34th Annual Basics of Airport Law Workshop and 2018 Legal Update

Session #2

RESEARCH TOOLS IN AIRPORT LAW

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A LAWYER’S ETHICAL OBLIGATION TO CONDUCT RESEARCH

Model Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
COMMENTS TO RULE 1.1

1. “In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include...the preparation and study the lawyer is able to give the matter.”

2. “A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar....Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study.”

3. “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice.”
CAN I REALLY GET IN TROUBLE?

- **People v. Barber**, 799 P.2d 936 (Colo. 1990)
  - “Schmit asked the respondent if there was any statute of limitations problem, and it was at this point, two years and seven months after Marilyn Schmit’s injury, that the respondent took his first look at the statute.”

- **In re Fisher**, 202 P.3d 1186 (Colo. 2009)
  - Attorney “did not research the process necessary to secure [client’s] rights in [husband’s] OPM benefits or take any steps toward securing those rights.”
  - “Fisher never contacted the OPM, did not consult the Attorney’s handbook published by the OPM, did not consult the OPM website, and did not consult with experts in the field of federal benefits.”
BUT I DID THE RESEARCH!

- *People v. Maynard*, 238 P.3d 672 (Colo. 2009)
  - “Although Respondent had a research folder in addition, she had never filed a RICO suit in Colorado, and instead had gone through her research folder that contained reported cases on the RICO statute. She did not update these cases before filing the RICO suit and clearly did not even review the cases she had already collected in her research folder.
  - “Notwithstanding Respondent’s possession of a key opinion and its clear warnings, Respondent ignored it and proceeded to file the RICO case in violation of almost every pleading standard revealed by her research.”
AIRPORT LEGAL RESEARCH & RULE 1.1

- Non-traditional sources
- Highly technical
- Constantly changing
AIRPORT LAW
RESEARCH METHODS
AND SOURCES
WHAT KIND OF LAW DO YOU PRACTICE?
START WITH THE STATUTE, RIGHT?

- Well, maybe…
…BUT ALSO CONSIDER OTHER SOURCES

- Regulations
- FAA Orders
- FAA Guidance ("Advisory" Circulars)
- Agency Decisions (Formal and Informal)
- Agency Opinions
- Case Law
- Secondary Sources
SOURCES OF LAW

- Air Commerce Act of 1926
- Civil Aeronautics Act of 1938
- Surplus Property Act of 1944
- Federal Airport Act of 1946
- Federal Aviation Act of 1958
- Airport and Airway Development Act of 1970
- Airline Deregulation Act of 1978
- Aviation Safety and Noise Abatement Act of 1979 (ASNA)
- Airport Airway and Improvement Act of 1982 (AAIA)
- Airport Noise and Capacity Act of 1990 (ANCA)
- Aviation and Transportation Security Act of 2001 (ATSA)
- FAA reauthorization statutes
- Recodification of Title 49 (1996)
Title 14 – Federal Aviation Regulations (FAR)

- Part 13 – Investigative and Enforcement Procedures
- Part 16 – Federally-Assisted Airport Enforcement Proceedings
- Part 77 – Safe, Efficient Use, and Preservation of the Navigable Airspace
- Part 91 – General Operating and Flight Rules
- Part 139 – Certification of Airports
- Part 150 – Airport Noise Compatibility Planning
- Part 161 – Notice and Approval of Airport Noise and Access Restrictions
SOURCES OF LAW

EXAMPLE ORDERS

- Airport Improvement Program Handbook (ORDER 5100.38D)
- Airport Compliance Manual (ORDER 5190.6B)
- Environmental Impacts, Policies and Procedures (ORDER 1050.1F)
- Passenger Facility Charge (ORDER 5500.1)

EXAMPLE POLICIES

- Policy and Procedures Concerning the Use of Airport Revenue
- Policy Regarding the Establishment of Rates and Charges
SOURCES OF LAW

EXAMPLES

- Airport Design (A/C 150/5300-13A)
- Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects (A/C 150/5100-14E)
- Minimum Standards for Commercial Aeronautical Activities (A/C 150/5190-7)

The “150” Series addresses “Airport” issues
FAA MATERIALS AND REPOSITORIES

- Advisory Circulars
  https://www.faa.gov/airports/resources/advisory_circulars/

- Airport Orders
  https://www.faa.gov/airports/resources/publications/orders/

- FAA SOPs
  https://www.faa.gov/airports/resources/sops/
SECONDARY SOURCES

- Airport Law Alerts / Digests
- Transportation Research Board, Airports Cooperative Research Program
WHO IS ACRP?

- Airport Cooperative Research Program of the Transportation Research Board
- FAA is our Sponsor
WHAT DOES ACRP DO?

- Applied Research Program
- Driven by and for the Airport Industry
WHAT IS PRODUCED BY ACRP?

- Guidebooks
- Reports
- Legal Research Digests
- Synthesis
- Models and tools
- Searchable databases
- Web-only Documents
- All available to download for FREE
WHAT IS OUR PROCESS?

Project Panel is formed
- Develops scope of work
- Selects proposal
- Provides oversight and guidance
WHAT IS THE LEGAL STUDIES PROGRAM?

- Provide legal research on topics of interest to the airport legal community, focusing on legal issues and problems having national significance to the airport industry
LEGAL STUDIES PANEL

- Chair Dan Reimer | Denver International Airport
- Rod Borden | Columbus Regional Airport Authority
- Debra Braga | Jacksonville Aviation Authority
- Jay Hinkel | City of Wichita, Kansas
- Clive Otis | Post, Polak, Goodsell, & Strauchler
- Elizabeth Smithers | Charlotte Douglas International Airport
- Daphne Fuller | FAA Liaison
- Tom Devine | ACI-NA Liaison
RECENT LEGAL RESEARCH DIGESTS

- LRD 32: Evolving Law on Airport Implications by Unmanned Aerial Systems
- LRD 33: Overview of Airport Duties and Standards of Care in Airfield Accident Cases
- LRD 34: Airport Public Health Preparedness and Response: Legal Rights, Powers, and Duties
- LRD 35: Legal Considerations in the Funding and Development of Intermodal Facilities at Airports
RECENT PUBLICATION

Research Report 184: Executive Summary for the Guidebook on Understanding FAA Grant Assurance Obligation

- Web-Only Document 44 Vol 1 – Understanding FAA Grant Assurance Obligations – Guidebook
- Web-Only Document 44 Vol 2 – Technical Appendices
- Web-Only Document 44 Vol 4 – Summary of AIP Grant Assurance Requirements
UPCOMING PUBLICATIONS

11-01/8-01 Legal Issues Related to Implementation and Operation of SMS for Airports

- Peter Kirsch and Nicholas Clabbers
- LRD focuses on the legal issues arising from the operation of SMS from airports who have voluntarily implemented a SMS program. There is a review of potential legal issues and an in-depth analysis of those identified issues.
- Expected publication 2018
UPCOMING PUBLICATIONS

11-01/10-01 Update of Compilation of FAA/DOT Airport Legal Determinations
aka LRD 21 – WebResource: https://crp.trb.org/acrplrd21/

- Tim Ravich
- The research is updating Part 16 and Part 302 decisions from 2012 through 2018, and then again each for three more years
CURRENT TOPICS

11-01/9-02 Legal Issues Relating to Airports Promoting Competition

- Eric Smith
- LRD will be guidance on the legally permissible means and methods of encouraging and accommodating competition at U.S. airports.
- Expected completion January 2019
11-01/10-03 Legal Issues Relating to Airport Commercial Contracts

- Scott Burrell, Leftwich, LLC
- LRD will be guidelines to assist with writing commercial contracts for airport proprietors and legal counsel.
- Expected completion June 2019
CURRENT TOPICS

11-01/11-01 Permissible Uses of Airport Revenue and Property

- Peter Kirsch
- Research will evaluate the scope of permissible uses of airport revenue and property.
- Expected completion September 2019
UPCOMING TOPICS – TENTATIVELY SELECTED

- Developing Lease Terms for New General Aviation Development
- Legal Implications of Data Collection at Airports
GETTING INVOLVED

- Submit a problem statement
- Volunteer to participate on panel
  - Volunteer to serve as topic expert for the legal topics
- Prepare a proposal
- Use our results
- Respond to inquiries from our contractors
KEY DATES FOR LEGAL TOPICS

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<th>Topic Ideas Solicited</th>
<th>August-September</th>
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<tr>
<td>Problem Statements Reviewed</td>
<td>September</td>
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<tr>
<td>Legal Panel Selects</td>
<td>September/October</td>
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<tr>
<td>RFPs Posted</td>
<td>All year long</td>
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<tr>
<td>Proposals Submitted</td>
<td>Approx. 45 days after RFP</td>
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HOW DO I FIND WHAT I NEED?

- The lawyerly answer is, as always:

   IT DEPENDS.
SINGLE TOPIC EXAMPLE

- Airport Revenue Use
- Let’s assume you receive a notice of investigation or request for documentation from FAA…
GOOGLE IS YOUR FRIEND*

**Permitted and Prohibited Uses of Airport Revenue** - Federal Aviation Administration


Sep 30, 2009 - This chapter discusses the sponsor's use of airport revenue. Diversion violates Federal law and AIP grant assurances unless: (1) it is...

09/30/2009

Chapter 15. Permitted and Prohibited Uses of Airport Revenue

15.1. Introduction. This chapter discusses the sponsor's use of airport revenue. It supplements, but does not supersede, the guidance issued in FAA's Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696, February 16, 1999, (Revenue Use Policy).
THE AIRPORT COMPLIANCE MANUAL
(FAA ORDER 5190.6B)

- The Bible for all things airport compliance
  (Grant Assurances and other obligations)

- Table of Contents lists specific obligations
DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration
[DOCKET No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA) DoT

ACTION: Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy ("Final Policy") was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of
49 U.S.C. § 47107 (GRANT ASSURANCES)

(b) Written Assurances on Use of Revenue.—

(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a state tax on aviation fuel to support a state aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.
GRANT ASSURANCE 25

25. Airport Revenues.

a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:

1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before
MORE TARGETED RESEARCH

- Use a variety of tools to make sure you cover all of your bases.

- LEXIS, Westlaw, TRB/ACRP, and FAA Part 16 Database
DEMO: SOME USEFUL TOOLS FOR LOCATING FAA MATERIALS

- FAA Website: https://www.faa.gov/airports/airport_compliance/
- LEXIS Advance – searching for (and finding) FAA decisions
- ACRP Legal Research Digest 21 – sortable FAA decisions
  - Update coming soon!
- ACRP Website Search
  - New ACRP publications on Grant Assurances
THANK YOU!

Questions?

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