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CIVIL AERONAUTICS—THE STATE AND THE NATION UNDER THE CIVIL AERONAUTICS ACT OF 1938*

CLINTON M. HESTER†

The Constitution of the National Association of State Aviation Officials states the Object of your organization,—I quote:

"Its purpose shall be to foster aviation as an industry and as an arm of the national defense; to join with the Department of Commerce (it is assumed this now includes the Civil Aeronautics Authority), the Aeronautical Chamber of Commerce and other agencies in research pertaining to aeronautics; to develop uniform air laws and regulations, and encourage cooperation between the several states."¹

In this connection let me give you some excerpts from the Civil Aeronautics Act of 1938. From Section 2—Declaration of Policy—comes this language:

"In the exercise and performance of its powers and duties under this Act, the Authority shall consider the following, among other things, as being in the public interest, and in acceptance with the public convenience and necessity—

"(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense; * * *

"(e) The regulation of air commerce in such manner as to best promote its development and safety; and

"(f) The encouragement and development of civil aeronautics."

From Section 205—General Powers and Duties of the Authority—I quote the following:

"Cooperation With State Aeronautical Agencies.

"(b) The Authority is empowered to confer with or to hold joint hearings with any State aeronautical agency, or other State agency, in connection with any matter arising under this Act, and to avail itself of the cooperation, services, records, and facilities of such State agencies as fully as may be practicable in the administration and enforcement of this Act."

Thus our charters are almost identical and our objectives are the same. It becomes more obvious daily that Congress intended

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1. 5 JOURNAL OF AIR LAW 611.

exclusive federal action only in that field which requires such control in order to perfect the regulatory scheme and to encourage and develop the national air-transportation system. It is equally apparent that there is much for the states to do alone, either by reason of jurisdiction or of the peculiar fitness of the states to do certain jobs. It is also unmistakably true and highly significant that Congress saw the necessity of and accordingly provided for cooperation and uniform action between the states and the nation.

Of course such a charter of powers and obligations is not self-executing. Neither is yours. But, your actions have already proved your understanding and ability, and those of us connected with the Civil Aeronautics Authority mean to quickly demonstrate our sympathetic consideration of the problems of aeronautics. There is not a man in the Authority who is not enthusiastic about flying. Every person of responsibility there has had experience with the pleasure and the utility of flight, with its convenience and the business results it produces. The new group coming in has and will retain the splendid organization of aviation technicians it found already functioning. This organization has been given the go-ahead signal for the best interests of aeronautics. It will be enlarged in activities or personnel whenever the situation so requires.

As you know—and know only too well because of your active participation in the Congressional hearings—the Civil Aeronautics Act of 1938 was not an imposition of regulation upon an industry by government. Rather, it was the industry that came to Congress and pleaded for a tribunal before which it could settle its problems, and an agency through which the industry's relations with government might flow in a single stream. The 1938 Act does just that.

According to your proceedings, as printed in the *Journal of Air Law*,² the state aviation officials, as early as 1934, recommended a permanent federal commission for aeronautics. You presented your views vigorously in writing and in person to the temporary Federal Aviation Commission, which reported in favor of such an agency in 1935. In 1936 your organization again went on record for (I quote) "the establishment by the Congress at the earliest possible moment, of a permanent, independent federal aeronautical agency to promote and supervise all phases of civil aviation,"³ and likewise in 1937 you favored (I quote) "as the most outstanding problem of the day" . . . "national legislation which may look

2. 5 JOURNAL OF AIR LAW 619.
3. 7 JOURNAL OF AIR LAW 553.

toward the ultimate goal of putting all governmental functions concerning civil aeronautics as far as practical under the jurisdiction of a single independent non-political body."⁴

Therefore the industry, *you* and all of us wanted and worked for the legislation, and it was passed. In addition, Congress shaped the instrument it gave us along new lines fashioning the 1938 Act to a design long sought in governmental commissions exercising mixed functions. It divides these functions as they are apportioned in our Constitution,—the legislative, the judicial and the executive. No longer will the responsibility of investigator and judge, policeman and jury be lodged in the same arm. No longer can the legislative and judicial body—the Authority in this instance—complain of the burden of administrative details. The members of the Authority, appointed by the President with the advice and consent of the Senate for definite 6-year staggered terms, are removable only for cause. Thus they are the servants of Congress in carrying out the legislative functions prescribed. The Administrator, on the other hand, though appointed by the President with the advice and consent of the Senate, is named without term and is removable by the President whenever, in his judgment, the Administrator fails to perform the executive functions assigned to him. The Air Safety Board, a novelty in aviation legislation, is another independent arm of the Authority, which is to investigate accidents with an eye to prevention and with the duty to assist and if necessary, criticize the Authority in its determinations with respect to safety. Thus we may say that the Administrator and the Safety Board propose; the Authority disposes.

To perfect the detail of all this the Authority has adopted an organization plan whereby there go through the Administrator's office not only the functions of the Authority aimed to regulate and to enforce the regulatory, the investigatory and the punitive functions, but also the functions for encouragement and aid. Everything done must meet the approval of the Authority, and the Administrator comes before it on exactly the same footing as do you, representing a state, or as does any other litigant.

The same holds true for the Air Safety Board. Its members, too, are appointed for definite 6-year staggered terms by the President by and with the advice of the Senate. I repeat,—this Board is independent of the Authority's bench, but in the last analysis it will come before the bench with exactly the same standing as an offender against safety rules of whom it may complain. Again you

are assured of wise sympathy for the two members of the air Safety Board thus far appointed are Col. Sumpter Smith, its Chairman, well-known and long-time pilot and engineer in the private and military fields, and Thomas O. Hardin, an airline pilot with 10,000 flying hours and a further generous experience in the private flying field.

Into the pattern of this background Congress fitted the familiar standards and requirements for air traffic rules, certificates of competency for airmen, certificates of registration and of airworthiness for aircraft, type certificates, production certificates, and those for air navigation facilities and air agencies,—all with enlarged categories and refinements produced by the best in the past twelve years' experience. No longer can there be navigated or operated in the United States an "identified" aircraft as distinguished from "registered" aircraft, a revision requested at your annual meeting in Cheyenne in 1934.⁵ A system for the recording of transfers of title to aircraft is created for the first time, and so the doctrine of let-the-purchaser-beware is circumvented if prospective buyers of aircraft will but first consult the Secretary of the Authority.

Air carriers are for the first time regulated in the light of the public interest and public convenience and necessity, and to this economic regulation Congress has brought a selection of the best that has been evolved in this country in utility regulation in the past fifty years. No longer will there be the absurdities of the past in the competitive bidding for air mail contracts. There must be a carrier fit, able and willing to carry the air mail. It must have a certificate of convenience and necessity from the Authority, which must include air mail service approved upon the petition of the air carrier or the Postmaster General, or both. This certification of need must be judged by the Authority upon the basis of public convenience and necessity actual or reasonably prospective. The air mail rate is then judged and fixed in the light of the inter-relationship of passenger, mail and express revenues, and they must be sufficient, combined in a proportion deemed proper for each service, to assure the performance of that service under existing circumstances through honest, economical and efficient management. The orders of the Authority are given a better standing in court by the provision which protects the findings of fact of the Authority, if they are supported by substantial evidence. On the other hand, and much more important from the public point of view, those affected by such orders are given new and well-defined rights

5. 5 JOURNAL OF AIR LAW 621.

of appeal, and thereby a better day in court than under the Air Commerce Act.

The airport survey is given to the Administrator as his special task to be completed by February 1, 1939. Congress says it wants a survey of the existing system of airports and definite recommendations as to whether the federal government should participate in the development and operation of a *national* system of airports, and, if so, to what extent. To this assignment is being brought the best brains in government, new experts have been added, and, last but by no means least, there is an advisory committee from aviation generally, on which your organization most appropriately has representation. The records show the state aviation people as advocates of federal participation for many years,—perhaps since 1927. Your organization formally went on record in this respect as early as 1934⁶ and you have consistently maintained and urged your position ever since⁷.

We want you, as well as everybody else, to be satisfied with and proud of the results. They must bear the scrutiny of Congressional members, committees and investigators. Therefore the recommendation cannot be made without the most complete possible array of facts to back it up. The approach must be purely objective. No recommendation involving, as it may, large and permanent financial commitments can be conscientiously made in any other manner.

The time is short and the method is to analyze and utilize the mountain of facts in our various government agencies, which facts have hitherto not been correlated, to study in detail every airport presently served by scheduled air transportation and every airport, whether or not so served, in certain states, where the approaching winter weather will permit such a detailed examination, and to make a detailed spot check in all other parts of the country. The inquiry will include the place in the national economy of the communities served by air transportation and the needs and possible contributions to the national economy of communities not now served by air transportation. The studies in each instance will include private flying activities as well as scheduled service. The formula for the study and the recommendation is found in Section 2 of the 1938 Act which I have quoted in the beginning.

The record of the National Association of State Aviation Officials is one of the high marks in public service. Your individual achievements match the collective public record of your organization.

6. 7 JOURNAL OF AIR LAW 553.

7. 9 JOURNAL OF AIR LAW 130.

You have contributed much to the predecessors of the Civil Aeronautics Authority and, as I have pointed out from time to time, you have by public pronouncement advocated the various new and improved parts of the Civil Aeronautics Act of 1938, even including the economic regulation and air mail provisions⁸. It has been said that the aviation industry asked for this regulation. It can be said with equal force that the state aviation officials not only asked for the legislation but were in large measure its architects. Therefore you have a stewardship and an accounting with the Congress and the President that gave us the 1938 Act. You would be indeed derelict if you left to the Authority alone the responsibility for the task. Moreover the Authority needs and wants your cooperation and I, as its representative, formally invite it.

8. 9 JOURNAL OF AIR LAW 130.