Poll Everywhere

- Two ways to participate
  - PollEv.com/AirportLaw
  - Text AIRPORTLAW to 22333 (not case sensitive)

- Enter your answer
  (by letter or number)
INTRODUCTION TO AIRPORT LAW

Nick Clabbers
Kaplan Kirsch & Rockwell

Katie van Heuven
Kaplan Kirsch & Rockwell
Poll Everywhere

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How did you learn about this workshop?

A. Prior attendance
B. E-mail from AAAE or Kaplan Kirsch & Rockwell
C. Word of mouth or recommendation
D. Internet search or my own research
E. Other
Let's get a sense of who is participating in this workshop.

I'm a newbie - this is my first time at this workshop.

I've been here before, but still have more to learn.

I'm not a lawyer, but play one on TV.

I should be teaching this course.
What is your principal role - attorney, manager, consultant, federal official, etc.?
AIRPORT LAW TOUCHES EVERYTHING
I PRACTICE AIRPORT LAW!

- Real Estate
- Regulatory Compliance
- Administrative
- Environmental
- Land Use
- Bonds
- Open Records

- Counselor
- Negotiator
- Mediator
- Litigator
- Therapist
AIRPORT LAW THROUGH A TRAVELER’S EYES

Let’s go on a little trip!
FIRST WE HAVE TO GET THERE
ARRIVING AT THE TERMINAL
TIME TO CHECK IN
SECURITY CHECK
MOOOOOOM, I’M HUNGRY
PREPARE FOR TAKEOFF...
...AND HOPE FOR A SMOOTH FLIGHT
LEARNING THE LAW

...therefore, we're in complete compliance with all federal guidelines.

\[ \begin{align*}
\delta_{ab} + 0.045w + \pi(4-\mu) &\approx \langle ysd^2 + e^2 \rangle J \Sigma \{m/n^2\} A \propto (b^3) \\
4(4-\mu) &\approx \langle ysw^2 + y^2 \rangle 6.667\times/\delta - [f/\phi] (4.5^o + jw^0 + mn) \\
&\approx 8\Omega \times/\delta - [f/\phi] (4.5^o + jw^0 + mn k14.5\pi/\delta^3) \\
&\approx (b^3) - ma : p^2/k = b^6 p16.06 w \\
(4-\mu) &\approx \langle ysw^2 + y^2 \rangle 6.667\times/\delta - [f/\phi] (4.5^o + jw^0 + mn k14.5\pi/\delta^3) \\
&\approx (b^3) - ma : p^2/k = b^6 p16.06 w \\
&\approx (b^3) \approx 8.0\mu T^3 67\times/\delta - [f/\phi] (4.5^o + jw^0 + mn k14.5\pi/\delta^3) \\
&\approx (b^3) = \text{rtk/}J \ 2.34 \\
&\approx (9.9a^2) U \propto (b^3) - ma : p^2/k = b^6 p1/\delta - [f/\phi] (4.5)^2 \\
k6.7 = x
\end{align*} \]
WHERE’S THE LAW?

- **Formal federal sources**
  - Statutes
  - Federal Aviation Regulations (14 CFR)
  - Adjudications (Part 16)

- **Local sources**
  - Minimum Standards
  - Rules and Regulations
WHERE’S THE LAW?

- Guidance and policy
  - FAA Orders
  - Advisory Circulars
  - Policy Statements
  - Guidance Letters
  - Standard Operating Procedures (SOPs)
NO REALLY, WHERE IS THE LAW?

- 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/
OTHER USEFUL TOOLS

- FAA Website
  https://www.faa.gov/airports/airport_compliance/
- LEXIS, Westlaw
- FAA Part 16 database
- TRB/ACRP
  - ACRP Legal Research Digest 21 – sortable FAA decisions
    - Update coming soon!
  - ACRP Website Search
    - New ACRP publications on Grant Assurances
BUT WAIT, THERE’S MORE

1. Grant Assurances
2. Deeds (Surplus Property Act)
3. Part 139 regulations (commercial airports)
4. Revenue Use Policy
GRANTS
GRANT ASSURANCES

- Grant Assurances
  - 39 separate requirements
  - 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
Contractual, not regulatory
- But Congressionally mandated

20-year duration
- Clock resets at each grant

FAA gets to enforce
- Prosecutor, judge, jury, executioner
- Court review only after FAA decision
DEEDS

- Surplus Property Act
  - Many of same restrictions as grant assurances
  - Perpetual (no 20-year limitation)
- Makes real estate sale difficult
PART 139 REGULATIONS (COMMERCIAL AIRPORTS)

- Requires airport operating certificates for airports that:
  - Scheduled and unscheduled operations; aircraft with more than 30 seats
  - Scheduled operations; more than nine seats but less than 31 seats

- Part 139 inspection
  - Administrative inspection of airport files, paperwork, etc.
  - Facilities inspection
  - Post inspection briefing with airport management

- Far less regulation of general aviation airports
Federal statute prohibits “diversion” of revenue at airport that has been grant obligated since 1996

Prohibition against revenue diversion is perpetual

Very complex definitions
Preemption

- Operation of national aviation system is a “cooperative scheme”
  - FAA (aircraft and airspace)
  - Airports (ground operations; airport operations)
  - Congress has preserved “proprietary powers and rights” of airport operators (not police powers)
- Jurisprudence has evolved in the last 100 years
  - Few bright lines
PREEMPTION

- Aircraft in flight
- Aircraft certification
- Pilot certification

- Operational restrictions
- Airfield regulations
- Certain financial matters

- Non operational matters
- Off airport land use
- Local health/safety

Express preemption

Implied / conflict preemption

No preemption

35TH ANNUAL AIRPORT LAW WORKSHOP
CRITICAL AIRPORT TERMINOLOGY

Airport Property
- “Aeronautical”
- “Non-Aeronautical”
CRITICAL AIRPORT TERMINOLOGY

“Airside”
- Airport Operations Area (AOA)
- Security Identification Display Area (SIDA)

“Landside”
CRITICAL AIRPORT TERMINOLOGY

Runway 4/22

Runway 22

Runway 4

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UNDERSTANDING AND WORKING WITH FAA

Air Traffic (ATO)  Airports  Safety  Space
FAA AIRPORTS DIVISION

- Airport safety, inspections, standards, airport design, construction, and operation
- Airport Improvement Program (AIP) grants
- Passenger facility charges (PFCs) approvals
- National airport planning and environmental requirements
- Policies on rates and charges, compliance with grant assurances, and privatization

35th ANNUAL AIRPORT LAW WORKSHOP
FAA REGIONS

- Regional office
- Airports District Office (ADO)
DEALING WITH FAA

- Agency is huge; airports function is not!
- Airports District Office (ADO) is first point of contact
- Don’t be afraid to call!
A WORD ON ENFORCEMENT

- Focus is on current compliance, not generally punitive action
  - Generally ADO or region
- Adjudication of grievances
  - Part 16 for grant assurances
  - Part 13 for informal grievances
  - Occasionally, rarely, court
- Penalties; corrective action
  - Negotiated
STAKEHOLDERS

- Neighbors
- General Aviation
- Non-aeronautical Users
- Concessions
- Tenants
- Utilities
- Air Traffic
- Airlines
- FBOs
- FAA
- Ground Access Providers
- Developers
- State
- Local Govt's
RECOGNIZE COMMON MISTAKES

- Airports have an unlimited supply of money.
- Airports are just like other local government functions.
- The federal government only regulates money and aircraft.
- We can do whatever we want with our airport.
- Airports only exist to serve ________.
Review the Airport Design Advisory Circular

Get the original documents

Talk to the Airport Director

Review the leases

Read the Grant Assurances

Check the Master Plan

Review the ALP (the whole thing)

Understand the surrounding land uses

Schedule a site visit