Session 1
An Introduction to Airport Law

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This afternoon's session

- Introduction to the conference
- Basic airport legal structures
- Sources of law
- Understanding the FAA
- Stakeholders in airport law
This is what makes airport law fun!

- Anti-discrimination
- Leasing
- Bankruptcy
- TSA
- Contract law
- Open Records
- Land use law
- Federal law
- Local ordinances
- Grant obligations

Airport Lawyer
Airport Law v. Aviation Law

Airport Law:
- FAA / TSA compliance
- Tenant and employee relations
- Airport finances
- Real estate development
- Airport operations and certification

Aviation Law:
- Aircraft accidents
- Pilot regulation
- Airline regulation
- Aircraft ownership and financing

(not covered at this conference)
Airport Law
(covered at this conference)

- FAA / TSA compliance
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Aviation Law
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- aircraft accidents
- pilot regulation
- airline regulation
- aircraft ownership and financing
Course Materials

- Agenda
- Workshop guide (speaker bios)
- *Airport Law Desk Reference*
- Presentations
- On-site – *[www.airportlawconference.com](http://www.airportlawconference.com)*
- Follow up from AAAE
- Roster
Evolution of Airport Law

**Authority**
- Who should own airports
- What is the role of government
  - Local, State, Federal

**Regulation**
- Safety
- Security
- System components
  - Pilots
  - Aircraft
  - Air Traffic
  - Airports
  - Airlines

**Funding**
- Airlines (and regulation)
- Capital costs
- Operating costs
- Collateral revenue
- Indirect expenses and revenue
Authority

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Legal sources - generally

- Statutes
- Regulations
- Adjudications
- FAA Orders
- Policy Statements
- Guidance Letters
- Advisory Circulars
Sources of FAA’s authority

1. Grant Assurances
2. Deeds (Surplus Property Act)
3. Part 139 regulations (commercial airports)
4. Revenue use statute and policy
Grant Assurances - Part 1

- Contractual, not regulatory
  - But Congress mandates the grant assurances
- 20-year duration in most instances
  - Clock resets at each grant
- FAA gets to enforce
  - Prosecutor, judge, jury, executioner
- Court review only after FAA decision
Grant Assurances - Part 2

- 39 separate requirements
- Apply to most non-planning grants
- Legally binding by contract
- Principal issues
  - Assurance 5 – rights and powers
  - Assurance 22 – economic nondiscrimination
  - Assurance 23 – exclusive rights
  - Assurance 24 – fee and rental structure
  - Assurance 25 – airport revenue
Understanding and dealing with the FAA
A much loved agency
FAA Airports Division
Air Traffic Organization
FAA Safety Division
Commercial Space Division
Other legal relationships and stakeholders
Airport Governance

- Special Purpose Governments: 47%
- General Purpose Governments: 53%
Other stakeholders

- Neighbors
- Tenants
- Regulators

- Governing Entity
- Finance
- Tort/State Courts
- Vendors

- Utilities
- Media/Free Speech
- Labor
- Ground Access

[Map with annotations]
• Tenants and users
• Vendors and suppliers
• Neighbors and local governments
• Regulators
• Aggrieved parties (litigation)
• Speakers and advocates
Tenants and Users

- Regulatory v. proprietary powers
- Aeronautical v. non-aeronautical
- Federal and other public
Concessionaires

- A special kind of tenant
- Subject to federal DBE provisions
- Contentious because of the stakes
Vendors/Suppliers

- Parent government
- Mutual aid
- Professional services
- Construction
- Other services
Noise/nuisance liability

- Liability: Airports, not FAA, not airlines
- Fifth Amendment/state equivalents
- Cost of defense
- Varies state/federal and state/state
  - Impact to use
  - Height
  - Direct overflights
  - Number of operations
  - Noise level
Tort liability and federal standards

• Basis for tort liability
  – See e.g., Alberto-Culver
  – Precise extent is dependent on state immunity law

• Non-commercial airports?

• Role of SMS?
First Amendment

- Free Speech
  - Public Fora
  - Non-public for a
- Establishment
- Media as stakeholder
- Advertising
- Social media
- Trademarks/Copyright
Those Who Want You To Have More Service

- Economic development organizations
  - Local governments
  - Chambers of Commerce
  - Specific local businesses
  - Special purpose entity to promote airport
Top 10
It matters who owns the airport.
2

Under what authority are you acting?

Federal

State

Proprietary
FAA regulation leads to preemption
Sources and use of funds
Disagreements with FAA

Enforcement
• Focus is on current compliance, not generally punitive action
• Generally ADO or Region

Adjudication of grievances
• FAR Part 16 for grant assurances
• Occasionally, rarely, court

Penalties; corrective action
• Negotiated

Exclusive jurisdiction in US Ct. Appeals (49 USC § 46110)
Which FAA are you dealing with?

- Agency is huge; airports function is not!
- Airports District Office is first point of contact
- Major policy issues to HQ
- Enforcement (routine) at ADO
- Adjudications of grant violations at HQ
- Don’t be afraid to call!
Is the problem aeronautical or non-aeronautical
9 Common Misconceptions

*(that affect our role as lawyers)*

- Airports have unlimited supply of money
- Airports are just like other local government functions
- The Federal Government only regulates money and aircraft
- Airports exist only to serve (fill in blank)
KEEP CALM AND BE REASONABLE
Questions?