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# REPORT OF THE NATIONAL ASSOCIATION OF STATE AVIATION OFFICIALS TO THE FEDERAL AVIATION COMMISSION

## I. THE NATIONAL ASSOCIATION.

### *Formation:*

The National Association of State Aviation Officials was organized at Cleveland, Ohio, September 1-2, 1931, and the organization membership at the present time includes official representatives from nearly every state in the union. The fourth annual meeting of the Association has been held at Cheyenne, Wyoming.<sup>1</sup>

### *Purpose:*

The objectives of the organization, as expressed in its Constitution, are as follows:

"Its purpose shall be to foster aviation as an industry and as an arm of the national defense; to join with the Department of Commerce, the Aeronautical Chamber of Commerce, and other agencies in research pertaining to aeronautics; to develop uniform air laws and regulations, and encourage cooperation between the several states."

### *Scope:*

The Association is interested in every subject which pertains

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1. Five meetings of state representatives were held before the organization of the National Association, as follows:

(1) *Conference of Western States*—called by Mr. J. D. Wood of Idaho, in August, 1929.

(2) *Midwest Legislative Air Parley*—held at Milwaukee, Wisconsin, February 24-25, 1930, with representatives from 15 states.

(3) *First National Legislative Air Conference*—held at the Air Law Institute in Chicago, August 18-20, 1930, with representatives from 30 states.

(4) *National Conference on Uniform Aeronautic Regulatory Laws*—called by the Aeronautics Branch and held in Washington, D. C., December 16-17, 1930, with representatives from 40 states.

(5) *Conference of State Division Officials*—held at Tulsa, Oklahoma, March 27, 1931.

The National Association of State Aviation Officials was organized at Cleveland by representatives from the following sixteen states: California, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, Missouri, and West Virginia.

Subsequent annual and other meetings of the Association were held as follows:

(1) *First Annual Meeting, N.A.S.A.O.*—held at East St. Louis, Illinois, December 3-5, 1931.

(2) *Interim Meeting, N.A.S.A.O.*—held at Detroit, Michigan, April 8, 1932.

(3) *Second Annual Meeting, N.A.S.A.O.*—held at Nashville, Tennessee, December 2-3, 1932.

(4) *Third Annual Meeting, N.A.S.A.O.*—held at Cincinnati, Ohio, October 12-14, 1933.

(5) *Fourth Annual Meeting, N.A.S.A.O.*—held at Cheyenne, Wyoming, September 27-29, 1934.

to the promotion and control of aeronautics, and particularly insofar as these subjects are related to state activity and concern.

*Membership:*

There are three classes of Association membership, as follows:

- (1) *Active members*—those individuals who, during their official incumbency, are active state officials of aviation, or members of aviation commissions or other similar state orders, charged with the duty of supervising, regulating or encouraging aviation; and also the representatives designated by the Governors of their states.
- (2) *Associate members*—those individuals who, in the opinion of the Membership Committee, are engaged in or connected with or have aided or contributed to the aviation industry.
- (3) *Honorary members*—the Assistant Secretaries (for Aeronautics) of War, the Navy and Commerce, the Second Assistant Postmaster General, the President of the Aeronautical Chamber of Commerce of America, and the President of the National Aeronautic Association.

*Officers:*

The officers for the year 1934-35 are as follows:<sup>2</sup>

*President*—FRED L. SMITH, Director of Aeronautics, State of Ohio.

*Vice-President*—FRED B. SHERIFF, Chairman, Montana Aeronautics Commission.

*Secretary-Treasurer*—FRED D. FAGG, JR., Member, Illinois Aeronautics Commission.

*Legal Counsel*—GEORGE B. LOGAN, of St. Louis, Missouri.

*Regional Vice-Presidents*—

- (a) North East—CHARLES L. MORRIS, Commissioner of Aeronautics, State of Connecticut.
- (b) South East—A. B. McMULLEN, Director of Aviation, State of Florida.
- (c) East Central—FLOYD E. EVANS, Director, Department of Aeronautics, State of Michigan.
- (d) North Central—JOHN D. AKERMAN, Member, Minnesota Aeronautics Commission.
- (e) South Central—ED McDONALD, Member, State Highway Commission, State of Oklahoma.

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<sup>2</sup> Former presidents of the Association include Frank McKee of Ohio, 1931-32 (deceased); Reed G. Landis of Illinois, 1932; Richard S. Boutelle of Tennessee, 1932-33; L. H. Brittin of North Dakota, 1933-34 (resigned); and Fred L. Smith of Ohio, 1934.

- (f) South Western—D. R. BRIMHALL, Utah Pacific Airways, Utah.
- (g) North Western—ELLSWORTH FRENCH, State Airport Advisor, State of Washington.

## II. UNIFORMITY OF STATE LEGISLATION.

### *Early History:*

In 1911, Judge Simeon E. Baldwin proposed a resolution in favor of state regulation of aeronautics, to the American Bar Association Committee on Jurisprudence and Law Reform. The committee refused to recommend the adoption of the resolution on the ground that such legislation had not yet become a matter of general interest. As Governor of Connecticut, however, Judge Baldwin did secure the passage of an air navigation bill and the Connecticut Act of 1911 was the first measure regulating aviation in America.<sup>3</sup>

In 1920, aviation committees were appointed by the American Bar Association and the National Conference of Commissioners on Uniform State Laws. Intending to profit by the experience of the states with railroad legislation, the two committees set about the task of proposing uniform aeronautical regulation—particularly since regulation was considered as the greatest need for the promotion of aviation development in the country. This fact is evident from the 1921 Report of the American Bar Association Special Committee on Aviation, excerpts of which read as follows:

"The backwardness of our commercial development has been the subject of unfavorable comment. Wherever we have inquired as to the cause of this we have met with the same answer: *the fault is with the law.*"<sup>4</sup>

"*The law respecting aeronautics is the one fundamental vital problem of the actual commercial development of the art at the present time.*"<sup>5</sup>

Granting that the question of aeronautical legislation was a very pressing problem, the main difficulty which confronted the two committees was to determine the most desirable type of law to propose. Specifically, the important question was: should there be a single, all-inclusive federal law governing aeronautics, or

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3. *F. P. Lee*, Legislative History of the Air Commerce Act of 1926, pp. 79-80 (Govt. Printing Office, 1928).

4. 46 Reports of the Am. Bar Association 498, 507 (1921).

5. *Ibid.* And see, also, the article by *G. W. Harris*, in the New York Evening Post, December, 1920, wherein he stated: "More and more thinking men who are taking an enlightened interest in aerial navigation are convinced that the one thing most needed to encourage and advance the development of the airplane industry, as well as aviation itself, in the United States, is a wise system of jurisprudence applicable to aeronautics and aerography." Cited in *Lee, op. cit.*, p. 67.

should there be both federal and state legislation upon the subject? Necessarily, one part of the answer to that question involved the constitutionality of a single federal law.

Admitting the economic necessity of uniform regulation, the first debate centered upon the authority of Congress to control the entire field. In the opinion of the first American Bar Association Committee on Aviation, a constitutional amendment was necessary, and such an amendment was advocated—since it was believed that no uniformity could possibly come from the forty-eight states.<sup>6</sup>

By 1922, however, expert legal opinion had taken the view that both federal and state aviation legislation were necessary.<sup>7</sup> Congress had already been invited to consider the Wadsworth-Hicks Bill and the National Conference of Commissioners on Uniform State Laws had passed Professor Bogert's draft of a Uniform State Law for Aeronautics on August 7, 1922. This division of authority had been clearly seen by Professor Bogert, as follows:

"It is believed that the regulation of interstate and international aviation by the Federal Government and the control of intrastate aerial navigation by the States (preferably through a uniform act) are the only constitutional methods of action at present."<sup>8</sup>

In the absence of any constitutional amendment, and particularly in view of the theory of the Air Commerce Act of 1926, the two-fold division of authority has never been since questioned.<sup>9</sup>

#### *The Air Commerce Act of 1926:*

Instead of proposing a constitutional amendment, it was decided to enact federal legislation based upon one of the existing powers of Congress and, after lengthy debate as to the proper power, the authority of the commerce clause was chosen. The essentials of the Winslow Bill were finally incorporated into the Bingham-Parker Bill and, as redrafted, became law on May 20, 1926.

The outstanding exception to the former recommendation was the failure to require *all* aircraft and airmen to be licensed by fed-

6. 46 Reports of the Am. Bar Association 498 (1921).

7. 47 Reports of the Am. Bar Association 413 (1922).

8. *Geo. G. Bogert*, "Problems in Aviation Law," 6 *Cornell L. Q.* 271 (1921), cited in *Lee, op. cit.*, p. 96.

9. *Clarence M. Young*, "The Province of Federal and State Regulation of Aeronautics," 1 *JOURNAL OF AIR LAW* 425 (1930); and *Geo. B. Logan*, "The Interstate Commerce 'Burden Theory' Applied to Air Transportation," 1 *JOURNAL OF AIR LAW* 433 (1930).

eral authority and, instead, requiring only those engaged in interstate and foreign air commerce as defined by the act to be so licensed.<sup>10</sup>

The Senate Report to Accompany S. 41 is quite clear as to the resulting situation:

"While the bill gives to the Secretary of Commerce authority to regulate and control civil aircraft engaged in interstate commerce and flying over Government property, care has been taken to avoid constitutional entanglements, and intrastate flying is left to the control of the States. It is hoped that the States will adopt uniform laws and regulations corresponding with the provisions of this bill and the rules and regulations that will be promulgated under it . . . ."<sup>11</sup>

*Developments Toward Uniform State Legislation:*

It being clear that there was a distinct place for both Federal and State aeronautical legislation, and that state legislation should be uniform in character, attention was again centered in the work of the two aviation committees of the American Bar Association and the National Conference of Commissioners on Uniform State Laws.

It should be pointed out that the National Association of State Aviation Officials has not previously attempted to propose any definite act for uniform state legislation. Since its membership includes members of the two committees just mentioned, it has chosen to work with these committees in the capacity of an advisor, and the closest and most beneficial contacts have thus been maintained.

One matter of procedure should be explained. In the development of a uniform law, the American Bar Association Committee on Aeronautical Law is obligated, by virtue of the Association By-Laws,<sup>12</sup> to confer with the National Conference of Commissioners on Uniform State Laws. If approved by the Conference Aviation Committee, and by the Conference proper, the proposal is then presented to the American Bar Association for approval, in order to secure widespread adoption by the various state legislatures.

The Uniform State Law for Aeronautics,<sup>13</sup> in whole or in part, was enacted into law in about twenty-one states. This act was drafted as a *non-regulatory* law and was intended merely to

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10. 51 Reports of the Am. Bar Association 445, 450 (1926).

11. Cited in *Lee, op. cit.*, p. 29.

12. Sec. 18.

13. Frequently called the Old Uniform State Law, to distinguish it from later developments. See *Fred D. Fagg, Jr.*, "A Survey of State Aeronautical Legislation," 1 JOURNAL OF AIR LAW 452 (1930).

establish the legal status of air navigation in relation to general law.<sup>14</sup> When it was drafted in 1922, the prevailing thought was that Congress would assume control of all regulatory phases of the subject.

The Uniform State Law thus became inadequate by 1926 and the aviation committees immediately centered their attention on the development of a uniform state air licensing law.<sup>15</sup> Such an act was drafted and finally approved by the National Conference, although it was not approved by the American Bar Association Committee.<sup>16</sup> Instead, the latter body was at work on a comprehensive Aeronautical Code which it had asked permission, in 1929, to prepare.<sup>17</sup> While there were considerable differences of opinion as to the method of providing for federal licensing of all state aircraft and airmen, the legislative trend was definitely in favor of the federal requirement.<sup>18</sup>

#### *The Present Situation:*

Decided differences of opinion, as to the proposed draft of an Aeronautical Code, between the members of the Committee on Aeronautical Law of the American Bar Association and those of the Aviation Committee of the National Conference of Commissioners on Uniform State Laws prevented any action for several years. In May of 1934 the two committees agreed to sponsor an Aeronautical Code which should consist of three parts, as follows: (1) a Uniform Regulatory Act, (2) a Uniform Airports Act, and (3) a Uniform Non-Regulatory Act—dealing with questions of liability, insurance, jurisdiction, etc. The American Bar Association Committee prepared the proposed Regulatory Act and submitted it to the Conference Committee for approval at the Milwaukee meeting in August of 1934. The Conference Committee failed to act at that time and merely advanced the proposal to second reading. The Conference Committee did approve the Uniform Airports Act. No action has been taken on the third section of the proposed uniform code.

The members of the National Association of State Aviation Officials adopted, at the Cheyenne meeting, a Uniform State Aeronautical Regulatory Act which is included in the Appendix to this report.

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14. See *Lee, op. cit.*, p. 132.

15. 53 Reports of the Am. Bar Association 317 (1928). The text of the proposed Licensing Act is appended to the committee report.

16. 56 Reports of the Am. Bar Association 317 (1931).

17. 54 Reports of the Am. Bar Association 141 (1929).

18. See *Fred D. Fagg, Jr.*, "The Trend Toward Federal Licensing," 2 JOURNAL OF AIR LAW 542 (1931).

### III. THE PROMOTION OF AERONAUTICS.

While the promotion of aeronautics is the first consideration of any state aviation body, the regulatory phases have been given prior treatment in this report because of the necessity for uniformity of regulatory legislation. There is less requirement of uniformity of practice in the purely promotional activities since the needs of each state will differ.

The primary work of aviation promotion, from a governmental viewpoint, has been accomplished by the federal government through the splendid efforts of the Bureau of Air Commerce. It has been the intention of the members of the National Association to supplement the federal activities in those phases of the work that can best be done (or perhaps only be done) by state officials.<sup>19</sup>

Numerous articles have dealt with this subject and adequately deal with the possibilities of state aid.<sup>20</sup>

### IV. THE EXCHANGE OF EXPERIENCES.

#### *Regional Meetings:*

While the early meetings of state aviation officials were of a local nature<sup>21</sup> the Association has made the continuance of these possible through its Regional Meetings.

The first of these meetings, under the auspices of the National Association, was held at Bismarck, North Dakota, May 1-2, 1933.<sup>22</sup> During the year 1934, some four or five regional meetings have been held—all of which have made possible the development of uniform state programs. The value of these meetings cannot be overestimated.

#### *Comparative Studies:*

In order to enable the officials of the various states to understand and evaluate the various aeronautical programs, the National Association has sponsored the publication of detailed studies of the various state activities. One complete study has been made of the

19. See *Reed G. Landis*, "The National Association of State Aviation Officials: Its Utility and Function," 4 JOURNAL OF AIR LAW 1 (1933).

20. See *J. Carroll Cone*, "The Dividing Line Between Federal and State Promotion of Aeronautics," 4 JOURNAL OF AIR LAW 473 (1933); *Albert Langelutig* and *Leo Freedman*, "The Promotion of Aeronautics by State Regulatory Bodies," 4 JOURNAL OF AIR LAW 383 (1933); *Fred L. Smith*, "The Federal Work Relief Program and State Aviation Encouragement," 5 JOURNAL OF AIR LAW 233 (1934); *Floyd E. Evans*, "Recent Developments in State Promotion of Aeronautics," 4 JOURNAL OF AIR LAW 504 (1933); and *Reed G. Landis*, "The Illinois Plan of Aviation Encouragement," 4 JOURNAL OF AIR LAW 188 (1933).

21. See, for example, those listed in note 1.

22. For an account, see 4 JOURNAL OF AIR LAW 359 (1933).

Illinois program,<sup>23</sup> and the Ohio program has been clearly explained in the presidential address at the Cheyenne meeting.<sup>24</sup> Other studies are anticipated from Connecticut, Idaho, Michigan, New Jersey and other states.

#### V. CONCLUSION.

An attempt has been made to briefly set forth the history, status, and function of the National Association of State Aviation Officials—together with a summary account of the developments toward a program of uniform state aeronautical promotion and control.

In submitting the following Recommendations, unanimously approved by the Association at its Fourth Annual Meeting at Cheyenne, September 29, 1934, the Association wishes to offer its unqualified assistance to the Federal Aviation Commission in the tremendously important task which has been committed to it for study and recommendation.

Respectfully submitted,

THE NATIONAL ASSOCIATION  
OF STATE AVIATION OFFICIALS

FRED L. SMITH, President

FRED D. FAGG, JR., Secretary

GILL ROBB WILSON, Chairman, Committee  
on Resolutions.

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23. See *E. B. Cole*, "The Illinois Program of Aeronautical Regulation and Promotion," 5 JOURNAL OF AIR LAW 51 (1934).

24. *Fred L. Smith*, "The States' Obligations in the Promotion of Aviation," 5 JOURNAL OF AIR LAW 515 (October, 1934).