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THE MINNESOTA AERONAUTICS ACT

FRED D. FAGG, JR.

The State of Minnesota has, since 1921, taken an active part in aeronautical regulation and encouragement and no state has a better record in attempting to promote uniform air legislation. This new law,\(^1\) approved on April twenty-second, should make possible a well balanced regulatory program and, as soon as funds can be provided, should enable the state to undertake a sound program of aviation encouragement.

The purpose of this legislation is to provide a system of control over aeronautics which shall be sufficiently flexible to meet the needs of a rapidly growing business\(^2\) while, at the same time, it affords almost complete protection to third persons. The method employed has been to establish a special commission, composed in part of technical experts, and to vest in that body the authority to regulate and encourage all aeronautical activities within the state. The statutory provisions have been reduced to a bare minimum and consist, almost entirely, of "empowering" sections—containing the necessary, and protective, legislative standards. There is one latent assumption—now rather generally accepted—that some state supervision of aeronautics is necessary. With the increase in intrastate flying activity and the decrease in federal appropriations, the responsibility of the individual states to provide an adequate program of control and encouragement seems certain.\(^3\)

To facilitate an understanding of the features of the Minnesota law, an analysis will be made of the various sections, which sections will be set forth in full in the body of the paper and followed by the author's comment.

I. DEFINITION OF TERMS.

The legislation of some states makes no attempt at definition, but the more advanced laws have endeavored to explain the mean-

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1. The new law, which was drafted at the AIR LAW INSTITUTE, is based upon the Illinois Law of 1931 and contains the amendments suggested by the Illinois Aeronautics Commission (of which the writer is a member) in its recommendations to the Illinois legislature during 1933.
2. For a study suggesting the need of flexible control, see Fred D. Fagg, Jr., "A Survey of State Aeronautical Legislation," 1 JOURNAL OF AIR LAW 452; and, also, Fred D. Fagg, Jr., "The State Aeronautical Regulation of 1930," 2 JOURNAL OF AIR LAW 193.
3. Relative to the question of federal and state control, see Clarence M. Young, "The Province of Federal and State Regulation of Aeronautics," 1 JOURNAL OF AIR LAW 423; George B. Logan, "The Interstate Commerce 'Burden Theory' Applied to Air Transportation," 1 JOURNAL OF AIR LAW 433; and Reed G. Landsis, "The Illinois Plan of Aviation Encouragement," 4 JOURNAL OF AIR LAW 188.
ing of all essential aeronautical terms employed. Where the definitions have been carefully phrased and are accurate, a commission or court will find its labors materially lessened. The Minnesota act has defined twelve basic concepts, as follows:

"Section 1. When used in this Act,

(a) 'Aeronautics' means the act or practice of the art and science of transportation by aircraft, and operation, construction, repair or maintenance of aircraft, airports, landing fields, emergency landing strips, air navigation facilities, or air instruction.

(b) 'Aircraft' means any contrivance now known or hereafter invented, used, or designed for navigation of, or flight in the air, except a parachute or other contrivance designed for such navigation, but used primarily as safety equipment.

(c) 'Public Aircraft' means an aircraft used exclusively in the governmental service, including military and naval aircraft, or of any state or territory thereof.

(d) 'Civil Aircraft' means any aircraft other than a public aircraft."

The first four definitions are generally accepted and require no comment.

(e) 'Airport' means any area, either of land or water, which is used or which is made available for the landing and take-off of aircraft, and which provides facilities for the shelter, supply, and repair of aircraft, and which, as to size and design, has at least 1,800 feet of effective landing length in all directions, with clear approaches, and which field shall be in good condition for landing at all times, or has landing strips not less than 500 feet wide, permitting landing in at least six directions at all times, with at least one landing strip aligned with the general direction of the prevailing wind, the landing strips not to cross or converge at angles at less than 40 degrees, nor any one of the landing strips to be less than 1,800 feet in effective length with clear approaches, or has two landing strips, one aligned with the general direction of the prevailing wind, permitting at least 4-way landing at all times, and having clear approaches, the landing strips to be at least 500 feet wide and at least 2,500 feet in effective length, and not to cross or converge at an angle less than 60 degrees; and which, in any case hereinbefore mentioned, meets the minimum requirements as to surface, marking, equipment and management as may from time to time be provided, by the Minnesota aeronautics commission."

The definition of the term airport, although based generally (but not specifically) upon certain requirements for a federal rating on size of effective landing area (which rating is purely voluntary), is quite different from the commonly accepted definition. In the Air Commerce Act of 1926, the term is defined as follows:

"The term 'airport' means any locality, either of water or land, which is adapted for the landing and taking off of aircraft and which provides facilities for shelter, supply, and repair of aircraft, or a place used regularly for receiving or discharging passengers or cargo by air."

The common distinction made between an airport and a landing field is that the former provides service facilities while the latter does not. In the opinion of the writer, such distinction is entirely unsatisfactory in that it fails to take into consideration the very important element of size of landing area. To meet the difficulty, the present federal airport rating regulations offer an optional classification on the basis of four ratings. But, under the present federal definition, a two-way landing area two hundred by one thousand feet (or less) could qualify as an airport if it offered service facilities—even if it could not qualify for the optional "4" (or minimum) federal rating. This situation could possibly be justified on the ground that an aviator, flying over such an area, would not be misled as to its size. Certainly it is true that, in time, the successful airport operator will offer the aviator an area sufficient and safe for his needs. However, until the time when competition shall have weeded out the operator of an unsafe area, it is believed desirable that the state shall not license any area as an airport until it meets certain minimum requirements as to size, design, surface, marking, equipment, and management. Such is the theory of the Minnesota legislation. Under its operation, a "circle" (the generally used marker for an airport) will have real and valuable significance.

Parenthetically, the writer wishes to make four observations in this connection: (1) The insistence upon such a minimum airport requirement will always be greater in mountainous states, such as Idaho, than in flat country, as is found in North Dakota. (2) The requirement will be particularly valuable to one using maps for cross-country flying—especially when he flies into unknown territory and wishes to know what facilities to expect. In such a case, an airport marking will convey valuable information and make it unnecessary for him to resort to other literature explaining in detail the nature of the facilities available. (3) While the writer has explained the purely optional nature of the federal airport rating, he has long asserted the authority of the Aeronautics Branch to require the licensing of all airports. But if the states will deal with the subject matter in a relatively uniform manner, federal action will not be necessary. (4) Airport

5. Section 9(g).
operators need entertain no fears that the state minimum require-
ments will continually be raised—due to the use of speedier air-
craft. The modern developments all point to slower landing
speeds and there is no doubt but that the possible use of small
intermediate landing fields (for emergency purposes) will also
keep landing speeds down.

"(f) 'Landing field' means any area, either of land or water, which
is used or which is made available for the landing and take-off of aircraft, which may or which may not provide facilities for the shelter, supply and repair of aircraft, and which meets the minimum requirements as to size, design, surface, marking, equipment and management as may from time to time be provided by the Minnesota aeronautics commission."

The term landing field is defined more generally as it repre-
sents the smaller, and less frequently used, area. Its minimum re-
quirements are to be prescribed by the state regulatory body—
according to the requirements of safety dictated by the physical
conditions within the state and best understood by that body. As
the landing field is also to be licensed, it should be given a dis-
tinctive marking—which in no case should be a circle.

"(g) 'Emergency landing strip' means an area, either of land or
water, which is available for the landing and take-off of aircraft, having not less than 200 feet of useable width and not less than 1,000 feet of useable length, the use of which shall, except in case of emergency, be only as provided from time to time by the regulations of the Minnesota aeronautics commission."

The emergency landing strip offers something of an innova-
tion and results largely from the experience of the Illinois com-
mission. There is no point in licensing airports and landing fields—
as a safety measure—unless the same regulation makes it unlawful
to operate from any but a licensed port or field. However, such
a requirement can work injustices unless there is a licensed port
or field available in every community. Particularly is this true in
three situations: (1) private owners flying from their own land;
(2) charter trips made to points where there is no port or field;
and (3) barnstorming operations. In all these cases, a too strict
adherence to the regulatory requirements will work a hardship
upon the parties concerned. The remedy is for the state regulatory
body to issue exemptions, upon proper application. But even such
a procedure is time consuming and unsatisfactory. The emergency
landing strip device is a way out of the difficulty. Under the
provisions of the definition, a pilot, in any of the three above-

6. See Section 12.
mentioned situations, need only choose an area, 200x1,000 feet, as his base of operations—with the proviso (to be established in the regulations promulgated by the commission) that, at the time of use, the longitudinal axis shall lie in the direction of the wind. In case of emergency, the proviso will be of no force. Another advantage of the emergency landing strip is that it offers a fairly workable basis for determining negligence on the part of the pilot in case he chooses a smaller base of operation or does not obey the requirements of the proviso.

“(h) ‘Person’ means any individual, association, copartnership, firm, company, corporation, or other association of individuals.”

Here again is a routine definition, used merely for purposes of convenience.

“(i) ‘Air instruction’ means the imparting of aeronautical information in any air school, flying club, or by any aviation instructor.”

Since the state regulatory body is to be given broad, general powers over air schools, flying clubs, and individual instructors, the foregoing all-inclusive definition of air instruction seems desirable. The optional federal rating offered to air schools as an inducement to meet certain standards, and for advertising purposes, does not purport to afford any comprehensive control over air instruction within the states. Consequently, if any control is to be exercised, it must be accomplished by the states themselves.

In some states, jurisdiction has been extended only to air schools. Two difficulties are at once presented in such a situation: (1) it is difficult to establish effective and reasonable limits to the term where it has not been defined in the law, and (2) it leaves entirely uncontrolled about one-half of the flying-training activities since it does not cover flying clubs and private instruction. If the aim of such state control is to afford safety to those engaged in giving and receiving aviation instruction, as well as to the public, then the state regulatory body must be given supervisory authority over all air instruction.

“(j) Any person engaged in giving instruction, or offering to give instruction in aeronautics—either in flying or ground subjects, or both—for or without hire or reward, and advertising, representing, or holding himself or itself out as giving or offering to give such instruction, shall be termed and considered an ‘Air School.’”

7. See Sections 10 and 12.
8. See Aeronautics Bulletin No. 7-B, School Supplement.
9. See, for example, the Illinois Law of 1931. The proposals contained in Illinois Senate Bill 314 (1933) furnish the basis for the Minnesota law.
The theory of the air school definition is that it shall offer a practical distinction—based upon the hold-out concept—which will be suitable for licensing purposes. When a state commission is given power to license air schools, it must decide (in the absence of definition) what an air school is. It will find extreme examples. It will find the large institution which has a great plant, abundant equipment and personnel, and which calls itself—through national advertising—an air school. The commission will also find the small operator who owns (or leases) a single plane and desires to give flying training—either as a main business or purely as a side-line—to as many students as can be enrolled by means of small-scale advertising (signs on hangars or short inserts in technical papers). No one would doubt that the former is an air school and subject to the license, yet there might be some doubt as to the latter, although, if the purpose of the license is to provide safety, there is possibly more reason to subject the latter to careful scrutiny. The difficulty just explained should not arise under this law, for the whole subject of air instruction falls under the jurisdiction of the commission and practical distinctions have been made between air schools and private instruction.

It should be mentioned that one additional ground for the exercise of regulatory control over air schools (which include both flying and ground schools) is to prevent frauds upon students whose tuition may be collected without any instruction in return. The era of so-called “gyp” air schools is passing, but state supervision is still necessary for reasons of financial, as well as physical, protection.

“(k) Any person (other than an individual) who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction, pleasure, or both, shall be termed and considered a ‘Flying Club.’”

Since many persons are learning to fly through the medium of flying clubs, it is believed desirable to include them under state control. Such a procedure is nothing new, since these clubs have been regulated in Michigan and Illinois, at least, for several years.

“(l) ‘Aviation instructor’ means any individual engaged in giving instruction, or offering to give instruction, in aeronautics—either in flying or grounds subjects, or both—for or without hire or reward, without advertising such occupation, without calling his facilities an ‘Air school’ or anything equivalent thereto, or without employing or using other instructors.”

The definition of aviation instructor, as distinguished from air school, should prove clear and of practical merit. The qualifica-
tions for an aviation instructor may be established by regulations issued by the commission and it is believed that the day will soon come when persons desiring to instruct will be required to pass some test beyond that required for a transport pilot rating. That some persons cannot impart information is well know. The Illinois experience would indicate that something in addition to the transport rating is desirable and doubtless several experiments will be tried to determine the requisite minimum qualification for an aviation instructor.

II. AIRCRAFT AND PILOT LICENSES.

There has been a general trend on the part of the states toward the adoption of federal requirements for the licensing of aircraft and pilots. While some of the states have limited that requirement to commercial aircraft or commercial airmen, the better practice has been toward the requirement of a federal license for all aircraft and airmen operating within the state. The Minnesota law, under discussion, has followed the latter practice.

Aircraft Licenses:

"Section 2. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating with 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 sub-

10. With the cooperation of the Federal Department of Commerce, the Illinois Aeronautics Commission, on May 5, 1932, required the following flying instructor's rating (Section 6, Illinois Air School and Aeronautic Instruction Regulations):

"A flying instructor's rating will be issued by the Illinois Aeronautics Commission, upon proper application, to the holder of a current effective flying instructor's rating issued by the Federal Department of Commerce; said rating issued by the Illinois Aeronautics Commission shall be for the period of one year, provided, however, that the holder's transport pilot's license shall not have sooner lapsed or been suspended or revoked.

"A flying instructor's rating will be renewed by the Illinois Aeronautics Commission, upon proper application, when the applicant offers written evidence that he has given at least 50 hours of instruction during the previous year, which evidence shall show the names and addresses of all students, together with their flying time and dates thereof; provided, however, that all hours of instruction given in excess of 50 hours shall also be listed; and provided, further, that in case the applicant shall have given less than 50 hours of instruction during the previous year, he shall then be obliged to secure a rerating as a flying instructor from the Federal Department of Commerce.

"The Illinois Aeronautics Commission may, in its discretion, suspend or revoke any flying instructor's rating issued by said Commission.

"No fee shall be charged for the issuance or renewal of any flying instructor's rating.

So many pilots failed to pass the first written examination given by the federal inspectors that the commission found it desirable to make the rating optional. But it is believed that the idea of requiring some sort of instructor's rating is fundamentally sound. At least, the results of the first examination showed clearly that many good pilots are lacking in instructional ability. See Reed G. Landis, "The National Association of State Aviation Officials: Its Utility and Function," 4 JOURNAL OF AIR LAW 1, 6.

ject 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 the 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."

The significance of the foregoing provision is to be found in the clause providing that "it shall be unlawful for any person to operate or navigate, or cause or authorize to be operated or navigated, any aircraft within the state unless such aircraft has an appropriate effective license, issued by the Department of Commerce of the United States, * * * ." The aim has been to distinguish between the operation and navigation of aircraft. The term operate is used here in a broader sense to include the active use of an aircraft by an owner, lessee, and so forth, as well as to include the merely mechanical operation of flying the aircraft. In other words, in cases involving prosecution for failure to possess an aircraft license, it is desirable to go beyond the pilot of the aircraft in order to reach the owner or operator, in the economic sense. He is the one who is most likely to be financially responsible, and any legislative provision should make it possible to make him responsible for failure to properly license the aircraft. The term navigate has to do with the mechanical operation of the aircraft—through ground maneuvers or flight, and deals primarily with the activities of the pilot in charge. That the intent of the provision shall be clear, the Minnesota law also provides that it shall be unlawful for any person to cause or authorize any aircraft to be operated or navigated unless it has a proper federal license. Thus, it is clear that the intent of the provision is to hold the owner, lessee, and so forth, in addition to the pilot, liable for failure to have the aircraft licensed.

Pilot Licenses:

"Section 3. The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that a person engaging within this State in navigating aircraft in any form of navigation, shall have the qualifications necessary for obtaining and holding a pilot's license issued by the Department of Commerce of the United States, it shall be unlawful for any person to navigate any aircraft in this State unless such person is the holder of a correct, effective
pilot's license issued by the Department of Commerce of the United States; provided, however, that this restriction shall not apply to those persons operating military aircraft of the United States, or public aircraft of any state, territory, or possession thereof, or operating any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft."

In this section, the term navigate has been used instead of operate because it is not unlawful for a person to operate (in the economic sense) an aircraft without having a federal pilot's license. The offense is navigating (flying or maneuvering the plane on the ground) without a proper license, for such navigation offers a hazard to third persons. With this exception, the Minnesota provision is entirely standard and requires no comment.

Possession and Display of Licenses:

"Section 4. The certificate of the license required for pilots shall be kept in the personal possession of the licensee when he is operating aircraft within this State and must be presented for inspection upon the demand of any passenger, or any peace officer of this State, any authorized official, or employee of the Minnesota aeronautics commission or any official, manager, or person in charge of any airport in this State upon which he shall land, or upon the reasonable request of any other person. The aircraft license must be carried in the aircraft at all times and must be conspicuously posted therein where it may be readily seen by passengers or inspectors; and such license must be presented for inspection upon the demand of any passenger, any peace officer of this State, any authorized official or employee of the Minnesota aeronautics commission or any official, manager, or person in charge of any airport in this State upon which it shall land, or upon the reasonable request of any other person."

This section is one which has been commonly used and requires no comment. However, it is customary, where the state requires the registration of a federal license, to further require that the state registration certificate also be kept ready for inspection by the proper authority.

III. THE STATE AERONAUTICS COMMISSION.

Appointment:

"Section 5. There is hereby created an aeronautics commission to be known as the Minnesota aeronautics commission, consisting of five persons to be appointed by the Governor and to serve without pay; provided, however, that at least two members of the commission must be, or have been actively engaged in and have had at least three years of practical experience in civil aeronautics. The Governor shall from time to time designate the member of the commission who shall be its chairman and who shall so
serve during the term of his appointment. Three of said persons, including the chairman, shall be appointed for a period of four years from and after the second Monday in the January following their appointment, and two for a period of two years from and after the second Monday in the January following their appointment, and upon the expiration of the terms of such respective commissioners the Governor shall appoint their successors, each to serve for a term of four years, and all to serve until their successors are appointed and qualified."

The aim of this legislation has been to secure the appointment of persons who are properly qualified to hold office, since at least two members must have had practical aviation experience. It is particularly desirable to have not less than a strong minority who have been technically trained in aviation matters.

The idea of having five members seems superior to a commission of three in that there will be thus more state aviation officials located throughout the state to handle local problems quickly. The idea of geographical representation has considerable merits. The commission personnel may be augmented by the appointment of a limited number of state inspectors who serve for the sum of one dollar per year.

There is probably no perfect type of regulatory body. Each state will doubtless select whatever form seems best to fit its own particular needs. But the Minnesota scheme offers many desirable features, as has been shown in the operation of the Illinois law.

To prevent the expiration of the terms of all commissioners simultaneously, the terms of office have been staggered—which is not unusual in commission appointments.

**General Organization:**

"Section 6. The commission shall, within thirty days after its appointment, organize, adopt a seal for the commission and make such rules and regulations for the administration of the commission not inconsistent herewith as it may deem expedient, and may from time to time amend such rules and regulations.

12. In Illinois, the law provides "that at least two members of the commission must be, or have been, experienced pilots with at least two hundred (200) hours of solo flying with at least three years of practical experience in aeronautics." In the opinion of the writer, the Illinois requirement is superior to the Minnesota provision, and it is interesting to note that the personnel of the Illinois commission in 1931 was composed of five persons who would qualify under the two hundred hours of solo flying requirement.

13. In Illinois, the practice has been to divide the state into four districts—each with one commissioner—and two for the Chicago district in which about fifty per cent of the flying occurs.

14. There are about thirty inspectors scattered about the state of Illinois, who serve for one dollar a year and who are all licensed pilots or who have been pilots. Their services in investigating accidents, supervising air meets, locating airport sites, assisting in prosecutions for air traffic violations, etc., have been of great value.

15. For an account of the various types of regulatory bodies, see Reed G. Landis, "The National Association of State Aviation Officials: Its Utility and Function," 4 Journal of Air Law 1, 14."
"Section 7. The commission may appoint a secretary to the commission, whose duty it shall be to keep a full and true record of all its proceedings, and keep the books and records in the general office of the commission, and to perform such other duties as the commission may prescribe.

"Section 8. The commission may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business, and shall fix their salaries, subject to the amount appropriated for the purposes of this act.

"Section 9. The Secretary of State shall provide suitable offices for the commission in the city of Saint Paul, Minnesota, and the commission may maintain offices in any other city in the State of Minnesota, that the commission may designate, and may incur, subject to the amount appropriated for the purposes of this Act, the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the enforcement of this Act, and the general promotion of aeronautics within the State."

There is nothing in these sections that requires particular comment.

Powers and Duties—Regulations:

"Section 10. It shall be the duty of the Commission to foster air commerce within the State of Minnesota and the Commission shall have supervision over the aeronautical activities and facilities within the State, which authority shall include supervision and control over all airports, landing fields, emergency landing strips, air instruction, air marking, air beacons, and all other air navigation facilities, and the registration of all pilots and aircraft. Accordingly, the commission is empowered to prescribe such reasonable rules and regulations as it may deem necessary and advisable for the public safety and for the promotion of aeronautics governing the designing, laying out, location, building, equipping, operation, and use, of all airports, landing fields, or emergency landing strips. The commission is further empowered to prescribe such reasonable rules and regulations as it may deem necessary governing the curriculum, equipment, personnel, and operation and management of all air instruction, for the purpose of protecting the health and safety of students receiving or to receive such instruction, and insuring, so far as may be, the public safety through the proper training and instruction of student aviators. The commission is further empowered to prescribe such reasonable rules and regulations as it may deem necessary and advisable for the public safety and safety of those engaged in aeronautics, and for the promotion of aeronautics, governing the establishment, location, maintenance and operation of all air markings, air beacons, and other air navigation facilities. The commission is further empowered to prescribe such reasonable air traffic rules and other regulations as it shall deem necessary for public safety and the safety of those engaged in aeronautics, and for the promotion of aeronautics; provided, however, that all rules and regulations prescribed by the commission under the authority of this section shall not be incon-
MINNESOTA AERONAUTICS ACT

sistent with the then current Federal legislation governing aeronautics and the regulations duly promulgated thereunder."

Here is the main empowering provision—which permits the utmost flexibility in regulation. After stating the general jurisdiction of the commission, broad powers are granted over four subjects—under proper legislative standards. Accordingly, the commission may promulgate rules and regulations governing (1) airports, landing fields and emergency strips; (2) air instruction; (3) air navigation facilities; and (4) air traffic rules.

In the exercise of this authority it is presumed that the commission will, from time to time, issue rules and regulations covering each of the subjects. These rules and regulations may be changed readily to meet the needs of changing conditions in the aviation industry and also changes in federal regulations. It is not expected that the commission rules will be numerous or burdensome, or in conflict with federal rules. Conversely, they should be far less burdensome than rules or regulations provided by statute—which cannot be changed until the next meeting of the legislature.

**Powers and Duties—Encouragement:**

"Section 11. The commission shall assist in the development of aviation and aviation facilities within the State for the purpose of safeguarding the interests of those engaged in all phases of the industry and of the general public and of promoting aeronautics. Accordingly, the commission is empowered to expend any or all the moneys allocated to, and deposited in, the State Aviation Fund, for the acquisition or enlargement by purchase, grant, lease, condemnation, or other means, and for the construction, operation and maintenance of airports, landing fields, or emergency landing strips within this State, and/or of other aeronautic facilities or services within this State for the safety and advancement of aeronautics, which shall include the joint establishment or provision of such aeronautic facilities or services in cooperation with other State or Federal department or with other political subdivisions of this State."


17. For illustrative commission rules and regulations, see Illinois Air Traffic Rules, November 23, 1931; Illinois Airport Regulations, April 7, 1932; and Illinois Air School and Aeronautic Instructions Regulations, May 5, 1932.

18. To prevent any duplication of regulation, it is provided in Illinois "that such supervision, rules and regulations shall not be in conflict with the authority of the Illinois Commerce Commission to supervise and regulate public utilities." The commerce commission exercises jurisdiction over all intrastate operations of the regular scheduled airlines, requires certificates of convenience and necessity, etc. See Howard C. Knott, "Certificates of Convenience and Necessity for Air Carriers," 3 JOURNAL OF AIR LAW 58, and Fred D. Fagg, Jr., and Abraham Fishman, "Certificates of Convenience for Air Transport," 3 JOURNAL OF AIR LAW 226.

19. In Iowa, for example, the Law of 1929 codifies the federal air traffic rules as they existed in 1929. No changes have been made in the statutory provisions to keep the federal regulations up to date. There is no regulatory body charged with the duty of enforcement and so the provisions are largely in the class of dead letters.
This section has been included to give the commission authority in connection with aviation encouragement activities. At the present time, no funds are available but this provision will become effective if, and when, revenues are provided—from the proceeds of an aviation gas tax, or by other means.

Powers and Duties—Licenses:

"Section 12. Within sixty days after the commission is created, all owners and/or operators of all airports, landing fields, air schools, and flying clubs, and the owners and/or operators of all air beacons and air navigation facilities, shall make application to the commission for its approval of such airport, landing field, air school, flying club, air beacon, or other air navigation facility, and the commission shall immediately consider and pass upon such applications. Within the same period all pilots and owners and/or operators of all aircraft shall register the Federal license of said airmen and of said aircraft in such manner as the commission may by regulation prescribe. All proposed airports, landing fields, air schools, flying clubs, air beacons, or other air navigation facilities shall first be approved by the commission before they or any of them shall be so used or operated. It shall be unlawful for any airport, landing field, air school, flying club, air beacon, or other navigation facility to be used or operated without the approval of the commission; and it shall be unlawful for any aircraft, except in case of emergency, to land upon or take off from any area in the State of Minnesota, other than an airport, landing field, or emergency landing strip; provided, however, that no license, rule, order, or regulation promulgated under the authority of this section or of this entire Act shall apply to airports, landing fields, air beacons, air markings, or other air navigation facilities owned or operated by the Government of the United States or by this State. By cities of the first class or any department thereof, except that in the conduct of such Municipal Airports, landing fields or emergency landing strips, the governing body thereof shall not prescribe rules and/or regulations contrary to current legislation of the State of Minnesota or of the Federal Government. The commission is hereby authorized to issue a certificate of its approval in each case and to make the following charges therefor:

"For the issuance of each certificate of registration of each Federal license for pilots and aircraft, no fee shall be charged.

"For issuance of each annual airport license, $10.00.

"For issuance of each annual landing field license, $10.00.

"For issuance of each annual air school license, $10.00.

"For issuance of each annual flying club license, no fee shall be charged.

"For issuance of each annual air beacon license, no fee shall be charged.

"For issuance of each annual other air navigation facility license, no fee shall be charged."

20. As to what can be done under a program of state encouragement, see Reed G. Landis, "The Illinois Plan of Aviation Encouragement," supra note 3; and also the more mature programs in operation in Idaho and Michigan as discussed by Albert Langeluttig and Leo Freedman in "Promotion of Aeronautics by State Regulatory Bodies," 4 JOURNAL OF AIR LAW 303.
This section provides that certain licenses shall be obtained from the commission and that other licenses (for aircraft and airmen) be registered with the commission. Further, it makes the operation without a license unlawful.

To make certain that aircraft shall be flown from and to proper landing areas, the provision has been inserted which makes it unlawful "to land upon or take off from any area in the State of Minnesota, other than an airport, landing field, or emergency landing strip." The omission of such a clause would nullify the advantage of airport and landing field licenses. As already explained, the emergency landing strip idea will meet the needs of the pilot flying from his own land, charter flights, and barnstorming operations, and the availability of the large lake region must not be overlooked.

The schedule of fees is moderate and is based largely upon the commercial nature of the venture. One question may be raised properly, as to whether or not it is desirable to charge a fee for landing field licenses. If they are operated commercially, a charge should certainly be made for the license. In other cases, the desirability seems doubtful.

Powers and Duties—Investigations and Hearings:

"Section 13. The commission, or any commissioner, or officer of the commission designated by the commission, shall have the power to hold investigations, inquiries and hearings concerning matters covered by the provisions of this Act, and all accidents in aeronautics within this State. All hearings conducted by the commission shall be open to the public. Each commissioner, and every officer of the commission designated by it to hold any inquiry, investigation, or hearing, shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, compel the attendance and testimony of witnesses, and the production of papers, books, and documents. In case of failure to comply with any subpoena or order issued under authority of this Act, the Minnesota aeronautics commission, or its authorized representative, may invoke the aid of any Court in this State. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of said court may be punished by the court as a contempt thereof.

"Section 14. In order to facilitate the making of investigations by the Minnesota aeronautics commission, in the interest of the public safety and the promotion of aeronautics, the public interest requires and it is therefore provided that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding growing out of any matter referred to in said

investigation, hearings, or report thereof, nor shall any commissioner or employee of the Minnesota aeronautics commission be required to testify to any facts ascertained in, or information gained by reason of, his official capacity, and, further, no commissioner or employee of the Minnesota aeronautics commission shall be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft."

The thirteenth section merely empowers the commission to conduct investigations and hearings, with authority to administer oaths and compel testimony, etc., so that it may be informed fully as to all pertinent subjects involving aeronautics.

The fourteenth section is designed to protect commission members against being compelled to serve as expert witnesses in accident cases which they have investigated and which have resulted in private litigation. This exemption calls for an explanation, as it is unusual to extend such an immunity. A state regulatory body is generally charged with the duty of investigating all serious air accidents. The purpose of such investigation is to collect reliable data relative to the causes of accidents in order to determine what, if any, additional regulation is necessary. This purpose is an entirely public one—looking toward public safety. If the members of the commission are not protected against testifying or furnishing their records (when they do not desire to do so), the result will be not only a loss of time but, also, that they frequently will be obstructed in their efforts to properly investigate—due either to a withholding of vital information or, worse, a possible destruction of evidence.22

Powers and Duties—Regulations and Annual Report:

"Section 15. The commission shall keep on file with the Secretary of State, and at the principal office of the commission, a copy of all their rules and regulations for public inspection. On or before the thirty-first day of December, in each year, the commission shall make to the Governor a full report of its proceedings for the year ending the first day of De-

22. The customary practice is to require that, "No aircraft involved in an accident in this State, in which there is structural damage and in which there is serious injury to any person, or which results in death, shall be removed from the scene of the accident, nor shall its condition be altered, until it has been inspected or its removal or operation authorized by the Illinois Aeronautics Commission or its duly authorized representative." Illinois Air Traffic Rule No. 38, effective Nov. 23, 1931.

Relative to accident reports, the Illinois Air Traffic Rule No. 39 provides: "Where serious injury to person or property is suffered or where death results from the operation of aircraft, the recorded owner and/or pilot of such aircraft shall immediately report, by telegraph or telephone, to the Illinois Aeronautics Commission, the license number of the aircraft and the time and place of the accident. All other accidents in the operation of aircraft within this State which result in injury to the aircraft shall be reported without delay by the recorded owner and/or pilot of such aircraft to the Illinois Aeronautics Commission. The preceding sentence shall not apply to gliders except when serious injury or death occurs."
December in each year, and may submit with such report such recommendations pertaining to its affairs as seem to it to be desirable."

This section requires no comment.

Powers and Duties—Enforcement and Cooperation:

"Section 16. It shall be the duty of the commission, its members and employees, and every county and municipal officer charged with the enforcement of State and municipal laws, to enforce, and assist in the enforcement of this Act. The commission is further authorized in the name of 'The State of Minnesota' to enforce the provisions of this act by injunction in the District Courts of this State. Other departments and political subdivisions of this State are further authorized to cooperate with the Minnesota aeronautics commission in the development of aeronautics and aeronautical facilities within the State."

No greater duty rests upon the state, in connection with aviation, than that of the proper enforcement of its laws. Further, it should assist in the enforcement of all current federal regulations. Any state which effectively enforces its aviation laws and regulations will find a very rapid decrease in violations and in accidents. A decrease in accidents can only result in greater confidence in air transportation and be of benefit to the industry.

It will also be noted that this section also authorizes other departments and political subdivisions to cooperate with the state aeronautics commission. It is expected that such a provision will obviate any difficulty found in connection with the aid and assistance which can be given by the state highway department, police teletypewriter equipment (for weather reports), and local governmental agencies.

Powers and Duties—License Refusals and Procedure:

"Section 17. In any case where the commission rejects an application for permission to operate or establish an airport, landing field, air school, flying club, air beacon, or other air navigation facilities, or in any case where the commission shall issue any order requiring certain things to be done, it shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given or such order modified or changed. In any case where the commission may deem it necessary it may order the closing of any airport, landing field, or order any air school, flying club, or air beacon, or other air navigation facility to cease opera-

22. For instance, in Illinois in the 18 months' period during which the Commission has been effectively operating, aviation fatalities have been reduced 55%. In New Jersey, in the same period, fatalities were reduced 60%. In the same period, the fatalities throughout the United States as a whole were reduced only 13%. In both New Jersey and Illinois, while fatalities were being reduced, the consumption of aviation gasoline was increasing, which would seem to indicate an increase in aviation activity while the safety factor was being substantially improved.
tions until it shall have complied with the requirements laid down by the commission. To carry out the provisions of this Act the Minnesota aeronautics commission and any officers, State or municipal, charged with the duty of enforcing this Act, may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where such airports, landing fields, air schools, flying clubs, air beacons, or other air navigation facilities are operated. Any order made by this commission pursuant to this Act shall be served upon the interested person by registered mail or in person before such order shall become effective.

"Section 18. Any person against whom an order has been entered may within thirty days after the service thereof appeal to the District Court of the county in which any part of the property affected by the order is located, for the purpose of having the reasonableness or lawfulness of the order inquired into and determined.

"Section 19. If no appeal is taken from the order of the commission within the period fixed, the party against whom the order was entered, shall be deemed to have waived the right to have the reasonableness or lawfulness of the order reviewed by a court and there shall be no trial of that issue in any court in which suit may be instituted for the penalty for failure to comply with the order."

These sections merely provide the machinery for license refusals and for cases in which appeals are sought from commission orders.

IV. PENAL AND OTHER PROVISIONS.

Penalties of Violation:

"Section 20. Any person failing to comply with the requirements of, or violating any of the provisions of this Act, or the rules and regulations for the enforcement of this Act made by the Minnesota aeronautics commission, shall be guilty of a gross misdemeanor and punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than ninety days, or both."

While the act carries a rather severe set of penalties, the usual custom is to temper the punishment to the nature of the offense. One or two successful prosecutions are all that is necessary to convince offenders that the law has teeth in it. The number and degree of violations will vary directly with the promptness and effectiveness of the law enforcement.

In some cases, licenses may be suspended or revoked, but difficulty will be found in attempting to suspend or revoke licenses granted to aircraft or pilots since these latter licenses have been issued by the federal government. However, the federal inspector is usually very willing to cooperate in handling reported cases involving violations.

State Aviation Fund:

"Section 21. There is hereby created a fund to be known as the 'State Aviation Fund.' All moneys received from the licensing of airports, landing fields, air schools, or other licenses issued under the provisions of this Act, shall be paid into the State Treasury and credited to such fund.

"Section 22. Any monies or fees coming into the hands of the said Commission may be used for the necessary expenses of the Commission essential to the carrying out of this act but no overdraft shall be created by reason of any such expenditures."

These sections provide the machinery for the collection, allocation, and disposition of funds received by the State Treasurer from licenses.

Separability and Repeal Provisions:

"Section 23. If any provision of this Act is declared unconstitutional or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

"Section 24. All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed."

The final sections are commonly employed and require no comment.

V. CONCLUSIONS.

The basic ideas behind the Minnesota legislation, which has just been set out completely and commented upon, are the following:

(1) The adoption of uniform standards and practices, for reasons of convenience and economy, through the requirement of federal licenses for all aircraft and all pilots operating within the state. (This requirement, also, on the theory that nothing but sound equipment and qualified personnel should be permitted to operate within the state.)

(2) The recognition of the necessary function which the state should perform, for the aviation industry and its citizens generally, in the encouragement and regulation of this new medium of transportation.

(3) The establishment of a state regulatory body which should be particularly qualified, technically and otherwise,
to promote and control the development of a new and very important industry.

(4) The granting of broad powers to that state body so that it may make, and change, rules and regulations to fit the needs of aviation and those of the citizens of Minnesota generally. The authority granted extends to every subject of aviation (but aircraft and pilots) so that all interests may be completely protected.

(5) The provision of adequate machinery for examining into and testing the reasonableness of any commission order which may have been issued.

(6) The insistence upon compliance with the requirements of the act and all rules and regulations duly promulgated under its provisions, by charging the proper authorities with the duty of enforcement and through the establishment of severe penalties for violations.

The Minnesota act has many advantages and the operation of this new legislation will be watched with considerable interest and confidence. 25

25. At this writing, Governor Olson has appointed, as chairman of the commission, Col. L. H. Brittin, whose qualifications and abilities are well recognized.