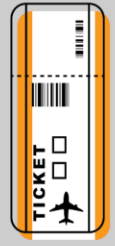
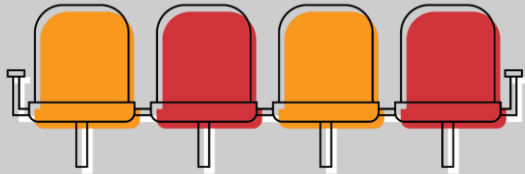


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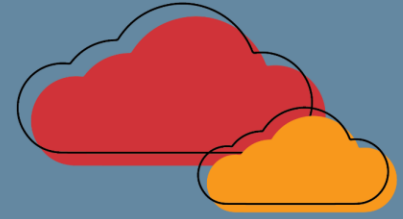


Crisis Management for Airport Lawyers

Shanita Asante
Kaplan Kirsch & Rockwell LLP

Thursday, October 22, 2020
2:00-3:00 PM (Eastern Time)

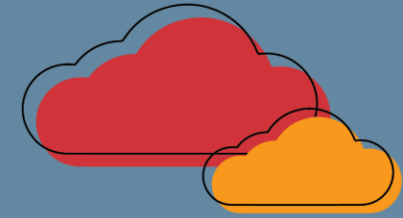
Legal Constraints on Airport Crisis Management



- I. Airport revenue use**
- II. Federal preemption**
- III. Airport laws:** federal statutes, regulations and guidance; federal Grant Assurances; and state and local laws
- IV. Additional laws:** First Amendment, contracts governed by state law, local health and safety laws, etc.



Airport Revenue Use



- Airport revenue may only be used for capital or operating costs of:
 - the airport, the airport system, or
 - other local facilities owned or operated by the airport sponsor that are directly and substantially related to transportation by air or persons or property
 - 49 U.S.C. § 47133
 - Grant Assurance 25
 - FAA Revenue Use Policy (64 Fed. Reg. 7696 (1999))
- Issue spotting: Can airport sponsors use airport revenue to:
 - *Repair airport facilities after a storm or weather event?*
 - *Provide health screening for passengers?*
 - *Purchase health screening equipment: For airport employees? For passengers?*



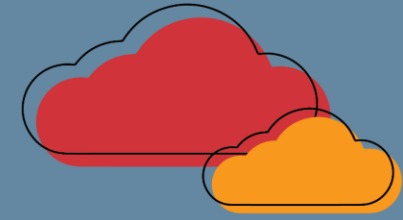
Federal Preemption and Crisis Management



- Preemption: Where a federal law covers an issue, state and local laws on that issue are “preempted” and cannot be enforced.
 - U.S. CONST. art. VI, cl. 2.
- Implied Preemption
 - **The Federal Aviation Act of 1958** (airspace management, air traffic control, aircraft noise, aviation safety, aircraft and pilot certification, and aviation security)
 - 49 U.S.C. § 40101
- Express Preemption
 - **Airline Deregulation Act of 1978** (“price, route or service” of air carriers)
 - 49 U.S.C. § 41713
- Narrow exception for sponsors to exercise their proprietary powers.



Federal and State Legal Requirements



■ Federal:

- Federal Aviation Regulations (Title 14 of the Code of Federal Regulations)
- Grant Assurances
(*E.g.*, 19, 22, 23, 37)
- FAA Guidance (Orders, Advisory Circulars, Opinion Letters, etc.)

■ State/Local:

- State Statutes & regulations
- County/City/Municipality ordinances



Additional Legal Requirements



- First Amendment
 - Public forum analysis
 - Viewpoint neutrality
- Contracts are governed by state law
 - *Force majeure clauses*
 - *Collective bargaining agreements*
- Issues regulated by local codes
 - Public health
 - Workplace safety
 - Employment and labor

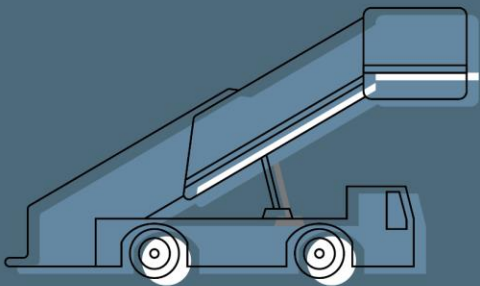


Panel Discussion



- Moderator: Katie van Heuven

- Speakers:
 - David Bannard
 - Peter Kirsch
 - Steven Osit
 - Eric Smith

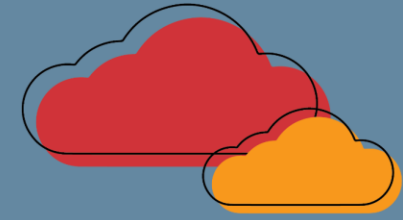


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Pandemic Response



- Immediate crisis response
 - Closure of facilities
 - Sanitation
 - Quarantines, travel restrictions
- Relief for tenants, users, airlines
 - Deferral vs. waiver of rent
 - Facility accommodations
- Use of CARES Act funds
- Recovery
 - Sanitation and testing
 - Liability concerns

Sources of legal obligations

- Grant Assurance obligations (e.g., self sustaining; no unjust discrimination)
 - Revenue use and diversion
 - Premises, employer liability
 - Airline Deregulation Act
-
- CARES Act
 - FAA pandemic guidance



Protests and Other First Amendment Activity



- First Amendment Policies
 - Forum analysis
 - Viewpoint neutrality
- Crisis Response
 - So, about that policy...
 - Importance of planning

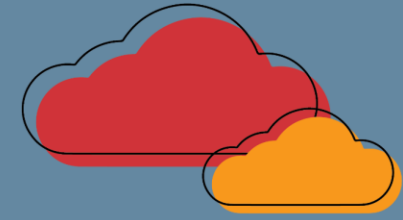
Sources of legal obligations

- U.S. Constitution
- State Constitution
- Grant Assurance 22(i)
- Other State and Local Law

“In preparing for battle I have always found that plans are useless, but planning is indispensable.” — Dwight D. Eisenhower



Natural Disasters



- The Airport Emergency Plan (AEP)
- National Incident Management System (NIMMS)
 - FEMA's comprehensive approach to emergency management.
 - Provides a set of standardized organizational structures
- Revenue Use Issues
- Airport Risk Mitigation
 - concern that is ever-present in almost all aspects of AEP
 - on-going responsibilities of counsel

Sources of legal obligations

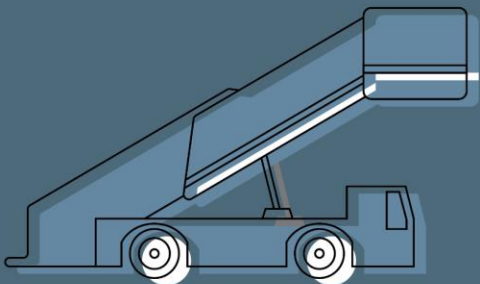
- The Stafford Act – 42 USC 5121 et seq
- Disaster Recovery Reform Act of 2018
 - (Part of FAA Reauthorization Act of 2018)
- Part 139 Certificated Airports
 - Advisory Circular 150/5200-31C
 - Appendix 1 SOPs required for crashes, bombs, fires, HAZMAT, Terrorism, Power Failures, Water Rescue and Natural Disasters



Questions???



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