel very keenly the loss of a very real and most valued friend. He will be remembered as one who devoted himself without reserve to the best interests of aviation.

F. D. F.