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STATE REGULATION OF AERONAUTICS
IN THE SOUTHWEST

THE broad regulatory powers contained in the Federal Civil Aeronautics Act¹ have caused the states to proceed with caution when drafting their own acts so as to avoid any conflicts with the Federal Government's control of civil aviation. The states appear to consider their own regulations more as reiteration of the Federal laws than as supplements to them. This caution on the part of the states is enhanced by decisions such as *United States v. Drumm*,² wherein it was stated "the operations of uncertified airmen anywhere in the navigable air space overlying the United States, constitute a hazard to interstate, overseas and foreign commerce. . . . [I]t is necessary that all pilots and aircraft operating in the air space overlying the United States, be certified." In Arkansas,³ Louisiana,⁴ New Mexico,⁵ and Texas⁶ the statutes make the simple requirement that airmen (pilots, navigators, etc.) must possess an appropriate Federal license to operate aircraft lawfully within the air space superincumbent upon the state. In Oklahoma⁷ airmen are required to register with the Oklahoma Aviation Commission and to renew their registration each year. However, the sole requirement for registration is the possession of a valid Federal certificate.⁸ An almost identical situation exists with respect to aircraft. Arkansas,⁹ Louisiana,¹⁰ New Mexico,¹¹ Okla-

¹ 52 STAT. 977 (1938), 49 U.S.C. 1946 ed. § 401 *et seq.*

² 55 F. Supp. 151, 155 (D. Nev. 1944).

³ ARK. STAT. 1947 ANN. § 74-105.

⁴ LA. STAT. ANN. (West, 1951) § 2-2.

⁵ N. M. STAT. 1941 ANN. § 47-103.

⁶ TEX. PEN. CODE (Vernon, 1948) art. 1137b.

⁷ 3 OKLA. STAT. ANN. (Perm. ed.) § 141 (a).

⁸ 3 OKLA. STAT. ANN. (Perm. ed.) § 141 (b).

⁹ ARK. STAT. 1947 ANN. § 74-104.

¹⁰ LA. STAT. ANN. (West, 1951) § 2-2.

¹¹ N. M. STAT. 1941 ANN. § 47-102.

homa¹². and Texas¹³ require appropriate Federal certificates for all aircraft operating within their respective boundaries. Louisiana has the further requirement that all civil aircraft operated solely within the state more than ten consecutive days must be registered with the Department of Public Works.¹⁴

For purposes of self-protection a sovereign government possesses the right and jurisdiction to control the airspace above its territory. In the United States it has been thought that each state has this authority except where it is limited by the powers granted the Federal Government;¹⁵ therefore, the states may, to a reasonable extent, regulate the operation of aircraft engaged in interstate commerce. The safety jurisdiction of the Federal Government has been defined to include not only interstate, overseas, or foreign air commerce but also any operation or navigation of aircraft which may endanger safety in interstate, overseas or foreign air commerce.¹⁶ This broad coverage includes all flights of aircraft over the United States, and any state safety regulations must conform with those of the Federal Government or be without effect. Under the Federal Constitution the National Government's economic jurisdiction is fully as broad as that which it has over safety, but has been asserted to cover only interstate, foreign or overseas air commerce and the carriage of mail. The states are left with authority to promulgate economic regulations over purely intrastate, non-mail carrying flights which do not affect interstate, foreign or overseas air commerce, although a purely intrastate situation in no manner affecting interstate commerce is difficult to imagine. In matters which are interstate but not national in scope, requiring no uniformity of action, the states and the Federal Government are said to have concurrent powers, and a state may issue regulations which do not burden or discriminate against

¹² 3 OKLA. STAT. ANN. (Perm. ed.) § 140.

¹³ TEX. PEN. CODE (Vernon, 1948) art. 1137b.

¹⁴ LA. STAT. ANN. (West, 1951) § 2-2.

¹⁵ 6 AM. JUR. (Rev. ed. 1950), *Aviation*, § 12.

¹⁶ THOMAS, ECONOMIC REGULATION OF SCHEDULED AIR TRANSPORT (1951) 41.

interstate commerce.¹⁷ Regulation of air traffic is a proper function of the legislative branch through the exercise of the police power.

Regulatory actions by the states are generally performed by administrative bodies which have been either especially created to control civil aviation or have been delegated additional powers for this purpose. The Arkansas Department of Aeronautics¹⁸ has general duties and powers to control and enforce rules concerning air ports, air navigation facilities, airmen instruction, etc., but is expressly forbidden to determine schedules, issuance of stock, public convenience, or adequacy of any common carrier in the state.¹⁹ General supervision over air common carriers is vested in the Arkansas Public Service Commission,²⁰ and no person may engage as an air common carrier unless he has a valid certificate from the Commission.²¹ The supervisory powers of the Commission include fixing rates,²² requiring periodic accounts, records and reports from the carrier, and supervising the issuance of securities if the carrier is incorporated under the laws of Arkansas.²³ The Commission is empowered to conduct hearings on matters arising under its jurisdiction; appeals from the orders of the Commission are to the District Court of Pulaski County for a review of the record of the proceedings.²⁴ Interstate common carriers are exempt from the requirements of the legislation,²⁵ and another provision²⁶ expressly exempts intrastate business incidental to the interstate business of such common carriers. However, if the Commission believes the carrier's intrastate rates are not proper,

¹⁷ *Id.* at 37.

¹⁸ ARK. STAT. 1947 ANN. § 74-102.

¹⁹ *Id.*, § 74-103.

²⁰ § 74-403.

²¹ § 74-405.

²² § 74-416.

²³ § 74-417.

²⁴ § 73-133.

²⁵ § 74-409.

²⁶ § 74-422.

it is empowered to petition the Civil Aeronautics Administration for review and adjustment of these rates.²⁷ Both the Public Service Commission and the Department of Aeronautics are cautioned against doing anything that may conflict with the orders, rules or regulations of the Federal Administrator of Civil Aeronautics or the Civil Aeronautics Board.

Louisiana has delegated its control over civil aeronautics to the Department of Public Works.²⁸ The Department may prescribe rules concerning design and layout of air ports, air instructions, safety and air markings.²⁹ All proposed airports, landing fields, air schools, flight clubs and air navigating facilities must be approved by the Department before any positive action may be taken towards their actual accomplishment.³⁰ The Director of Public Works is vested with authority to direct and supervise all aeronautical activities and to hold hearings and investigations concerning matters covered by the Louisiana Aeronautics Act.³¹ Witnesses to these hearings may be subpoenaed through the proper district court.³²

In the event an application for permission to establish or operate an airport, air school, landing field, flying club or air beacon is refused, the party against whom the order has been issued may appeal to the proper district court within ten days to have the reasonableness or lawfulness of the order inquired into or determined.³³ Upon trial the court hears evidence as to matters concerning the order in question and enters judgment either affirming or setting aside the order of the Department, or may remand the matter to the Department for further hearing.³⁴ If no appeal is

²⁷ § 74-404.

²⁸ LA. STAT. ANN. (West, 1951) § 2-5.

²⁹ *Id.*, § 2-6.

³⁰ § 2-8.

³¹ § 2-9.

³² § 2-10.

³³ § 2-14.

³⁴ § 2-15.

taken within the period fixed, the party is deemed to have waived the right to have the reasonableness or lawfulness of the order reviewed by any court and may not raise the issue in any suit which may be brought for the penalty for failure to comply.³⁵ Copies of all rules and regulations made by the Department pertaining to aeronautics are kept on file with the Secretary of State.³⁶

The New Mexico Corporation Commission has the authority to make regulations concerning common carriers and air traffic rules applicable to the operation of all aircraft within the state.³⁷ All air traffic rules promulgated by the Commission must conform with the Air Commerce Act of May 20, 1926,³⁸ and all amendments thereto. Aircraft transporting passengers or materials out of the state and returning are expressly included under the jurisdiction of the Commission,³⁹ and all common carriers operating in New Mexico must have a certificate of public convenience and necessity from the Commission.⁴⁰ The New Mexico Aeronautical Commission was created and vested with the power to promulgate rules and regulations designed to promote and encourage aeronautics.⁴¹ Its jurisdiction extends to the design and layout of airports, the instruction of airmen, and the installation of air navigation facilities, and it may enter into such agreements with any agencies of the United States as will enable the State to secure all benefits which may be available to it under any aeronautics programs adopted by the agencies.⁴² One statute transferred to the Aeronautics Commission all powers over aircraft other than common carriers heretofore held by the Corporation Commission.⁴³ The Attorney-General for the State has said the statute violates

³⁵ § 2-16.

³⁶ § 2-7.

³⁷ N. M. STAT. 1941 ANN. § 47-107.

³⁸ 44 STAT. 568, 49 U.S.C. 1946 ed. § 171 *et seq.*

³⁹ N. M. STAT. 1941 ANN. § 47-106.

⁴⁰ *Id.*, § 47-108.

⁴¹ § 47-112.

⁴² § 47-113.

⁴³ § 47-115.

the New Mexico Constitution, since there was nothing in the title to indicate that the Corporation Commission was to be stripped of its power over all aircraft.⁴⁴ To date the New Mexico Legislature has done nothing to remedy this apparent defect.

The Oklahoma Aviation Commission exercises a general control over airports, air navigation facilities, and airmen instruction.⁴⁵ It is also empowered to establish, expand or modify a state airway system. Its authority includes the promulgation of rules and regulations designed to advance aeronautics within the state.⁴⁶ As pointed out earlier, it also receives the registration of airmen operating within the state. It is vested with the power to conduct hearings concerning matters within its jurisdiction.⁴⁷ It is the duty of the Commission to enforce the Oklahoma Aeronautics Act, and it does so through the proper courts.⁴⁸ The Commission may not grant an exclusive right for the use of any airport, airway, or air navigation facility.⁴⁹ The Oklahoma Corporation Commission, whose authority covers the issuance of certificates of public convenience and necessity to common carriers operating within the state, was said, in the ruling on *Application of Central Airways*,⁵⁰ to have no authority to receive, or act upon, an application by an airline for a license to operate in the state.

The Texas Aeronautics Commission is vested with the general powers and duties to supervise civil aviation within the state. Its authority includes prescribing rules of air flight, but it may make no rules or regulations which may impose a greater restriction upon aviation than now exists. The Texas Aeronautical Act specifically states that the Commission shall have no authority to

⁴⁴ OPS. ATT'Y.-GEN. OF N. M. (1939-1940) 99.

⁴⁵ 3 OKLA. STAT. ANN. (Perm. ed.) § 74.

⁴⁶ 3 *Id.*, § 138.

⁴⁷ 3 *Id.*, § 142.

⁴⁸ 3 *Id.*, § 145.

⁴⁹ 3 *Id.*, § 136.

⁵⁰ 199 Okla. 300, 185 P. 2d 919 (1947).

issue certificates of public convenience and necessity within the state. The Director of Aeronautics is charged with the duties of enforcing any rules issued by the Commission.⁵¹ All of the states here considered have provided criminal penalties for the violation of their aeronautical laws.

Any person operating airplanes for the purpose of carrying passengers for hire in the state of Louisiana must procure and execute an indemnity bond with the obligation running in favor of any person that may be injured in person or property by his operation. The amount of the bond must be equal to \$15,000 for the first aircraft, plus \$1,000 for each additional aircraft operated.⁵² The New Mexico Public Service Commission has issued the requirement that all air common carriers must have personal injury insurance in force equal to \$1,000 for each seat in each airplane they have operating in the state and \$4,000 for each accident, plus \$5,000 property damage insurance for each airplane.⁵³

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⁵¹ TEX. REV. CIV. STAT. (Vernon, 1948) art. 46c-6, 8.

⁵² LA. STAT. ANN. (West, 1951) § 45-2.

⁵³ N. M. Aircraft Common Carrier Reg., 1930.

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