Airport Law 101

October 8, 2020

Katie van Heuven
Kaplan Kirsch & Rockwell LLP

Nick Clabbers
Kaplan Kirsch & Rockwell LLP
Airport Law 101:

20 Things to Know in 2020
1. AIRPORT LAW AND AIRPORT TERMINOLOGY CAN BE CONFUSING
2. “AIRPORT” LAW AND “AVIATION” LAW ARE DIFFERENT

Airport law
- FAA/TSA/CBP compliance
- Airport operations
- Finance, funding, taxation
- Real estate development and regulation
- Stakeholder relations

Aviation law
- Aircraft regulation and financing
- Airline regulation and operations
- Pilot regulation
- Aircraft accidents
3. AIRPORT LAW TOUCHES EVERYTHING

Real Estate  Bonds  Land Use  Administrative

Environmental  Regulatory Compliance  Safety  Enforcement

Contracts  Procurement

Bankruptcy  Public Health?
4. AIRPORT LAW TAKES MANY FORMS

- Formal federal sources
  - Statutes (Title 49 of the U.S. Code)
  - Federal Aviation Regulations (Title 14 of the Code of Federal Regulations)
  - Administrative Adjudications (14 C.F.R. Part 16)

- Local sources
  - Minimum Standards
  - Rules and Regulations
  - Health and Safety rules
4(a). REALLY, A LOT OF FORMS

- Guidance and policy
  - FAA Orders
  - FAA Advisory Circulars
  - FAA Policy Statements
  - FAA Guidance Letters
  - FAA Standard Operating Procedures (SOPs)
No really, where is the law?

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

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

- FAA SOPs
  https://www.faa.gov/airports/resources/sops/
Other useful tools

- FAA Website [https://www.faa.gov/airports/](https://www.faa.gov/airports/)
- LEXIS, Westlaw
- Transportation Research Board/ Airport Cooperative Research Program (TRB/ACRP)
  - ACRP Legal Research Digest 21 – sortable FAA decisions [https://crp.trb.org/acrolrd21/](https://crp.trb.org/acrolrd21/)
  - ACRP Website Search
5. AIRPORTS ARE SUBJECT TO EXTRA REQUIREMENTS

- Grant Assurances
- Deeds (Surplus Property Act)
- Title 14 of the C.F.R. (Federal Aviation Regulations)
- Revenue Use Restrictions (49 USC 47133)
6. GRANT ASSURANCES ARE KEY!

- Grant Assurances
  - 39 separate requirements
  - Legally binding by contract

- Principal issues
  - Assurance 5 – rights and powers
  - Assurance 19 – operations and maintenance
  - Assurance 22 – economic nondiscrimination
  - Assurance 23 – exclusive rights
  - Assurance 24 – fee and rental structure
  - Assurance 25 – airport revenue

READ THEM!
7. DON’T FORGET ABOUT DEED RESTRICTIONS.

- Surplus Property Act
- Many of the same restrictions as grant assurances
- Perpetual (no 20-year limitation)
- Makes real estate sale difficult
8. GET TO KNOW TITLE 14 OF THE CFR

- Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings
- Part 77 – Safe, Efficient Use and Preservation of the Navigable Airspace
- Part 139 – Certification of Airports
- Part 150 – Airport Noise Compatibility Planning
- Part 158 – Passenger Facility Charges
- Part 161 – Notice and Approval of Airport Noise and Access Restrictions
9. AIRPORT REVENUE IS COMPLICATED

- Federal statute prohibits “diversion” of revenue at airport that has been grant obligated since 1996
  - Prohibition against revenue diversion is perpetual
  - Complex interpretations
- See also:
  - Airport Revenue Use Policy 64 Fed Reg. 7696 (1999)
  - Grant Assurance 25

LONG ISLAND / SUFFOLK

FAA says East Hampton can use airport revenue for litigation

The town was sued in 2015 after passing laws to curb noise at the airport and will use some of the revenue it generates, which last year topped $4 million, to defend itself.

FAA wants answers on 'concerns' about 'diversion' of airport money

By Peter Dejong — Contact Reporter
Daily Press

OCTOBER 10, 2017, 10:44 AM

The Federal Aviation Administration wants the Newport News/Williamsburg International Airport to respond to a list of "specific concerns" the agency has about the way the airport has spent money in recent years.

A Sept. 26 letter from the FAA indicates that the airport may have broken federal law by "subsidizing" People Express airlines — a start-up airline that began at the Newport News airport in 2014 and quickly collapsed. The letter says the airport may have allowed other public money to be "diverted," and says its former executive director may have "improperly" used an airport credit card.
10. WHERE PREEMPTION APPLIES (AND WHERE IT DOES NOT) IS KEY

- 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

- Usually a stuffy legal concept, but real world consequences this year
Preemption

Express preemption

- Aircraft in flight
- Aircraft certification
- Pilot certification

Implied / conflict preemption

- Operational restrictions
- Airfield regulations
- Certain financial matters

No preemption

- Non operational matters
- Off airport land use
- Local health/safety
11. KNOW YOUR AIRPORT

Airport Property

Aeronautical

“Airside”

“Landside”

Non-aeronautical

Still very important!

• Airport Operations Area (AOA)
• Security Identification Display Area (SIDA)
12. KNOW YOUR FAA

Air Traffic (ATO)  Airports  Safety  Space
12(a). FAA Airports

- 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
12(b). FAA Regions

- Regional office
- Airports District Office (ADO)
12(c). FAA AIRPORTS PLAYS A LOT OF ROLES

- Agency is huge; Airports function is not!
- Airports District Office (ADO) is first point of contact
- Don’t be afraid to call!
13. FAA IS USUALLY KEEN TO FORGIVE, BUT MAYBE NOT FORGET

- 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 in most instances


- Recent, serious focus on revenue diversion issues
14. YOU WILL WEAR A LOT OF HATS

- Counselor
- Negotiator
- Mediator
- Litigant
- Therapist
15. YOU WILL HERD A LOT OF CATS

YOU ARE HERE

- Neighbors
- General Aviation
- Non-aeronautical Users
- Concessions
- Tenants
- Utilities
- Air Traffic
- Airlines
- FBOs
- FAA
- Ground Access Providers
- Developers
- State
- Local Gov't's
- FAA
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 ________.
17. AIRPORT LAW IS SLOW TO CHANGE IN RESPONSE TO NEW CHALLENGES...
This guidance here is not legally binding in its own right and will not be relied upon by the FAA as a separate basis for affirmative enforcement action … Conformity with this guidance … is voluntary only ….
19. BUT THERE’S NEVER A DULL MOMENT!

- Eventual return of air travel and continued operations
  - Day to day, airports keep running
- Renegotiation of agreements with airlines, concessionaires, other tenants
- Non-aeronautical development
- Bankruptcy and restructurings
- Post-election changes?
20. QUESTIONS (See what we did there?)

- Katie van Heuven
  - cvanheuven@kaplankirsch.com
- Nick Clabbers
  - nclabbers@kaplankirsch.com

303-825-7000