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STATE

REPORT OF THE COMMITTEE ON AERONAUTICAL LAW OF THE AMERICAN BAR ASSOCIATION, 1940*

I

Federal or State Legislation To Supplement the Civil Aeronautics Act of 1938

The members of the committee have held numerous meetings with members of the Civil Aeronautics Authority. On January 11, 1940, the committee met at New Orleans, Louisiana, where the National Aeronautic Association was holding its convention. The Authority sent one of its members, Mr. Oswald Ryan, and also Mr. Elwood B. Cole to confer with the committee. Mr. Fred Glass, the chief examiner of the Air Safety Board, also attended the sessions of the committee.

It was unanimously decided that further state legislation is highly desirable to promote the establishment of airports, and the committee took steps to assist Mr. Cole of the Authority and many aviation officials in securing the passage of the Uniform Airports Act,¹ an act already approved by this Association.

The need of establishing many more airports and emergency landing fields, and improving existing airports is a subject on which members of the committee have given a great deal of study during the past year, independently, and also in cooperation with employees and executives of the Civil Aeronautics Authority. There has developed no difference of opinion on the importance and desirability of further appropriations and legislation, both state and federal, to promote this purpose.

The Civil Aeronautics Authority made an exhaustive study of the airports situation and recommended² that \$25,000,000 be appropriated for the improvement and establishment of airports and \$100,000,000 be used out of WPA funds for labor on airports.

Early in the session there was, however, a general belief that WPA activities and funds would be greatly curtailed, and so Senator McCarran introduced a bill (S. 3620) which provided for a direct federal appropriation of \$125,000,000 to be apportioned by the Civil Aeronautics Authority among the several states for the development of a vast airport program. This airport program was not dependent upon the government's policy with respect to WPA activities.

In June H. J. Res. 544 was passed appropriating \$1,000,000,000 for the continuance of the WPA, thus making it apparent that WPA funds could be available for airport development.

Accordingly, although hearings had started on the bill, they were

* Taken from the Advance Program of the Sixty-third Annual Meeting of the American Bar Association.

1. See page 3 of CAA Bulletin No. 4.

2. H. Doc. No. 245, 76th Cong., 1st Sess.

recessed upon call of the chairman, and Senator McCarran introduced S. 4146 as a substitute for S. 3620.

The latter bill incorporates the recommendations of the Civil Aeronautics Authority. It gives an annual appropriation of \$25,000,000 to the Administrator to be used in aiding states to the extent of 75 per cent of the cost of their projects if the state is unable to supply sufficient funds, but if either the Army or Navy recommends that a field is needed for national defense, the Federal Government may pay 100 per cent of its cost. The Civil Aeronautics Authority has recommended that \$100,000,000 of the billion dollar WPA fund be used for labor on airports. It is expected that S. 4146 which embodies the recommendations of the Civil Aeronautics Authority, and the War and Navy Departments, will become a law before this report goes to press.

Considerable discussion, and some differences of view have developed on whether, in line with the mandate of this Association in 1938 "to cooperate with the Civil Aeronautics Authority" in a study of the desirability of further state legislation, the committee should push the passage of the Uniform Regulatory Act.³ The Authority has gone on record to the effect that the State Regulatory Act should be modified to harmonize with the Civil Aeronautics Act of 1938.

A Uniform Regulatory Act was developed and unanimously adopted by the National Association of State Aviation Officials at their meeting in 1934. A copy of it is set forth in the right-hand column on page 91 of CAA Bulletin No. 4. After the state aviation officials had approved it, it was taken up at the Conference of the Commissioners on Uniform State Laws. The Commissioners changed the draft. A comparison of the two, paragraph by paragraph, is set forth in CAA Bulletin No. 4. The committee pressed members of the Authority specifically on the suitability of the enactment by the several states of the regulatory act prepared by the Commissioners and was advised that the Civil Aeronautics Authority was unwilling to recommend its passage.

In accordance, therefore, with the policy of cooperation with the Civil Aeronautics Authority, the committee does not recommend the passage of the State Regulatory Act.⁴

Transfer of Civil Aeronautics Authority To Department of Commerce

Great excitement was occasioned in aviation circles by promulgation of the President's Reorganization Plan No. 4 which abolished the Air Safety Board and transferred its functions to the Civil Aeronautics Authority, changed the name of the Authority to the Civil Aeronautics Board, and with all existing powers and functions, made it a unit of the Department of Commerce. The Administrator of the Civil Aeronautics Authority, who by the President's Reorganization Plan No. 3 was made the Administrator of Civil Aeronautics, was likewise transferred to the Department of Commerce.

This presidential attempt at economy met with the most violent and widespread opposition, for, in part, the following reasons:

3. See page 91 of CAA Bulletin No. 4.

4. See note as to Mr. Logan's dissent, p. 132, *infra*.

In the early days of aviation while it was in the Commerce Department, 473 persons lost their lives in air crashes, 146 of whom were airline pilots. The public had developed a fear of riding the airlines.

The Civil Aeronautics Act of 1938 made the Authority as nearly independent from political pressure as possible. At least that was one of its avowed purposes. Executive management of airports, fields and beacons was under an independent administrator. An independent three-man Air Safety Board investigated what caused a crash. The Safety Board could even find that a regulation of the Authority had been at fault.

Prior to the Civil Aeronautics Act of 1938, the Department of Commerce had, in case of a crash, been charged with sitting in judgment on its own rules, and its own conduct. This weakness was criticized by the Pilots Association, the Air Transport Association and many other associations and independent interests connected with the business of air commerce.

Since the establishment of the Civil Aeronautics Authority, its work, and that of the Air Safety Board coordinated with it, and the Administrator, has met with uniform approval from the aviation industry and the traveling public.

A world record has been made for safety in the air. Since March 26, 1939, not a single air passenger has been killed in an airline accident in spite of the fact that air commerce has operated more miles and has carried more passengers than ever before. During the year commencing March 26, 1939, pilots flew 87,325,145 miles (equivalent to 3,600 times around the equator) and carried 2,028,817 passengers without a single fatality. The Civil Aeronautics Authority deserves much credit for this, and general consternation resulted when the President's Plan No. 4 subjected the Authority to reorganization.

Every member of this committee, and the chairman expressed the view that since the officials whose duties were set up under the Civil Aeronautics Act of 1938 were making such an excellent record, constituting, as it does, a model for other government bodies, the Presidential Executive Order reorganizing the Authority's functions, abolishing the Air Safety Board and transferring jurisdiction over all civil aviation to the Department of Commerce, was, to say the least, highly unwise. Your committee appealed to the President of the American Bar Association, who laid the matter before the Board of Governors and on May 14, 1940, the Board of Governors authorized the committee to oppose the President's Order. This was done in writing to the President of the United States, and to the Senate committee before which the question of repudiation of the Executive Order was pending. The House of Representatives had previously repudiated it, but in spite of widespread opposition, there was not a sufficient vote in the Senate to prevent its becoming law. Accordingly, on June 30, the Authority becomes a unit in the Department of Commerce known as the Civil Aeronautics Board.

Whether decisive action heretofore firmly taken by the Authority will be impeded or changed by the transfer to the Commerce Department cannot now be seen. If the Federal Government's control becomes less satisfactory and decisive, more state legislation will be the inevitable result.

An encouraging circumstance is that the recent chairman of the Civil

Aeronautics Authority, who has universally been accepted as an able executive under the 1938 act, has just been made Assistant Secretary of Commerce. Thus it would appear that aviation may have a place in the sub-cabinet.

In spite of fears expressed by the aviation industry generally, and by members of your committee, over the effect of the President's Plan, it is conceivable that the administration of the law may be kept as clear of politics, as firm and constructive, and as independent in steps to promote safety, as it was under the Authority. We believe your committee should continue in close cooperation with the Civil Aeronautics Board for another year to observe the extent to which further state or federal legislation may be needed to supplement the present law.

II

Legislation on Salvage of and by Aircraft at Sea in Consonance with the Principles of Maritime Law

A number of meetings have been held with the Division of International Communications of the State Department on the progress made in the ratification by the various nations of the "Convention for the Unification of Certain Rules Relating to Assistance and Salvage of Aircraft or by Aircraft at Sea"⁵ adopted by the Fourth International Conference on Private Air Law held in Brussels, Belgium, in 1938. This convention will become effective when ratified by five nations. The Convention adopts the principles of maritime law, making them applicable to the salvage of aircraft lost at sea. The State Department has suggested (without definitely passing upon the point) that the wording of the Convention may be so explicit that further legislation may not be necessary to make it effective.

When your committee reported to this Association a year ago, it was believed that little time would elapse before five countries would have ratified the Convention. However, the war in Europe has demanded the attention of many of the countries which actively participated in the Fourth International Conference, and our State Department therefore at this time reports that the Convention has been ratified by none of the powers. However, your committee is glad to report that in the few accidents that have happened at sea, the principles of maritime law have by common consent been applied to aircraft, and it would appear, therefore, that the Association can safely await international developments before furthering legislation on the subject.⁶

III

Modernizing of Customs and Immigration Laws

Pursuant to the instructions contained in resolution No. III of the committee report of last year, your committee has made a study of the

5. C.I.T.E.J.A. document 319.

6. In connection with this subject, reference is made to this committee's 1939 report on the Brussels conference; also to the address of Samuel E. Gates before the American Bar Association, published in the *JOURNAL OF AIR LAW AND COMMERCE*, October, 1939, and to Arnold W. Knauth's article, *The Aviation Salvage at Sea Convention of 1938*, published in the New York University School of Law Contemporary Law Pamphlets, Series 1, No. 18.

customs and immigration laws and regulations with a view to making such laws and regulations more properly applicable to the conditions and problems of air commerce. Members of the committee have had several conferences with immigration and customs authorities in Washington, looking toward the adoption of certain amendments and modifications.

This question has been under consideration by the federal authorities for some time. Several years ago an inter-departmental committee, composed of representatives from the Departments of State, Treasury, Commerce and Labor, was appointed to make a study of this question and to recommend those changes which, in its opinion, should be made. Upon investigation in Washington, it was ascertained that this report was nearing completion and your committee was advised that it would be made available to it for study and comment prior to final publication. Accordingly, it was deemed advisable to defer further action until after this report had been examined.

On June 4, 1940, the President submitted Reorganization Plan No. 5 to the Congress transferring the Immigration and Naturalization Service of the Department of Labor, including the Commissioner of Immigration and Naturalization and his functions, to the Department of Justice, and all functions of the Secretary of Labor with respect to immigration and naturalization were transferred to the Attorney General. This plan became effective June 14, 1940.

Your attention is called to the fact that during the past year the volume of our foreign air commerce has more than doubled. Both the number of schedules and plane capacities have been materially increased. With this increase, immigration and customs problems incidental to air commerce have been further intensified and complicated. Complete modernization of these laws and regulations is the more imperative.

A member of your committee recently conferred with immigration, customs and commerce authorities on this question. It is believed that some definite steps will be taken by interested government departments and agencies within the next few months. Your committee therefore recommends that it be permitted to continue its study and work on this question with the thought that during the coming year the desired changes may be accomplished.

MABEL WALKER WILLEBRANDT, Chairman,
LAURENCE W. BEILENSON,
GEORGE B. LOGAN,*
FRANCIS B. UPHAM, JR.,
J. E. YONGE.

KENTUCKY AERONAUTIC COMMISSION CREATED

The last session of the General Assembly of the Commonwealth of Kentucky passed and Governor Keen Johnson signed an act creating the Kentucky Aeronautic Commission, consisting of 6 members, one-half from each major political party, with 4-year staggered terms, and the further

* Mr. Logan dissents from that portion of the report referring to the "State Regulatory Act" and believes the committee should urge its passage.

requirement that at least 2 members be actively engaged in, affiliated with or identified with aviation. There is also a provision for the Commission to organize itself, elect a Chairman, Vice Chairman and Secretary from among its members to serve for a period of one year and to appoint a Kentucky Aeronautics Director, outside the membership of the Commission, to serve at its pleasure. The act requires the possession of aircraft and airman certificates issued by the United States and provides that the air traffic rules issued by the Commission shall be identical with those issued by the United States "as nearly as may be and insofar as the same are applicable." The new and unusual provision of the act is the designation of the Kentucky Aeronautic Commission "as the proper agency of the Commonwealth to accept and receive financial or other aid from the United States Government for the acquisition, construction, maintenance and operation of airports and landing fields, air markings and other air navigational aids or otherwise in carrying out the promotion of aviation, whether such work is to be done by the Commonwealth or at the expense of municipal corporations or political subdivisions aided by grants or aids from the United States." A verbatim copy of the act follows so that a more exact study may be made.

Governor Johnson evidently means to have the best aviation commission in the country for each member appointed has some special qualification in aeronautics or engineering. The Chairman of the Commission is Major A. H. Near, Superintendent of Bowman Field, Louisville. Major Near is one of the better-known aviation figures in the United States and has served with distinction as a member of the Board of Governors of the National Aeronautic Association, as President of the Air Corps Reserve Officers Association and is now the President of the National Association of Airport Executives. The Vice Chairman is Charles H. Gartrell of Ashland who is a private pilot, owner of his own aircraft and an eastern Kentucky aviation enthusiast. The Secretary is Richard W. Davania of Paducah, who is an officer in the Air Corps Reserve and a leader in aviation in eastern Kentucky. The other members are Jesse Creech, Lexington, an Ace of World War I who flew with the 148th U. S. Aero Squadron attached to the Royal Flying Corps; Addison W. Lee, Jr., who has since its organization in 1928 been Chairman of the Louisville and Jefferson County Air Board; and H. D. Palmore of Frankfort, an A.E.F. Captain in World War I and a former state highway engineer. According to our latest information no Director has yet been appointed.

KENTUCKY AERONAUTICS ACT*

CHAPTER 1

(S. B. 147)

"AN ACT to provide for the regulation of aeronautics within this Commonwealth in the interest of public safety and of aeronautic progress; to create and set up a body politic to be known as the Kentucky Aeronautic Commission; to prescribe the powers and duties of said Commis-

*Acts of the GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY. Passed at the Regular Session of the General Assembly, Which Was Begun in the City of Frankfort, Kentucky, on Tuesday, January the Second, and Ended on Thursday, March the Fourteenth, Nineteen Hundred Forty.

sion; to create the office of Director of Aeronautics of Kentucky and to prescribe the powers and duties of such Director; to continue in force present laws permitting cities of certain classes and certain Counties to acquire, construct, maintain and operate airports and landing fields; to repeal all laws in conflict with this Act; and in general to promote the progress of aviation in the Commonwealth.

“BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY:

§1. Kentucky Aeronautic Commission created; members, qualifications, terms.

There is hereby created a bi-partisan commission composed of six (6) members which shall be a body politic and corporate, and shall be known as the ‘Kentucky Aeronautic Commission’ and in such name said commission shall have the power to sue and be sued; contract and be contracted with; acquire and sell real and personal property by contract purchase, gift, condemnation or otherwise, and may do all things reasonable or necessary to effectively carry out its work and properly perform the duties intended or required under this Act within the limits of its resources.

The members of the Commission shall be appointed by the Governor, who shall be an ex-officio member of the Commission. One-half of the members of the Commission shall be of one political party and one-half of the other political party which at the last preceding general election respectively cast the highest and the next highest number of votes. The terms of office of the six (6) members first taking office after the date of enactment of this Act shall expire as designated by the Governor at the time of appointment, two at the end of the first year; two at the end of the second year; two at the end of the third year. The two members whose terms expire at the end of each year shall be members of opposing political parties as hereinbefore provided. If the Governor so elects, members may succeed themselves. The terms of office of their successors shall expire four years after the expiration of the terms of their predecessors, except in appointments to fill unexpired terms when there may be a vacancy, in which case such appointment shall be for the unexpired term of the predecessor. Each member shall serve, except in case of resignation, until his successor shall have been appointed and qualified. Each member shall be white and at least twenty-five years of age and at least two of such members shall be, without respect to their political affiliations, actively engaged in, affiliated with or identified with aviation.

§2. Compensation; officers; rules and regulations.

Members of the said Commission shall serve without compensation. The Commission shall upon the appointment of its members, organize and elect officers. It shall elect a Chairman, Vice Chairman and Secretary from among its members to serve for a period of one year, and annually thereafter shall elect such officers.

The Commission shall have the authority to employ such agents and employes as are necessary to carry out the work and functions of said Commission, and to prescribe such rules and regulations (other than air traffic rules as provided hereinafter) as it deems necessary.

§ 3. Office of Kentucky Aeronautics Director; terms, qualifications, compensation, powers.

There is hereby created the office of 'Kentucky Aeronautics Director' who shall be appointed by the Commission and shall hold office during the pleasure of the Commission. The Director shall be a person holding a valid commercial license or its equivalent issued by the United States Government for the piloting of aircraft, with at least five years' experience in the aeronautical industry and with at least two (200) hundred certified flying hours as pilot. The Director shall be the Executive Officer of the Commission, and under its supervision, shall carry out the provisions and administer this Act and the rules, regulations and orders established thereunder as well as the laws of the United States and the Commonwealth of Kentucky with reference to aeronautics. He shall be in charge of the office of the Commission and responsible to the Commission for the preparation of reports and the collection and dissemination of data and other public information relating to aviation. At the direction of the Commission the Director shall, together with the Chairman of the Commission, execute all contracts entered into by the Commission which are legally authorized and for which funds have been provided. The Director shall have the right to attend, but not vote, at all meetings of the Commission.

§ 4. Aircraft and operating aircraft defined.

In this Act 'aircraft' shall mean any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. 'Operating aircraft' shall mean performing the service of aircraft pilot.

§ 5. Licensing and registering aircraft.

The public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that aircraft operating within the Commonwealth should conform with respect to design, construction and airworthiness to the standards prescribed by the United States Government with respect to navigation of aircraft subject to its jurisdiction, it shall be unlawful for any person to navigate an aircraft within the Commonwealth unless it is licensed and registered by the Civil Aeronautics Authority or other proper department of the United States in the manner prescribed by the lawful rules and regulations of the United States then in force.

§ 6. Licensing of pilots; qualifications.

The public safety requiring and the advantages of uniform regulations making it desirable in the interest of aeronautical progress that a person engaged within this Commonwealth in navigating the aircraft defined in Section 4 in any form of navigation for which license to operate such aircraft would be required by the United States Government within its jurisdiction, it shall be unlawful for any person to navigate an aircraft within the Commonwealth unless he shall be licensed and registered by the Civil Aeronautics Authority or other proper department of the United States in the manner described by the lawful rules and regulations of the United States then in force.

§ 7. No license to be prescribed by Kentucky Aeronautic Commission; registration of pilots and aircraft.

No license other than that prescribed by the Civil Aeronautics Authority or other proper department of the United States for aircraft or pilots shall be required within this Commonwealth, and the Commission shall have no authority to require or prescribe any other form of license: The Commission shall be empowered, if it deems it necessary, to require that any and all aircraft or pilots operating aircraft frequently or regularly from any airport within this Commonwealth, shall register with the Commission, but no fee shall be imposed therefor.

§ 8. Air traffic rules; to be identical with U. S. Government rules.

The Commission may from time to time promulgate air traffic rules applicable to the operation of aircraft within the Commonwealth; providing however, that such air traffic rules shall be identical with the air traffic rules adopted by the Civil Aeronautics Authority or other proper department of the United States as nearly as may be and insofar as the same are applicable; which said air traffic rules shall be maintained in current condition by likewise promulgating any amendments which may be from time to time made effective by the Civil Aeronautics Authority or other proper department of the United States. The Commission may also promulgate any local rules, not in conflict with the Civil Aeronautics Authority rulings, which may be necessary for safety.

§ 9. Unlawful to operate in violation of air traffic rules.

The public safety requiring and the advantages of uniform regulation making it desirable, it shall be unlawful for any persons to operate any aircraft within this Commonwealth in any form of navigation whatsoever in violation of the air traffic rules promulgated by the Kentucky Aeronautic Commission.

§ 10. Inspection of airports; unlawful to operate from field declared unfit.

The Commission shall by the Director of Aeronautics or otherwise cause to be inspected all airports and landing fields of whatsoever nature within the limits of the Commonwealth for the purpose of determining the safety and adequateness of such facilities for the operation of aircraft. It shall be unlawful for any person, firm or corporation to operate any aircraft for hire from any airport or landing field of any nature whatsoever if it has been declared unfit for such operation by the Director or the Commission until such time as such airport or landing field shall be approved by the Commission.

§ 11. Members of the Commission and Director of Aeronautics to be peace officers.

Each member of the Kentucky Aeronautic Commission and the Director of Aeronautics shall be peace officers and are hereby empowered to arrest any person found violating any provision of the preceding sections with respect to operation of aircraft.

§ 12. Violation of act; penalty; prosecution.

Any person who violates any provision of this Act with respect to operation of aircraft shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred (\$100.00)

dollars or by imprisonment for not more than ninety days, or both. Provided, however, that any and all funds collected under the provisions of this Act shall be credited to a revolving fund of the Kentucky Aeronautic Commission for the use of the Commission in carrying out the provisions of this Act. Provided, however, that acts or omissions made unlawful by this Act shall not be deemed to include any act or omission which violates the laws or lawful regulations of the United States, but it shall not be necessary to allege or prove, as part of the case for the people that the defendant is not amenable, on account of the alleged violation, to prosecution under the laws of the United States. That he is amenable to such prosecution shall be a matter of defense, unless it affirmatively appear from the evidence adduced by the people.

§ 13. Commission may acquire airports, etc.; title to property in Commission; contracts for use of facilities; alienation of property; former legislation unrepealed by this section.

The Kentucky Aeronautic Commission may acquire or sell, by contract, purchase, lease, donation or condemnation, airports, buildings, runways, grounds, and other facilities suitable for airport purposes and the proper safeguards to flying where such airports, etc., shall reasonably inure to the benefit of the Commonwealth generally. The Commission may make additions and improvements in or to such airports or facilities and either alone or with the cooperation of others provide personnel, heat, light, water, fuel, telephone service, drainage, runways, fueling facilities, and other costs of operation and maintenance, including insurance, and further may bear the expense of removal or change of such obstructions as shall exist to menace air travel. Title to all property acquired or constructed by the Commission for the purpose of this Act shall vest in said Commission so long as such property is held by the Commission for the purpose of establishing and maintaining airports or landing fields and such other purposes as are naturally incident thereto, to provide for transportation by air of passengers, freight, express or mail matter, or whatever else the public generally may require to be carried. The Commission is further empowered to enter into contracts of lease for land or facilities to which title is vested in the Commission with any municipal corporation or political subdivision, person, firm, association or corporation for the furtherance of the purposes of this Act. Any and all rents or revenues derived from such contracts of lease shall become the property of the Commission to be expended by it in carrying out the purposes of this Act.

Sections 938j-1 to 938j-9, both inclusive and section 2741q, of the Kentucky Statutes and any and all other laws enabling towns, cities or counties to acquire, operate and maintain airports and landing fields are not repealed by this Act, but shall remain in full force and effect. The Commission is hereby empowered to give such advice and assistance, including financial aid and engineering and technical assistance within the limits of its resources, as it may deem advisable, to enable any town, city or political subdivision to acquire, construct, maintain and operate airports and landing fields or otherwise assist in the development of aeronautics within their limits.

§ 14. Aid from United States Government; Commission agency to receive.

The Kentucky Aeronautic Commission is hereby designated as the

proper agency of the Commonwealth to accept and receive financial or other aid from the United States Government for the acquisition, construction, maintenance and operation of airports and landing fields, air markings and other navigational aids or otherwise in carrying out the promotion of aviation, whether such work is to be done by the Commonwealth or at the expense of municipal corporations or political subdivisions aided by grants or aids from the United States. When such acquisition or construction of airports, or other facilities is made at the joint expense of municipal corporations or political subdivisions and the United States Government, the Commission shall on behalf of such municipal corporation or political subdivision accept and receipt for such monies as are to be paid over by the United States Government and forthwith pay such monies over to said municipal corporations or political subdivisions under such terms and conditions as may be imposed by the United States Government in making such grants.

§ 15. Repeal of acts in conflict herewith.

Sections 165-25 to 165-44, both inclusive, and Section 4618-28 of the Kentucky Statutes and all other laws in conflict herewith are hereby repealed.

§ 16. Constitutionality of Act.

Should any section of this Act be found in conflict with the Constitution of the Commonwealth of Kentucky, such unconstitutionality shall not affect any other section herein.

§ 17. Effective date of Act.

There being an urgent need for the establishment of the Kentucky Aeronautic Commission, the Director of Aeronautics, and for otherwise carrying out the purposes of this Act and it being considered that this Act should be placed in effect as soon as possible, an emergency is hereby declared, and this Act shall take effect from and after its passage as required by law.

Approved by the Governor March 20, 1940."

RHODE ISLAND AERONAUTICS ADVISORY BOARD CREATED

Earlier this year the General Assembly of Rhode Island passed an aviation act which created the position of Administrator of Aeronautics and a commission called the State Aeronautics Advisory Board. The whole aviation set-up is lodged in the Department of Public Works and immediately under the Director of Public Works and therefore not too unlike the old Bureau of Air Commerce set-up with its Director of Air Commerce under the Secretary of Commerce. The act is the most comprehensive one yet passed in this country. It not only deals with the requirement for an aircraft certificate and an airman certificate issued by the United States and registered in the State of Rhode Island but it goes on to define ownership of the airspace, lawfulness of flight, liability for injuries to surface persons and property, liability of the aircraft owner, the situs of crimes and torts, the situs of contractual and legal relations and the killing of birds or animals from aircraft. The act also deals with airports, including estab-

lishment as well as regulation. It provides for the adoption of rules and regulations and it likewise takes care of investigations, hearings and appeals to the courts.

The Governor of Rhode Island has appointed as Administrator of Aeronautics Mr. Willard M. Fletcher who for the last 10 years has been Chief of the State Division of Airports. Mr. Fletcher has been a pilot for the past 18 years and has had an intimate knowledge of aeronautics possessed by few people in this country, his organization and handling of aeronautic conferences in his region being an outstanding piece of work. He has been a Regional Vice President of the National Association of State Aviation Officials. The Board can best be described in the words of the statute which say "there shall be an aeronautics advisory board which shall function as a unit independent of a director (Director of Public Works) and not subject to his jurisdiction. Said advisory board shall consist of five qualified electors of the state, at least four of whom shall be persons having practical knowledge of aeronautics, who shall be appointed by the governor" with staggered terms of 5 years each. "Said board shall make suggestions to and shall advise the director of the department concerning the aeronautical policies, rules, and regulations of the department; provided, however, that said advisory board shall have no administrative powers." The members of the Advisory Board are not of such national aviation prominence or acquaintance as Mr. Fletcher but they are obviously men well chosen to meet the qualifications prescribed in the statute. They are Mr. Leroy Gardner, Chairman, Dr. Maurice Eighme, Major Stanford McLeod, Mr. Thomas Harris and Colonel William Hoey, Jr. A verbatim copy of the statute follows so that a more exact study may be made.

RHODE ISLAND AERONAUTICS ACT*

CHAPTER 851.

An act making uniform the law with reference to Aeronautical regulation; creating the position of administrator of aeronautics and a state aeronautics advisory board; amending chapter 110 of the general laws, as amended, and chapter 660 of the public laws, 1939, known as the "administrative act of 1939," as amended, and repealing chapter 109 of the general laws, as amended.

It is enacted by the General Assembly as follows:

SECTION 1. *Short Title.* This act shall be known and cited as the "Uniform aeronautical regulatory act."

SEC. 2. *Definitions.* When used in this act:

(a) "Aeronautics" means transportation by aircraft, air instruction, the operation, repair, or maintenance of aircraft, and the design, operation, repair, or maintenance of airports, landing fields, or other air navigation facilities.

(b) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of, or flight in, the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

*January Session, 1940. H. 631A. Approved April 27, 1940.

(c) "Certificate aircraft" means any aircraft for which an aircraft certificate other than a registration certificate has been issued by the government of the United States.

(d) "Public aircraft" means an aircraft used exclusively in the governmental service. "Military aircraft" are public aircraft operated in the service of the United States army, national guard, navy, marine corps or coast guard.

(e) "Civil aircraft" means any aircraft other than a public aircraft.

(f) "Airport" means any area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, and which provides facilities for the shelter, supply, and repair of aircraft and which, as to size, design, surface, marking, equipment, and management meets the minimum requirements established from time to time by the director.

(g) "Landing field" means any area of land, water, or both, which is used or is made available for the landing and take-off of aircraft, which may or may not provide facilities for the shelter, supply, and repair of aircraft, and which, as to size, design, surface, marking, equipment, and management meets the minimum requirements established from time to time by the director.

(h) "Person" means any individual, or any corporation or other association of individuals.

(i) "Air instruction" means the imparting of aeronautical information by any aviation instructor or in any air school or flying club.

(j) "Air school" means any person engaged in giving, offering to give, or advertising, representing, or holding himself out as giving, with or without compensation or other award, instruction in aeronautics—in flying, in ground subjects, or in both.

(k) "Flying club" means any person (other than an individual) who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction, pleasure, or both.

(l) "Aviation instructor" means any individual engaged in giving, or offering to give, instruction in aeronautics—in flying, in ground subjects, or in both—either with or without compensation or other reward, without advertising such occupation, without calling his facilities "air school" or any equivalent term, and without employing or using other instructors.

(m) "Board" means the aeronautics advisory board established in the department of public works, by section 106 of the administrative act of 1939, as amended.

(n) "Administrator" means the administrator of aeronautics established by section 106 of the administrative act of 1939, as amended.

(o) "Director" means the director of public works.

SEC. 3. *Recovery for Injuries.* Whenever any aircraft shall be used, operated, or caused to be operated in this state and an action is begun to recover damages for injuries arising to the person or to the property or for the death of a person, arising out of an accident or collision in which that aircraft was involved, or arising out of an accident caused by the dropping or falling of any object from such aircraft, evidence that at the time of such accident or collision it was registered in the name of the defendant as owner shall be *prima facie* evidence that it was then being operated by and under the control of a person for whose conduct the defendant was wholly responsible, and absence of such responsibility shall be an affirmative defense to be set up in the answer and

proved by the defendant; and for the purposes of this act the term "owner" shall include the legal title holder thereof and any person, firm, copartnership, association or corporation having the lawful possession or control of an aircraft under written sale agreement.

SEC. 4. *Registration: Certificate.* No flight of civil aircraft, other than of a foreign aircraft, shall be made or authorized to be made within this state unless such aircraft is possessed of valid aircraft registration and airworthiness or experimental certificates issued by the government of the United States, nor in violation of any term, specification or limitation of such certificates; *provided, however,* that these restrictions shall not apply to model aircraft operated in accordance with such regulations as the director may prescribe, or to a non-passenger-carrying flight solely for inspection or test purposes authorized by the director or by the proper Federal authority to be made without such certificate.

SEC. 5. *Pilot's License.* No person shall operate any civil aircraft within this state unless such person is the holder of an effective pilot's license, permit or certificate issued by the government of the United States; *provided, however,* that this restriction shall not apply to any person operating any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft nor to persons operating model aircraft, nor to any person piloting an aircraft which is equipped with fully functioning dual controls when a certificated instructor is in full charge of one set of said controls. No person shall operate any civil aircraft in this state in violation of any term, specification or limitation of such pilot's license, permit or certificate.

SEC. 6. *License: Certificate.* Such required pilot's license, permit or certificate shall be kept in the personal possession of the pilot while he is operating an aircraft within this state. Such required aircraft certificates shall be carried in the aircraft at all times and shall be conspicuously posted therein in clear view of passengers. Such pilot's license, permit or certificate and aircraft certificates shall be presented for inspection upon the demand of any passenger, any peace officer of this state, any authorized official or employee of the director, or the board, or any official, manager or person in charge of any airport or landing field in this state upon which the pilot shall land, or upon the reasonable request of any other person. In any criminal prosecution under any of the provisions of this act, a defendant who relies upon a license, permit or certificate of any kind shall have the burden of proving that he is the possessor of a proper license, permit or certificate. The fact of non-issuance of such license, permit or certificate may be evidenced by a certificate signed by the official having power of issuance, or his deputy, under seal of office, stating that he has made diligent search in the records of his office and that from the records it appears that no such license, permit or certificate was issued.

SEC. 7. *Registration.* All resident individuals and owners or operators having any type of federal aeronautical certificate for an individual or aircraft shall register such certificates in such manner as the director may prescribe. Non-residents may operate non-commercially within the state without such registration for not more than ten consecutive days in any calendar year. To operate commercially intra-state, non-residents shall register.

SEC. 8. Whenever in chapter 110 of the general laws, entitled "Division of state airports," amended as to reorganization by chapter 660 of the public laws, 1939, or in any document, record or proceeding authorized by the same, the word "airport" is used, such phrase shall hereafter be deemed to refer to

and mean "airport or landing field" and whenever in said chapter or in said document, record or proceeding, the words "division" and "chief" are used, such words shall hereafter be deemed to refer to, include and describe the "department of public works" or the "director of public works" as the context requires.

SEC. 9. Sections 1, 3, and 12 of said chapter 110 of the general laws, as amended, are hereby further amended to read as follows:

"Section 1. The director of public works shall have supervision over the state airport at Hillsgrove and such other airports as may be constructed or operated by the state. He shall enforce the provisions of this chapter.

"Sec. 3. Upon his appointment and qualification as airport manager, as provided in section 12 of this chapter, for the state airport at Hillsgrove or for any other airport constructed or operated by the state, said manager shall take possession and assume control of said airport and proceed to operate and manage the same as an airport.

"Sec. 12. For the state airport at Hillsgrove, the director shall employ an airport manager and such other assistants to hold office at his pleasure, fix their duties and salaries within the amounts appropriated therefor, and incur such other expenses as may be authorized by the general assembly within the amounts appropriated therefor and in accord with the requirements of the state civil service act. With the same limitations he may employ similar employees for each other airport that may be constructed or operated by the state."

SEC. 10. Sections 100, 101 and 106 of chapter 660 of the public laws, 1939, known as the "Administrative act of 1939," are hereby amended to read as follows:

"Sec. 100. There shall be a department of public works. The head of the department shall be the director of public works who shall carry out, except as otherwise provided by this act, the provisions of chapters 74 to 80 inclusive, 82, 85, 110, 112, 114, 115 and 638 of the general laws of 1938 and of all other general laws and public laws heretofore carried out by the existing director of public works and the department of public works, including the provisions of the act making uniform the law with reference to aeronautical regulation, passed at the January session, 1940.

"Sec. 101. The department and the director shall have supervision over all contracts for public works, the construction, reconstruction, maintenance and repairs of roads and bridges, the care and the maintenance of public buildings and all other structures and automotive equipment of the state except as otherwise provided by this act, the development, maintenance, and operation of state airports, jurisdiction over all other aeronautics within the state, jurisdiction over rivers and harbors and state piers within the limits of state law; *provided, however*, that all contracts for the construction, reconstruction, maintenance and repairs of all public roads and bridges, public buildings and all other properties of the state government, and the purchase of all equipment, materials and supplies used in connection therewith shall be negotiated by the purchasing agent in the department of coordination and finance. The director of public works shall cooperate with the federal government in connection with public works projects.

"Sec. 106. (a) Said department and director shall have supervision over the state airport at Hillsgrove, such other airports and landing fields as may be constructed or operated by the state and all other aeronautics within the state and shall enforce the provisions of chapter 110 of the general laws of 1938,

as amended, including the provisions of the act making uniform the law with reference to aeronautical regulation, passed at the January session, 1940.

"(b) Within the department of public works there shall be an aeronautics advisory board which shall function as a unit independent of the director and not subject to his jurisdiction. Said advisory board shall consist of five qualified electors of the state, at least four of whom shall be persons having practical knowledge of aeronautics or aviation, who shall be appointed by the governor as herein provided. No person shall be eligible to serve on the advisory board who is actively engaged or employed in commercial or military aeronautics. In the month of February, 1941, and in the month of February in each year thereafter the governor shall appoint one member of said board to hold office until the first day of March in the fifth year after his appointment until his successor is appointed and qualified to succeed the member whose term will next expire.

"When this act shall take effect the governor shall thereupon appoint one member of said board to serve until the first day of March, 1941, one member to serve until the first day of March, 1942, one member to serve until the first day of March, 1943, one member to serve until the first day of March, 1944, and one member to serve until the first day of March, 1945, and until their respective successors are appointed and qualified. The members of said board at their first meeting shall elect one of their number as chairman and thereafter shall elect a chairman upon the appointment of any new member for a full term and whenever the office may become vacant.

"Any vacancy which may occur in said board shall be filled by appointment by the governor for the remainder of the unexpired term. Said board shall make suggestions to and shall advise the director of the department concerning the aeronautical policies, rules, and regulations of the department; *provided, however*, that said advisory board shall have no administrative powers.

"(c) Within said department there shall be an administrator of aeronautics who shall be well qualified in aeronautics and shall be appointed by the director, with the approval of the governor, and in accord with the requirements of the state civil service act. Said administrator of aeronautics shall exercise the powers and duties of the department and director relating to aeronautics. Said administrator shall devote his entire time to the duties of his office as required and prescribed by this act and shall not be actively engaged or employed in any other profession or business while holding the office of said administrator."

SEC. 11. *General powers of adoption and notice of rules, regulations, and orders*:—Except as otherwise specifically provided in this act, the director shall have supervision over aeronautics within the state, including (1) the establishment, location, maintenance, operation, and use of airports, landing fields, air markings, air beacons, and other air-navigation facilities, and (2) the establishment, operation, management, and equipment, of all air schools, flying clubs, and other persons giving air instruction. With the approval of the board, the director shall adopt and promulgate, and thereafter may amend or repeal, rules and regulations establishing minimum standards with which all air-navigation facilities, air schools, and flying clubs must comply, and, with the approval of the board, shall adopt and enforce, and thereafter may amend or repeal, rules, regulations, and orders, to safeguard from accident and to protect the safety of persons operating or using aircraft and persons and property on the ground, and to develop and promote aeronautics within this state. No rule or regulation of the director shall apply to airports, landing fields, air beacons or other air-navigation facilities owned or operated within this state

by the federal government. In order to avoid the danger of accident incident to confusion arising from conflicting rules, regulations, and orders governing aeronautics, the rules, regulations, and orders of the director shall be kept in conformity as nearly as may be with federal legislation, rules, regulations, and orders on aeronautics, and shall not be inconsistent with paramount federal legislation, rules, regulations, and orders on the subject.

Every general rule, regulation, and order of the director shall be posted for public inspection in the main aeronautics office of the director at least 5 days before it shall become effective, and shall be given such further publicity, by advertisement in a newspaper or otherwise, as the director shall deem advisable.

Every order applying only to a particular person or persons named therein shall be mailed to, or served upon, such person or persons.

Every rule, regulation, and order, general or otherwise, adopted by the director shall be kept on file with the secretary of state.

SEC. 12. *Duties. Fostering aeronautics.* It shall be the duty of the director to foster aeronautics within this state in accordance with the provisions of this act and for such purpose the director shall:

(a) Encourage the establishment of airports and other air-navigation facilities;

(b) Make recommendations to the governor and the general assembly as to necessary legislation or action thereto;

(c) Study the possibilities for the development of air commerce and the aeronautical industry and trade within the state and collect and disseminate information relative thereto;

(d) Advise with the civil aeronautics authority and other agencies of the federal government and with state authorities in carrying forward such research and development work as tends to increase and improve aeronautics within this state.

SEC. 13. *Investigations and hearings.* The director shall have the power to conduct investigations, inquiries and hearings concerning matters covered by the provisions of this act and accidents or injuries incident to the operation of aircraft occurring within this state. The director shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas, or subpoenas *duces tecum*, compel the attendance and testimony of witnesses and the production of papers, books, and documents. If any person shall fail to comply with any subpoena, subpoena *duces tecum* or order issued under authority of this act, the director may invoke the aid of any superior court in this state. The court may thereupon order such person to comply with the requirements of the subpoena, subpoena *duces tecum* or order of the director, or to give evidence upon the matter in question. Any failure to obey the order of the court shall be punishable by the court as a contempt thereof.

SEC. 14. *Admissibility in evidence of investigations and hearings—testimony of the director.* The reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding growing out of any matter referred to in such investigations or hearings, or in any report thereof, except in case of criminal or other proceedings instituted by or in behalf of the director under the provisions of this act; nor shall either the director or the administrator of aeronautics be required to testify to any facts ascertained in, or information gained by reason of his official capacity. Neither the director nor the administrator of

aeronautics shall be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft or any navigation facility.

SEC. 15. *Enforcement, cooperation.* It shall be the duty of the director and every state and municipal officer charged with the enforcement of state laws to enforce, and assist in the enforcement of this act. The director is further authorized in the name of the state of Rhode Island and Providence Plantations to enforce the provisions of this act by appropriate proceedings in the superior courts of this state. Other departments and political subdivisions of this state are authorized to cooperate with the director in the development of aeronautics within this state.

SEC. 16. *Examination of premises.* In any case where the director shall pursuant to this act issue any order requiring or prohibiting certain things to be done, he shall set forth his reasons therefor and shall state the requirements to be met before such approval shall be given or such rule, regulation, or order shall be modified or changed. In any case where the director deems such action necessary or proper he may order the closing of any airport or landing field, or the cessation of operations of any air school, flying club, air beacon, or other air navigation facility, until the requirements laid down by the director shall have been fulfilled. To carry out the provisions of this act, the director and any officers, state or municipal, charged with the duty of enforcing this act, may inspect and examine at reasonable hours any premises, the aircraft and the buildings and other structures thereon, where such airports, landing fields, air schools, flying clubs, air beacons, or other air navigation facilities are operated.

SEC. 17. *Appeal from order.* Any person against whom an order has been entered may within 10 days after the service thereof appeal to the superior court of the county in which the order was made or the property affected by the order is located for the purpose of having the reasonableness or lawfulness of the order inquired into and determined.

SEC. 18. *Procedure for appeal.* The party taking the appeal shall file a petition in the office of the clerk of such superior court, and summons shall thereupon be issued by the clerk and shall be served upon the director. Upon the filing of the petition, the appeal shall be in order for trial not less than 10 days nor more than 30 days after the service of the summons and shall be tried by the superior court without formal pleadings. Upon trial of the appeal, the court shall hear evidence as to matters concerning the order in question, as to the condition of the property in question, and the manner of its operation, and shall enter judgment either affirming or setting aside the order of the director or the court may remand the matter to the director for further hearing. The superior court may in its discretion determine whether the filing of the petition shall act as a stay of proceedings.

SEC. 19. *Failure to file appeal—Waiver.* If an appeal is not taken from the order of the director within the period fixed, the party against whom the order was entered shall be deemed to have waived the right to have the reasonableness or lawfulness of the order reviewed by a court and that issue shall not be tried in any court in which suit may be instituted for the penalty for failure to comply with the order.

SEC. 20. *Penalty.* Any person failing to comply with the requirements, or violating any of the provisions of this act, or the rules, regulations or orders adopted by the director shall be guilty of a misdemeanor and punishable by a fine of not more than \$500.00 or by imprisonment for not more than one year or by both such fine and imprisonment.

SEC. 21. *Separability.* If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

SEC. 22. *Repeal.* Chapter 109 of the general laws, entitled "The uniform law of aeronautics," amended as to reorganization by chapter 660 of the public laws, 1939 and further amended by chapter 722 of the public laws, 1939, is hereby repealed.

SEC. 23. *Time of Effect.* This act shall take effect upon its passage and all acts and parts of acts inconsistent herewith are hereby repealed.

A true copy,

Attest:

J. HECTOR PAQUIN
Secretary of State