A SHORT HISTORY OF AIRPORTS AND AIRPORT LAW

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FIRST FLIGHT – DECEMBER 1903
AIRPORT LAW vs. AVIATION LAW

AIRPORTS
- SAFETY
- AIRFIELD & FACILITIES
- SECURITY
- FUNDING & FINANCES

AVIATION
- PILOTS
- ACCIDENTS - TORT LIABILITY
- AIRCRAFT
- AIRLINES & OPERATORS

AIRPORTS

AVIATION
UNIQUE SYSTEM IN USA

Regulator +
Funder +
Operator (Navigation) +
Advocate
OTHER NATIONS’ MODELS – DISCRETE OR SEPARATE LEGAL AUTHORITY

- Operator of airline
- Operator of airports
- Regulation
- Funding
- Navigation
- Advocacy
THE EVOLUTION OF AIRPORTS

College Park Airport
C. 1911-1912, with the Wright Model B airplane
Photo courtesy of College Park Aviation Museum

College Park, MD
WHY HISTORY MATTERS – TO UNDERSTAND:

- **PURPOSE** of statutory scheme
- Unique **DIVISION** of authority
- Unique **SHARED** authority
- **BASES** for federal regulation
AIRPORT LAW

- Rules and legal principles applicable to **public-use, federally-obligated** airports.
- Rules derive primarily from **federal law** and obligations of **federal grants**.
- Also derive from **generally-applicable rules** with specific application to airports (e.g., U.S. Constitution).
- Common set of topics addressed by **state and local law**. Specific requirements vary state-to-state.
EVOLUTION OF AIRPORT REGULATION

Wright Brothers Use of the sky Pilots Safety Airlines Airports Security ?

EARLY AIRPORT LAW

Who owns the sky?
What is the federal government’s role?
Who should own airports?
Who pays what?
Who is responsible for impacts?
FIRST BASIC QUESTION – AD COELUM DOCTRINE

Cuius est solum, eius est usque ad coelum et ad inferos

Whoever owns the soil, it is theirs all the way to Heaven and all the way to Hell
EARLY STATUTES – PART 1

- Air Commerce Act of 1926
- Civil Aeronautics Act of 1938
- Surplus Property Act of 1944
- Federal Airport Act of 1946
“The Secretary of Commerce is authorized to designate and establish civil airways.”

“Air navigation facilities owned or operated by the United States may be made available for public use under such conditions and to such extent as the head of the department or other independent establishment having jurisdiction thereof deems advisable and may by regulation prescribe.”

“The Secretary of Commerce shall grant no exclusive right for the use of any civil airway, airport, emergency landing field, or other air navigation facility under his jurisdiction.”

Sec. 5
CIVIL AERONAUTICS ACT OF 1938

“No exclusive rights shall be granted for the use of any civil airway, landing area, or other air navigation facility.” Sec. 302(a)

 “[T]he Administrator shall not acquire any airport by purchase or condemnation.” Sec. 302(a)

“The Authority shall make a field survey of the existing system of airports and shall present to the Congress definite recommendations as to whether the Federal Government should participate in the construction, improvement, development, operation, or maintenance of a national system of airports.” Sec. 302(c).
AIRSPACE
REGULATION OF AIRSPACE
“We have said that the airspace is a public highway. Yet it is obvious that if the landowner is to have full enjoyment of the land, he must have exclusive control of the immediate reaches of the enveloping atmosphere. Otherwise, buildings could not be erected, trees could not be planted, and even fences could not be run. . . . The landowner owns at least as much of the space above the ground as he can occupy or use in connection with the land.”

_U.S. v. Causby_, 328 U.S. 256 (1946)
“Aviation has added a new dimension to travel and to our ideas. The ancient idea that landlordism and sovereignty extend from the center of the world to the periphery of the universe has been modified. Today the landowner no more possesses a vertical control of all the air above him than a shore owner possesses horizontal control of the sea before him. The air is too precious as an open highway to permit it to be ‘owned’ to the exclusion or embarrassment of air navigation by surface landlords who could put it to little real use.”

Northwest Airlines v. Minnesota, 322 U.S. 292 (1944)
J. Jackson, concurring
 EARLY CASE LAW – RARE POETRY

“Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxies onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders. Its privileges, and protection, so far as transit is concerned, it owes to the Federal Government alone and not to any state government.”

_Northwest Airlines v. Minnesota_, 322 U.S. 292 (1944)

J. Jackson, concurring
“In our business of judging in this case, while sitting as a court of equity, we must not only weigh the conflict of interests between the airport owner and the nearby landowners, but we must further recognize the public policy of the generation in which we live. We must recognize that the establishment of an airport of the kind contemplated is of great concern to the public, and if such an airport is abated, or its establishment prevented, the consequences will be not only a serious injury to the owner of the port property but may be a serious loss of a valuable asset to the entire community.”

*Antonik v. Chamberlin*, Ohio Ct. App. (1947)
A DEVELOPING PARTNERSHIP

- Airport capital needs
- Commercial aviation
- Local Gov't
- Private sector
- Airport operations
- Air navigation system
SURPLUS PROPERTY ACT OF 1944

- 500 airports declared surplus after war ended
- Provided for the orderly transfer of excess or surplus federal property
  - Included airports
  - Airport-specific provisions now found at 49 U.S.C. Sections 47151–47153
- War Assets Administration (1946-49) to oversee transfers of surplus property
  - Succeeded by General Services Administration
SURPLUS PROPERTY ACT OF 1944

- Deed restrictions
  - Public use
  - Reasonable conditions
  - No unjust discrimination
  - No exclusive rights
- Penalty – reversion to federal government
- Approval required to release restrictions (e.g., sale)
  - 14 C.F.R. Part 155
  - Airport Compliance Handbook (FAA ORDER 5190.6B)
FEDERAL AIRPORT ACT OF 1946

- Grant program administered by CAA
  - Federal-Aid Airport Program
  - $520 million over seven years
- Key features of aid program remain today
  - Federal assistance with local match
  - Apportionment and discretionary funds
  - Federal approval based on inclusion in National Airport Plan
  - Grant Assurances
EARLY GRANT ASSURANCES – FAMILIAR?

“the airport to which the project relates will be available for public use on fair and reasonable terms and without unjust discrimination”

“such airport and all facilities thereon or connected therewith will be suitably operated and maintained.”

“the aerial approaches to such airport will be adequately cleared and protected”

“all facilities of the airport developed with Federal aid and all those usable for the landing and take-off of aircraft will be available to the United States for use by military and naval aircraft in common with all other aircraft at all times without charge.”

“all project accounts and records will be kept in accordance with a standard system of accounting prescribed by the Administrator”
EVOLUTION OF AIRPORT LAW – PART 2

How should airport users be regulated?
How should airport revenue be used?
Who is responsible for security?
How can airports minimize impacts?
How far should FAA’s reach extend?

1958  1970  1990  Today
MODERN AIRPORT LAWS

- Federal Aviation Act of 1958
- Airport and Airway Development Act of 1970
- Anti-Head Tax Act of 1973
- Airline Deregulation Act of 1978
- Airport Noise and Capacity Act of 1990
- Aviation and Transportation Security Act of 2001
- FAA Reauthorization statutes through 2018
Air Traffic (ATO)
Airports
Safety
Space
AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970

- Created the Airport and Airway Trust Fund
  - Ticket tax, fuel tax, cargo tax, and aircraft registration fee
- Two grant programs
  - Planning Grant Program
  - Airport Development Aid Program
- $30 million over 4 years made available for GA airports
- 14 C.F.R. Part 152
“Except as provided in subsection (c) of this section and section 40117 of this title, a State, a political subdivision of a State . . . may not levy or collect a tax, fee, head charge, or other charge on – (1) an individual traveling in air commerce; (2) the transportation of an individual traveling in air commerce; (3) the sale of air transportation; or (4) the gross receipts from that air commerce or transportation.”

49 U.S.C. Sec. 40116(b)
“Except as provided in subsection (d) of this section, a State or political subdivision of a State may levy or collect – (1) . . . property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and (2) reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities . . . .”

49 U.S.C. Sec. 40116(d)
AIRLINE DEREGULATION ACT OF 1978

“Except as provided in this subsection, [an entity] may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier . . . .”

“This subsection does not limit [an entity] that owns or operates an airport served by an air carrier . . . from carrying out its proprietary powers and rights.”

49 U.S.C. Section 41713(b)
AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982

- Established the Airport Improvement Program
- Same basic features as 1970 Act and prior legislation (dating back to 1946)
- Numerous subsequent acts
  - Reauthorization on four-year cycle (usually)
- Added to Grant Assurances
REVENUE DIVERSION

“All revenues generated by the airport, if it is a public airport, will be expended 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 directly related to the actual transportation of passengers or property.”

Sec. 511(a)(12)
LOOKING TO THE FUTURE OF AIRPORT LAW

A
Federal regulatory regime has been established for 75+ years

B
Shared responsibility is foundational – unlikely to change

C
Discussion of breaking apart – Air Traffic Funding Regulation Safety
QUESTIONS

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