

1936

Editorials

Recommended Citation

Editorials, 7 J. AIR L. & COM. 108 (1936)
<https://scholar.smu.edu/jalc/vol7/iss1/5>

This Comment is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

EDITORIALS

HOW MANY UNIFORM AVIATION LAWS ARE THERE?

In the Commerce Clearing House Aviation Law Service, in Report Letter No. 9 (November 6, 1935), there is presented a very detailed and valuable study of the *Uniform State Law for Aeronautics* as adopted (with variations) in some twenty-one states. On page 11,003, under the heading of Illinois (which has never adopted the act), there appears this statement:

An "Aeronautical Act" was adopted in Illinois in 1933. The substance of some of the sections of the Uniform Act is adopted, but the law is, in general, dissimilar thereto.

The foregoing statement is likely to be misleading. The Illinois law of 1933 adopts nothing of the *Uniform State Law for Aeronautics*. It is quite dissimilar to the uniform law referred to because it covers an entirely different field, and was never intended to deal with matters of substantive law.

Because of the obvious confusion which exists on a rather wide-spread front, it seems desirable to discuss again briefly the whole subject of uniform aviation laws.¹ Let us start out, then, by stating that there are at present at least *five* so-called uniform aviation laws, as follows:

- (1) Uniform State Law for Aeronautics (1922),
- (2) Uniform State Air Licensing Act (1929),
- (3) Uniform State Aeronautical Regulatory Act (1934),
- (4) Uniform Aeronautical Regulatory Act (1935), and
- (5) Uniform Airports Act (1935).

The Uniform Law Makers. To properly understand the origins of these various uniform laws, we must digress for a moment to consider what bodies have been most active in sponsoring them. Although the idea of uniformity in state legislation has been admittedly desirable ever since the early days of railroad legislation, the organizations which have been most active in promoting uniform aviation laws are: (1) The National Conference of Commissioners on Uniform State Laws (through an aviation committee), (2) The American Bar Association (through a committee on

1. For a rather detailed statement of the history of uniform aviation law development in the United States, see 5 JOURNAL OF AIR LAW 611, 613 (1934).

aeronautical law), and (3) the National Association of State Aviation Officials.

In 1920, aviation committees were appointed by the American Bar Association and the National Conference of Commissioners on Uniform State Laws. These committees have been quite active since their formation. The National Association of State Aviation Officials began its activities in 1931, following an organization meeting at Cleveland, Ohio, during that year.

In 1920, the important question was: should there be a single, all-inclusive federal law governing aeronautics, or 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.

Uniform State Law for Aeronautics. Before the constitutionality arguments were fully developed, Professor Bogert presented his draft of the *Uniform State Law for Aeronautics*, and it was passed by the National Conference on August 7, 1922. (It has since been adopted, in whole or in part, by some twenty-one states.) The act was drafted as a *non-regulatory* law and was intended merely to establish the legal status of air navigation in relation to the general law. When it was considered, in 1922, the prevailing thought was that Congress would assume control of all *regulatory* phases of the subject.

Parts of this act are now antiquated and obsolete. The present Conference and American Bar committees are now undertaking its revision to bring it up to date. When so revised, it will take its place as Part III of the Uniform Aeronautical Code (which will be explained later on).

Let us remember, then, that this 1922 uniform law deals mainly with *substantive* law questions; that is now being entirely revised and that the revision will be one of the most important subjects of consideration by the aviation committees of the National Conference and the American Bar Association during the present year.

Uniform State Air Licensing Act. From 1920 to 1926, the aviation committees just mentioned were concerned with the formulation of a federal aviation law and the first real debate centered upon the authority of Congress to control the entire field (the desirability of such control being fully accepted). As is well known, the initial thought was to the effect that a constitutional amendment would be necessary to enable Congress to assume control of the whole field. This method of acquiring authority was deemed to require too much time, and so the Air Commerce Act was bottomed

upon the commerce clause, and was enacted into law in May of 1926.

However, it was felt that the authority of the commerce clause was not broad enough to require federal licenses for *all* aircraft and airmen operating in the country and so such a license was only required for aircraft and airmen operating in interstate or foreign air commerce. 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"²

The aviation committees immediately centered their attention on the development of *regulatory* legislation and so drafted the *Uniform State Air Licensing Act* which was adopted by the National Conference of Commissioners in 1929. The Aeronautics Branch of the Department of Commerce was also active in sponsoring this uniform state regulatory legislation.

Let us remember, here, that this represents the first step toward state *regulatory* legislation of a uniform character; that the first subject matter pertained to the licensing requirements for aircraft and airmen; and that *either* a *state* or a *federal* license was required for operation in the adopting state. (The requirement of a *federal* license did not come until later.)

This act was adopted by several states but has been superseded by the later regulatory acts. It should not be adopted in its present form in the future by any state.

Uniform Aeronautical Code. By 1929, it was apparent that the non-regulatory *Uniform State Law for Aeronautics* was partly out of date and that there was also need for regulatory legislation of a more inclusive nature than that provided by the *Uniform State Air Licensing Act*. Hence, the American Bar Association Committee in that year asked permission to draft a new aeronautical code which would meet the growing needs of the aviation industry. That permission was granted. By 1934, the American Bar committee and the Conference committee had agreed upon a three-fold division of that aeronautical code, as follows:

2. See 5 JOURNAL OF AIR LAW 611, 615 (1934).

- (1) A Uniform Aeronautical Regulatory Act (Part I),
- (2) A Uniform Airports Act (Part II), and
- (3) A Uniform Non-Regulatory Act (Part III).

The first two of these have been completed and were passed by the National Conference and by the American Bar Association in July of 1935. The third is now in process and it is expected that a tentative draft thereof (Part III) will be ready during the present year. The third part of the uniform aeronautical code has received no official title. For convenience, it has been termed the "Non-Regulatory" act to distinguish it from Part I.

Uniform State Aeronautical Regulatory Act.³ Representatives of the American Bar Association committee and the National Association of State Aviation Officials pooled their experience and ideas and drafted the *Uniform State Aeronautical Regulatory Act*. This was then offered to the Conference committee in May of 1934. The Conference committee was not successful in obtaining final action thereon at the Milwaukee meeting during the summer and so the matter had to go over until the July, 1935, meeting at Los Angeles.

This delay was disadvantageous to many of the state aviation officials—due to the fact that some forty state legislatures were to meet during the first of 1935 and that it was desirable to have some uniform regulatory legislation passed at the 1935 sessions. With that thought in mind, the draft was considered at the Cheyenne meeting of the National Association of State Aviation Officials in September of 1934, and was there unanimously adopted by the Association. (It was believed that any minor changes made by the National Conference before official adoption by that body could be incorporated in 1937 legislation, and that, between 1935-37, the adopting states would have a satisfactory regulatory law in force.)

This act, then, is not an *official* uniform law (in the sense of being formally adopted by the National Conference). On the other hand, it is in spirit identical with the *Uniform Aeronautical Regulatory Act* (officially adopted in 1935) and served as the model for consideration by the Conference committee in 1935. It is an *official* uniform law so far as it represents the views of those most closely connected with aviation matters in the individual states—the National Association of State Aviation Officials. At least, it must be granted the status of a *semi-official* uniform law and, since there

3. For a copy, see 5 JOURNAL OF AIR LAW 630 (1934). This is the Act adopted by Illinois in 1935. The 1933 Illinois law served as the model for the Uniform State Aeronautical Regulatory Act. It therefore has nothing to do with the 1922 uniform law.

is so little difference between the two, it is quite immaterial which is adopted.

Uniform Aeronautical Regulatory Act.⁴ As has just been stated this is the *official* regulatory act, formally adopted by both the National Conference and by the American Bar Association at Los Angeles in July of 1935. It appears to be a trifle more carefully worded (from the standpoint of sentence structure) but has no merits otherwise over the 1934 act as sponsored by the National Association of State Aviation Officials.

If a state were to adopt one of the two regulatory proposals--there being neither on its books already--the 1935 act would seem to be somewhat preferable. However, the term *student permit* should be stricken from its paragraphs for a student is at present given a federal *license* for purposes of instruction.

Uniform Airports Act.⁵ This act was officially passed upon favorably by the National Conference and by the American Bar Association at the Los Angeles meeting in July of 1935. It should be adopted by all states which have not already passed legislation covering the subject matter to their particular satisfaction.

FRED D. FAGG, JR.

4. For a copy, see 6 JOURNAL OF AIR LAW 584 (1935).
5. For a copy, see 6 JOURNAL OF AIR LAW 589 (1935).