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## Notes, Comments, Digests

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## NOTES, COMMENTS, DIGESTS

Department Editors..... { ROBERT KINGSLEY  
SAUL N. RITTENBERG

### NOTES

CUSTOMS—CHICAGO AS A PORT OF ENTRY IN INTERNATIONAL AERIAL TRANSPORTATION OF PERSONS AND GOODS.—Just as Chicago became, in the development of the country's railroad system, a focal point for lines from all parts of the United States, it promises to assume a similarly important role in air traffic. The strides which the city has already taken in this direction are evidenced by the fact that the Chicago Municipal Airport ranks with the leading airports of the world from the standpoint of traffic and facilities.<sup>1</sup>

The foregoing, together with the recognition that air traffic will eventually become the accepted mode of high speed international transportation, justifies considering the desirability of establishing Chicago as a port of entry for aircraft. At the present time, this city would figure in international flights only between the United States and Canada. But even in this limited field, the convenience is at once apparent if instead of being obliged to make an intermediate landing and take-off from an airport at the Canadian border, a plane bound from Chicago to Winnipeg, for example, could comply with all regulations pertaining to the clearance of vessels at the Chicago airport, and then proceed directly to its destination.

As it is now, a plane leaving Chicago and bound for a Canadian point must stop at one of the customs airports strung along the border.<sup>2</sup> There clearance must be effected, which consists of the filing of a manifest of all cargo and passengers on board.<sup>3</sup> Thereupon, the ship may go on to its point of destination in Canada. In returning to the United States, the plane must make its first landing at an airport of entry "unless provision for landing elsewhere is made with the proper customs officials in advance."<sup>4</sup> The Department of Commerce Regulations provide, however, that "aircraft of United States registry not transporting merchandise or passengers for hire are not required to clear on departing from the United States."<sup>5</sup>

In the aerial transportation of goods, which is developing into an important branch of air activity, a possible consequence of such an intermediate stop at a customs airport on the border would be the delay and expense incident to the unloading of the cargo for customs declaration and inspection, and reloading again.

This same problem was presented in freight transportation by water, and as a result, Chicago was established as a port of entry for water traffic,

1. The leading position of the Chicago Municipal Airport is indicated by the following comparison for the year 1933:

Landings:.....	Oakland, 66,000.....	Floyd Bennett, 51,000.....	Chicago, 32,000
Passengers:.....	Chicago, 120,313.....	Newark, 120,000.....	Cleveland, 104,948
Mail (Pounds):...	Chicago, 1,528,000.....	Newark, 1,500,000.....	Cleveland, 938,000
Express (Pounds):	Newark, 425,000.....	Cleveland, 250,000.....	Chicago, 161,000

2. See Appendix C.

3. Appendix B, subparagraphs 2 and 3.

4. Appendix B, subparagraph 4.

5. Appendix B, subparagraph 1.

permitting the clearance of cargo for customs purposes at the time it is loaded on the ship, or, in the case of incoming vessels, at the time of arrival.

Airports may be established as airports of entry by the Secretary of the Treasury after a showing that a sufficient need exists in a particular area for such airport of entry.<sup>6</sup> This requirement is supplemented by that contained in Department of Commerce Regulations Governing the Entry and Clearance of Aircraft<sup>7</sup> to the effect that the airports designated shall "so far as practicable, be municipal airports and shall meet at least the requirements of the Airport Rating Regulations of the Department of Commerce for an A-1-A rating."<sup>8</sup>

It is doubtful if such designation of Chicago as an airport of entry would entail any substantial increase in costs of operation of the airport, since it is provided<sup>9</sup> that the "powers, privileges or duties conferred upon officers or employees of the customs service" may be conferred upon other employees of the United States stationed at such port of entry "with the consent of the head of the government department under whose jurisdiction the officer or employee is serving." Or, it would seem that inasmuch as Chicago is already established as a port of entry for water traffic, the customs officials and employees now stationed here could assume the administration of customs laws with respect to traffic by aircraft.<sup>10</sup>

The designation of an airport as one of entry may be withdrawn "if it is found that the volume of business clearing through the port does not justify maintenance of inspection equipment and personnel, if proper facilities are not provided and maintained by the airport, if the rules and regulations of the Federal Government are not complied with, or if it be found that some other location would be more advantageous."<sup>11</sup>

To effect the change whereby aircraft could take off from Chicago for Canadian destinations, without making an intermediate stop at a border airport to comply with customs regulations, and to permit compliance with custom requirements at Chicago for aircraft journeying from Canadian points, would be practical and convenient, but as yet one is not warranted in saying it is necessary. If the change is merely a matter of going through a routine of paper transactions, the step should be taken as a forward-looking move toward establishing and maintaining Chicago as a center of air traffic. If any considerable amount is necessary to be expended in making the change, such as the hiring of new personnel, or installation of inspection equipment and facilities, consideration should be postponed until

6. This is provided by the Air Commerce Act of 1926, 44 Statutes at Large, 568, sec. 7(b). Such establishment by the Secretary of the Treasury, it is presumed, would be only with respect to those functions within the jurisdiction of the Treasury Department, i.e., enforcement of customs and other revenue laws. Further on in the act (sec. 7(d)) it is provided that the Secretary of Labor may designate "ports of entry for civil aircraft" (which would mean those already established by the Secretary of the Treasury in accordance with sec. 7(b)) "as ports of entry for aliens arriving by aircraft."

7. Appendix B.

8. "unless particular conditions which prevail warrant a departure from these requirements."

9. Appendix A, sec. 7(b).

10. If there were any substantial expenditure necessary to establish Chicago as a port of entry for aircraft, it is doubtful whether the move should be made, since it is more a matter of convenience than absolute necessity, and since the amount of traffic which would benefit thereby is problematical.

11. Appendix B.

such time as traffic utilizing this convenience would justify the expenditure.

GEORGE R. SULLIVAN.

### Appendix A

#### AIR COMMERCE ACT OF 1926

#### 44 Statutes at Large 568

"Sec. 7(a). The navigation and shipping laws of the United States . . . shall not be construed to apply to seaplanes or other aircraft . . .

"(b) The Secretary of the Treasury is authorized to (1) designate places in the United States as ports of entry for civil aircraft arriving in the United States from any place outside thereof and for merchandise carried on such aircraft, (2) detail to ports of entry for civil aircraft such officers and employees of the customs service as he may deem necessary, and to confer or impose upon any officer or employee of the United States stationed at any such port of entry (with the consent of the head of the government department or other independent establishment under whose jurisdiction the officer or employee is serving) any of the powers, privileges or duties conferred or imposed upon officers or employees of the customs service, and (3) by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of the customs and public health laws to such extent and upon such conditions as he deems necessary.

"(c) The Secretary of Commerce is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels to such extent and upon such conditions as he deems necessary.

"(d) The Secretary of Labor is authorized to (1) designate any of the ports of entry for civil aircraft as ports of entry for aliens arriving by aircraft, (2) detail to such ports of entry such officers and employees of the immigration service as he may deem necessary, and to confer or impose upon any employee of the United States stationed at such port of entry (with the consent of the head of the government department or other independent establishment under whose jurisdiction the officers or employee is serving) any of the powers, privileges or duties conferred or imposed upon officers or employees of the immigration service, and (3) by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of the immigration laws to such extent and upon such conditions as he deems necessary."

### Appendix B

#### REGULATIONS OF THE DEPARTMENT OF COMMERCE GOVERNING THE ENTRY AND CLEARANCE OF AIRCRAFT

#### Aeronautics Bulletin, No. 7-C, 1931

1. "Aircraft of United States registry not transporting merchandise or passengers for hire are not required to clear on departing from the United States." (Ch. 1, sec. 1.)

2. ". . . Aircraft of United States registry transporting merchandise or passengers for hire, and all aircraft of foreign registry, bound to a foreign port, shall clear at the customs port of entry nearest the place of departure, or at the airport of departure if such airport has been designated as a customs airport." (Ch. 1, sec. 1.)

3. Clearance consists of the filing of a manifest of all cargo and passengers on board. (Ch. 1, sec. 2.)

4. In entering the United States from a foreign point, the pilot of the aircraft shall, before taking off, inform the collector of customs at the place of first landing in the United States, "which must be an airport of entry

unless provision for landing elsewhere is made with the proper customs officials in advance, giving the type of aircraft, the markings thereon, the name of the pilot, and the approximate time of arrival." (Ch. II, sec. 5.)

5. After arrival in the United States from a foreign port, the person having charge of such aircraft shall immediately report his arrival to the proper customs officials. (Ch. II, sec. 6.)

#### U. S. AIRPORT OF ENTRY REGULATIONS

1. Airports of entry and airports of entry for aliens will be designated after due investigation to establish the fact that a sufficient need exists in any particular district or area to justify such designation and to determine the airport best suited for such purpose. (Sec. 2.)

2. The designation as an airport of entry or an airport of entry for aliens may be withdrawn if it is found that the volume of business clearing through the port does not justify maintenance of inspection equipment and personnel, if proper facilities are not provided and maintained by the airport, if the rules and regulations of the Federal Government are not complied with, or if it be found that some other location would be more advantageous. (Sec. 4.)

3. Airports designated as airports of entry shall, so far as practicable, be municipal airports and shall meet at least the requirements of the Airport Rating Regulations of the Department of Commerce for an A-1-A rating, unless particular conditions which prevail warrant a departure from these requirements. (Sec. 5.)

#### Appendix C

##### AIRPORTS OF ENTRY ALREADY ESTABLISHED ALONG THE CANADIAN BORDER

###### *Regular*

Albany Municipal Airport, Albany, N. Y.  
Buffalo Municipal Airport, Buffalo, N. Y.  
Wayne County Airport, Detroit, Michigan.  
Boeing Airport, Seattle, Washington.  
Lake Union Seaplane Base, Seattle, Washington.

###### *Temporary*

Akron Municipal Airport, Akron, Ohio.  
Graham Airport, Bellingham, Washington.  
Buffalo Marine Airport, Buffalo, N. Y.  
St. Croix River Seaplane Base, Calais, Maine.  
Caribou Airport, Caribou, Maine.  
Cleveland Municipal Airport, Cleveland, Ohio.  
Detroit Municipal Airport, Detroit, Michigan.  
Ford Airport, Detroit, Michigan.  
Duluth Municipal Airport, Duluth, Minnesota.  
Duluth Seaplane Base, Duluth, Minnesota.  
Great Falls Municipal Airport, Great Falls, Montana.  
Havre Municipal Airport, Havre, Montana.  
Juneau Airport, Juneau, Alaska.  
Ketchikan Airport, Ketchikan, Alaska.  
Malone Airport, Malone, N. Y.  
Port of Minot, Minot, North Dakota.  
Billings Field, Ogdensburg, N. Y.  
Ogdensburg Harbor (Seaplane), Ogdensburg, N. Y.  
Fort Pembina Airport, Pembina, North Dakota.  
Mobodo Airport, Plattsburg, N. Y.  
Port Angeles Airport, Port Angeles, Washington.  
Port Townsend Airport, Port Townsend, Washington.  
Rouses Point Seaplane Base, Rouses Point, N. Y.

Sault Ste. Marie Airport, Sault Ste. Marie, Mich.  
 Scobey Airport, Scobey, Montana.  
 Skagway Municipal Airport, Skagway, Alaska.  
 Skagway Seaplane Base, Skagway, Alaska.  
 Spokane Municipal Airport, Spokane, Washington.  
 Missisquoi Airport, Swanton, Vermont.  
 Watertown Municipal Airport, Watertown, N. Y.  
 Wrangell Airport & Seaplane Base, Wrangell, Alaska.

#### COMMENTS AND OPINIONS

**AIRPORTS—POWER OF MUNICIPALITY TO ACQUIRE LAND OUTSIDE OF CORPORATE LIMITS.**—[Minnesota] Your letter to Attorney General Harry H. Peterson, under date of July 25th, has been referred to the undersigned for attention.

Therein you state that the city of Waseca is a city of the fourth class and is contemplating the acquisition of additional land adjacent to its airport; that this land is located outside the city limits; and that said land will probably have to be condemned.

You enclosed with your communication a copy of Section 1 of Chapter 12 of your home rule charter relating to condemnation proceedings provided for in said chapter.

You state:

The city wants your opinion as to how the condemnation proceedings should be prosecuted, under the charter or under the state law.

We assume that there is no provision in your home rule charter or the amendments thereto authorizing the city of Waseca to acquire additional land adjacent to the city for airport purposes. In this connection we direct your attention to Chapter 217, Laws of 1929. Section 1 of said Chapter 217 provides, in part:

The governing body of any city, village, or town in this state is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft *either within or without the limits of such cities, . . .*

Section 3 of said Chapter 217 provides, in part:

Any lands acquired, owned, controlled, or occupied by such cities, villages, towns, or counties for the purpose enumerated in Sections 1 and 2 hereof shall and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose and as a matter of public necessity, and such cities, . . . shall have the right to acquire property for such purpose or purposes *under the power of eminent domain* as and for a public necessity.

Section 4 provides, in part, as follows:

Private property needed by any city . . . for an airport or landing field may be acquired by gift or by purchase if the city . . . is able to agree with the owners on the terms thereof, and otherwise by condemnation, *in the manner provided by the law under which the city . . . is authorized to acquire real property for public purposes, other than street purposes, or, if there be no such law, in the manner provided for and subject to the provisions of the condemnation law.*

It will be noted from the above referred to sections of said Chapter 217 that a city of the fourth class operating under a home rule charter may acquire property for airport purposes either within or without the limits of such city; and that such city may acquire such property by condemnation proceedings "in the manner provided by the law under which the city . . . is authorized to acquire real property for public purposes, . . . or, if there be no such law, in the manner provided for and subject to the provisions of the condemnation law."

Chapter 41 of Mason's Statutes of 1927, Section 6537 thereof, relating to eminent domain under the general laws of the state, provides, in part:

Whenever the taking of private property for any public use shall be authorized by law, it may be acquired, under the right of eminent domain, in the manner prescribed by this chapter; but nothing herein shall apply to the condemnation of property by any incorporated place whose charter provides a different mode of exercising the rights of eminent domain by it possessed, . . .

It seems to have been within the contemplation of the legislature both under Chapter 217, Laws of 1929, and under said Section 6537, Mason's Statutes of 1927, that where it was necessary for a city to acquire property by condemnation proceedings that such proceedings should be instituted under the laws or charter provisions applying to such municipality. It seems obvious, therefore, that if the provisions relative to condemnation proceedings under your home rule charter are adequate that such proceedings should be brought pursuant to and in conformity with the provisions of your home rule charter. The question then arises as to whether the provisions of said Chapter 12 of your home rule charter relating to condemnation proceedings are valid and adequate.

Article 4, Section 36 of the State Constitution provides:

Any city . . . in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state . . . Before any city shall incorporate under this act the legislature shall prescribe by law the general limits within which such charter shall be framed. . . .

Pursuant to this constitutional authority the legislature, by Mason's Statutes of 1927, Section 1271, has provided:

And by such charter the city may be authorized to acquire, by gift, devise, purchase, or condemnation, any property, within or without its boundaries, needed for the full discharge of any public function which it is permitted to exercise.

Chapter 12 of the charter of the City of Waseca provides, in part:

Whenever the common council shall desire or intend . . . to acquire land or an easement therein for the above mentioned *or for any other public purpose*, and if it shall be necessary to take private property, it shall cause an accurate survey and plat thereof to be made and filed with the city clerk . . . but otherwise it shall by resolution declare its purpose *to condemn* and take the same . . .

Then follows in said section the procedure relative to the taking of such property by condemnation proceedings by the city.

There can be no question but that the city of Waseca, pursuant to said Chapter 217, Laws of 1929, is authorized to acquire property for airport purposes whether such property is located within or without the corporate limits of the city and, as hereinabove indicated, Section 4 of said Chapter 217 provides that in so acquiring such property by condemnation proceedings it shall be done "in the manner provided by the law under which the city . . . is authorized to acquire real property for public purposes." This provision, "in the manner provided by the law under which the city . . . is authorized to acquire real property for public purposes," in said Section 4, Chapter 217, Laws of 1929, must, in our opinion, be deemed to be the procedure prescribed by Chapter 12 of the city charter of the city of Waseca. In other words, the city having been given the power to adopt the home rule charter pursuant to article 4, Section 36 of the State Constitution, and also having been authorized pursuant to Section 1271, Mason's Statutes of 1927, and Chapter 217, Laws of 1929, to acquire property for such purpose outside the corporate limits of the city by right of eminent domain, we believe that the right to provide by charter the procedure for the exercise of that power necessarily follows.

We are, therefore, of the opinion that the charter provisions relative to such condemnation proceedings are valid if they prescribe a method of procedure which does not amount to the taking of property without due process of law.

We have examined such charter provisions in Chapter 12 of your city charter, and the procedure provided for therein seems to protect the constitutional rights of the property owners. In addition to the copy of the section which you enclosed with your communication, the right of appeal from the determination of damages by the jurors so appointed by such magistrate "to the district court of Waseca county from the decision of such jury" is given by Section 4 of said Chapter 12 of your home rule charter.

In connection with the bringing of such condemnation proceedings under the provisions of your home rule charter, we direct your attention to the case of *State v. Rapp*, 39 Minn. 65, in which Justice Mitchell, speaking for the court, said:

Condemnatory proceedings in the exercise of the right of eminent domain are not civil actions or causes within the meaning of the constitution, but special proceedings, only quasi judicial in their nature, whether conducted by judicial or non-judicial officers or tribunals. The propriety of the exercise of the right of eminent domain is a political or legislative, and not a judicial question. The manner of the exercise of this right is, except as to compensation, unrestricted by the constitution, and addresses itself to the legislature as a question of policy, propriety, or fitness, rather than of power. They are under no obligation to submit the question to a judicial tribunal, but may determine it themselves, or delegate it to a municipal corporation, to a commission, or to any other body or tribunal they see fit. Neither are they bound to submit the question of compensation incident to the exercise of the right of eminent domain to a judicial tribunal. Provided it be an impartial tribunal, and the property-owner has an opportunity to be heard before it, the legislature may refer the matter for determination to a jury, a court, a commission, or any other body it may designate.

In this connection see also the cases of *Board v. Roselawn Cemetery*, 136 Minn. 456, and *In re Improvement of Third Street, St. Paul*, 177 Minn. 146. On page 154 of the latter case, the court said:

The power to condemn property is in the first instance legislative. But the legislature may and does delegate to courts, municipalities, municipal officers and boards the administrative and quasi judicial proceedings, to carry into effect the legislative power. The proceeding is in rem and largely administrative.

Under the rules laid down by our Supreme Court in the above referred to cases, we do not believe that there is any question but that the provisions relative to condemnation proceedings under your home rule charter are adequate and amply protect constitutional rights of the property owners. (*Opinion of the Attorney General*, Aug. 3, 1934).

AIR TRANSPORT—AIR LINE PILOTS' WAGE DISPUTE.—[National Labor Board] The Air Line Pilots' Association and American Airways, Eastern Air Transport, Transcontinental and Western Air, United Air Lines and Western Air Express jointly submitted to the National Labor Board, in September, 1933, a wage dispute concerning the rate and method of payment for air pilots. The National Labor Board referred the matter to a fact-finding committee for study and recommendation and caused a detailed study of the wage situation in this industry to be made. The Board's decision has been withheld for several months because of the uncertain conditions in the industry resulting from the cancellation of the air-mail contracts in February. In view of the recent changes in the industry the Board feels that a public service will be rendered by the issuance of a decision setting forth its views regarding a fair wage scale for air pilots.

The traditional method of computing pilots' wages on the basis of mileage flown was abandoned by the industry during the period from 1931 to 1933. The dispute was occasioned by the new rates which had been put into effect on October 1, 1933, by all the companies involved. These rates are on an hourly basis and provide for \$4 an hour for day flying under 125 miles hourly speed, with 20c hourly increase to become effective at speeds of 126 miles, 141 miles, 156 miles, 176 miles, 201 miles, respectively. Two dollars an hour is added to each rate for night flying. In addition each pilot receives a base rate of \$1,600 annually, increased by \$200 for each year of service, up to a maximum of \$3,000 a year. This base rate is paid regardless of whether the pilot engages in any flying.

The pilots insisted upon a return to the mileage basis of payment and proposed the following scale: four cents a mile for day flying and seven cents a mile for night flying over ordinary terrain, with an increase to five cents and nine cents a day for day and night flying, respectively, over hazardous terrain, plus a base rate of from \$1,800 to \$3,000 a year. The companies contended for the continuation of the October first rates. These rates provided for approximately the same compensation for all flights at the low rates of speed which had been customary in the past, but resulted in materially reduced compensation for flights at the increased speeds which the industry has been striving to introduce and attain.

The October rates are inadequate for additional reasons. The differential paid for night flying as against day flying seems insufficient, the speeds at which the increased hourly rates would become effective seem impracticable, and the differentials for the increased speeds does not sufficiently take into

account the increased hazards and the probable increased earnings to be derived from the speedier equipment.

The Industry is on the threshold of technological improvement which will greatly accelerate the speed of airplane travel and which may result in some technological unemployment. The increase of speed will either greatly increase the mileage covered by the pilots or materially reduce their monthly hours of employment.

If the pilots were to fly in the future the same number of hours as in the past and were paid on the same mileage basis, their monthly earnings would be greatly increased. Similarly, were the mileage basis to be continued and the hours of actual flying reduced, there would be no change in monthly earnings notwithstanding the sharp reduction in monthly hours. In either event, the pilot would receive the chief benefits accruing from the new equipment. The hourly basis of payment, on the other hand, does not adequately compensate the pilots for the increased mileage with the added hazards incident thereto, and results in a sharp decrease of earnings in the event that the new equipment reduces the employment opportunities of the pilots. It would seem advisable, therefore, to adopt a basis of pay under which both the company and the employees would share in the benefits accruing from the new equipment and bear the burdens that will attend its introduction in the beginning. Various bases of compensation were accordingly studied that promised to attain this objective and a combination of both methods of payment was devised. The Board's report summarizing these studies was submitted to the parties for their criticism and suggestions. It thus appears that the method of payments recommended by the Board will impose no undue burdens upon the companies, that it can be administered without any practical difficulties, and that it provides an adequate basis of compensation for the pilots.

As the issues have been fully discussed with the parties and the considerations impelling the Board in reaching this decision have been outlined in an elaborate report, it is unnecessary to describe the issues here involved in any detail. In the attached chart,<sup>1</sup> the various methods of payment proposed by the parties and the Board are tabulated.

It is the decision of the National Labor Board on all the issues submitted that:

1. 85 hours of flying shall constitute the monthly maximum for air pilots.
2. Experience has not crystallized sufficiently to put a maximum on the monthly mileage of air pilots.
3. The rate of base pay shall be \$1,600 a year with an increase of \$200 for each year of service, up to a maximum of \$3,000.
4. Air-line pilots shall be paid the base rate plus an hourly rate of \$4, \$4.20, \$4.40, \$4.60, \$4.80, and \$5 for day flying and \$6, \$6.30, \$6.60, \$6.90, \$7.20, and \$7.50 for night flying at hourly speeds of under 125 miles, 125 miles, 140 miles, 155 miles, 175 miles, and 200 or more miles, respectively. In addition, at monthly mileages of under 10,000, 10,000 to 11,999 miles, and 12,000 miles and more, respectively, the pilots shall be paid 2c, 1½c and 1c a mile for all miles per hour flown at an hourly speed of more than 100 miles.
5. This award shall remain in effect for a period of one year.
6. The differentials existing on October 1, 1933, for co-pilots and for flying over hazardous terrain shall be maintained. *In the Matter of The Air*

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1. The chart is not here reproduced.

*Line Pilots' Wage Dispute*, Decisions of the National Labor Board, Part II, p. 20, May 10, 1934. (Opinion in full.)

CONSTITUTIONALITY—STATE LEGISLATION—AIRCRAFT LICENSING—DELEGATION OF LEGISLATIVE POWER.—[Minn.] Recently two suits were instituted in Minnesota contesting the constitutionality of their act to regulate aeronautics. The section in dispute in both cases provides that:

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within this state should conform with respect to design, construction, and airworthiness to the standards prescribed by the United States government with respect to navigation of civil aircraft subject to its jurisdiction, it shall be unlawful for any person to operate or navigate, or cause or authorize to be operated or navigated, any aircraft within this state unless such aircraft has an appropriate effective license, issued by the Department of Commerce of the United States, and is registered by the Department of Commerce of the United States; provided, however, that this restriction shall not apply to military aircraft of the United States or public aircraft of any state, territory, or possession thereof, or to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft.<sup>1</sup>

The suit still pending in Ramsey County was brought by the owner of a plane against the members of the Minnesota Aeronautics Commission under the Uniform Declaratory Judgment Act.<sup>2</sup> The least flimsy of plaintiff's contentions are that the act involves an invalid delegation of legislative power, an unreasonable exercise of the state's police power, a denial of the equal protection of the law and that it amounts to a taking of property without due process of law.

On November 21, the Hennepin County case was concluded.<sup>3</sup> It had originated with a criminal information filed by the commissioner in charge of enforcement, when one of the defendants, an unlicensed pilot, was found transporting a passenger in an unlicensed plane, and the other flew his unlicensed plane after warning. A demurrer to the information was decided in favor of the commission. At the hearing the defendants maintained that there had been an invalid delegation of legislative power by the State of Minnesota to the Department of Commerce of the United States. They further maintained that, by reason of the fact that the military aircraft of the United States, the public aircraft of the states, and the aircraft licensed by foreign countries having reciprocal agreements with the United States were exempted from the Act, they were being denied the equal protection of the law. Both contentions were refuted by the court.

On the trial of the case before the jury all constitutional issues were ruled out. The prosecution established the fact that the planes had been flown, stated that they were not licensed and rested. The defendants unsuccessfully argued that there had been no proof of the fact that their planes were not licensed. They had apparently overlooked the Minnesota law which provides that, in certain license cases, the mere allegation of the state of the absence of a license shifts the burden of proof to the defendant.

1. Minnesota Laws, 1933, C. 38, §2.

2. *Nieman v. Minnesota Aeronautics Commission*, District Court of Ramsey County, Minn., Second Judicial District.

3. *State of Minnesota v. Kelsey*, and *State of Minnesota v. Walertus*, District Court of Hennepin County, Minn., Fourth Judicial District.

The jury returned a verdict of guilty. Both defendants were sentenced to sixty days in the work house but sentence was stayed pending good behavior.

The holding of the court seems both legally sound and practically desirable. A delegation of legislative power will be upheld wherever the legislature has gone so far as to lay down a policy. Another test often applied is whether the subject matter has been acted upon as far as is practical. The writer believes that the section in question meets both requirements. As for the other constitutional issue raised by the defendants, it seems too obvious to need discussion. The equal protection clause relates to persons and not to states. And the exemptions in favor of the planes of foreign countries with whom the United States has reciprocal agreements is one of necessity since such agreements become the supreme law of the land. And finally, should anyone doubt the expediency of the requirements imposed, to convince them they need only learn of a recent Minnesota disaster to convince them.<sup>4</sup>

CECILE L. PILTZ.

### DIGESTS

**AIRPORTS—CONSTITUTIONALITY OF UNIFORM AIRPORT ACT—PUBLIC CONVENIENCE AND GENERAL WELFARE—APPROPRIATIONS.**—[Georgia] A tax payer of Glynn County sought a temporary injunction against the Georgia Commission of Roads and Revenues to prevent its using certain refunding certificates issued for the building of a "boat garage" or pier, and an airport, under the provision of a statute. (Ga. L. 1933, p. 161 as amended Mar. 22, 1933, p. 158.) The statute authorized an appropriation by means of the sale of the certificates to be used to pay off certain bonded indebtedness and to use the surplus "for any other proper and legal county purpose." The legislature had authorized the construction of these devices by the adoption of the Uniform Airport Act (Ga. L. 1933, p. 1021). The plaintiff taxpayer's chief contention was that the use of this money in the building of airports and "boat garages" was contrary to the Georgia Constitution (Civil Code, 6562, Art. 7, Sec. 6) which permitted a delegation of power to counties and other governmental subdivisions to levy taxes "to build and repair public buildings and bridges . . . and for . . . roads, . . ." The defendant Commission admitted all the facts but denied the legal conclusions of the plaintiff and the trial court refused the temporary injunction. Plaintiff excepted to the judgment and appealed on the ground that it was contrary to the law.

*Held:* the decisions affirmed, Atkinson, J., delivering the opinion in which all the judges concurred. The court found that the building of a boat garage, or basin for the mooring of vessels, fell well within the authority as stated in *McGinnis v. McKinnon*, 165 Ga. 713, 141 S. E. 910 (1928), where it was held that a pier built at the end of a public road "as a part of such road" where "the primary purpose is for the promotion of public convenience . . . and general welfare" was within the constitution. This was also reiterated in *McClatchey v. City of Atlanta*, 149 Ga. 648, 101 S. E. 682 (1920). Thus by the first case, any means to facilitate travel and transportation was a proper county purpose for convenience and general welfare of the public. It was conceded that a pier which connected sea travel with airways *facilitated* transportation and therefore the building of it was constitutional.

An airport, the court held, was also for facility of travel by land and air. It assumed that "public travel now includes air." Coupling this with lan-

4. The accident occurred July 1, 1934, Bowerville, Minnesota. Two passengers were taken up in an unlicensed plane by an unlicensed pilot, and both passengers were killed.

guage from a New York case, *Hesse v. Rath*, 249 N. Y. 435, 144 N. E. 342 (1928), where the court said that aviation today was an established method of transportation, it was easy for the court to come to the conclusion that there was such a thing as an "air road" within the meaning of *roads* in the constitution. Therefore, since an airway was like a public highway, an airport was like a pier at the end of a road and to use public money in building it was within the delegated power of the constitution as stated in *McGinnis v. McKinnon, supra*.

It must be noticed, by the way, that the taxpayer's complaint was against the using of *county* tax money for this purpose. The court found that the money here used was raised by means of a *state* gasoline tax, but it assumed, *arguendo*, that even if it were county tax money, it could be validly used as it was in the principal case. *Swoger v. Glynn County et al.* (Supreme Court of Georgia decided Nov. 17, 1934, No. 10394).

RAYMOND NAJARIAN.