

a heavy snowstorm the teachers may collect their salaries for such days without the necessity of reporting to the school building on such days irrespective of any school board requirement therefor.

OFFICIAL OPINION NO. 6

March 25, 1963

Mr. James J. McManus, Director
Aeronautics Commission
1025 State Office Building
Indianapolis 4, Indiana

Dear Mr. McManus:

This is in response to your letter requesting an Official Opinion in answer to the following questions:

- “1. Does the Aeronautics Commission of Indiana have any responsibility and/or authority in regulating the flight of aircraft in or over the State of Indiana?”
- “2. What statutory responsibilities and/or authority confronts the Commission in regard to licensing and regulating intrastate air carriers who may fall outside present and contemplated federal regulations?”

The powers and duties of the Aeronautics Commission of Indiana must be expressed in the statutes of this state. I have examined the statutes pertaining to aeronautics and have found express mention of several powers which the commission has in dealing with matters incidental to the flight of aircraft, but I find no express power to regulate the actual flight itself.

The principal statute defining the powers and duties of the commission is the Acts of 1945, Ch. 360, Sec. 8, as amended, as found in Burns' (1962 Supp.), Section 14-319. This statute gives the commission the responsibility of reporting to the appropriate federal authority any cases of flight by persons

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without an airman's certificate or flight of aircraft without a valid airworthiness certificate, and empowers the commission to assist federal authorities in the conduct of investigations of air accidents. Mention is also made in this statute of a state airways system plan. That portion of the statute reads as follows:

"It (meaning the Commission) may designate, design, publish and revise from time to time a state airways system plan which will best serve the interests of the state. It may chart such airways system and arrange for publication and distribution of such maps and charts and notices and bulletins relating to such airways as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned, provided that such facilities conform to federal safety standards."

The Acts of 1945, Ch. 360, Sec. 1, as found in Burns' (1950 Repl.), Section 14-312, gives the following definition for the word "airway":

"'State airway' means a route in the navigable air space over and above the lands or water of this state, designated by the commission as a route suitable for air navigation."

There are no statutory prohibitions against flight in other than the designated airways or against deviation from these airways. No procedure is set out by statute for determining what shall be an airway or for defining its width, course, altitude or any other feature. It appears that this portion of the act was designed for the purpose of allowing the commission to recommend certain air routes and educate the public in their use, but not to compel the use of these air routes.

Read as a whole the statutes of this state indicate that the primary authority of the commission is to act as a co-ordinating and advisory body to further the development of aviation in the state. Certain regulatory and enforcement powers

have also been conferred upon the commission, notably in the fields of airport certification and approval, aircraft titling and tall structures regulation. However, there is no statute expressly conferring upon the commission any power to control the actual flight of aircraft, aside from the matters incidental to flight mentioned above. It is well established that while an agency has all powers necessary to carry out its express powers, it has no inherent or common law powers.

1 I. L. E. Administrative Law and Procedure § 21;
Sutherland Statutory Construction, 3rd Ed., Vol. 3,
Sec. 6603, p. 268;

Smith v. Thompson Construction Company *et al.*
(1946), 224 Ind. 565, 69 N. E. (2d) 16.

My attention has been directed to the Acts of 1945, Ch. 360, Sec. 2, as found in Burns' (1950 Repl.), Section 14-313, which reads as follows:

“It is hereby declared that the purpose of this act is to further the public interest and aeronautical progress by providing for the protection and increase of safety in aeronautics; by cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states; by revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the building of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics; by establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for cooperation with the federal authorities

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in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state, by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of federal agencies.”

And a portion of Section 8 of the Acts of 1945, Ch. 360, as amended, as found in Burns' (1962 Supp.), Section 14-319, which reads as follows:

“It (the Commission) may perform such acts, issue and amend such orders, and make, promulgate, and amend such reasonable general or special rules, regulations, and procedure, and establish such minimum standards, *consistent with the provisions of this act, as it shall deem necessary to carry out the provisions of this act and to perform its duties hereunder:* all commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this state.” (Our emphasis)

The broad, general language of these two portions of the Aeronautics Commission Act confers no express powers, but merely defines the purpose and scope of the act. Any rule making powers which this language appears to confer is, by the terms of the statute, limited to rules necessary to carry out express duties. Furthermore, no standards or guide lines for administrative action are defined. Any legislative grant of power, in addition to being expressly stated, must be accompanied by well defined standards for the reasonable exercise of the power, or else the grant must fail as an unconstitutional delegation of the legislative function.

Statutes very similar to those above were considered in the case of *State v. Larson* (1932), 10 N. J. Misc. 384, 160 Atl. 556, where the state aviation agency had attempted,

through its rule making power, to regulate and control intrastate aviation. The statutes there considered were a "purposes" section, somewhat more express and explicit than Section 2 of the Aeronautics Commission Act set out above, and a portion of another section which provided in part as follows:

"* * * the commission 'may establish and revise from time to time air traffic rules for the navigation, protection and identification of aircraft which shall conform to and coincide with, insofar as is practicable, the [Federal] air commerce act * * * It may establish standards of air-worthiness for aircraft' * * * It may encourage and effect, insofar as is practicable, uniform field rules for airports."

The act further provided that violation of any portion would constitute a misdemeanor.

There is a great similarity between these statutes and the Indiana statutes. But in the Larson Case the courts rejected the notion that rules promulgated under such statutory provisions could be effective and declared the act itself to be unconstitutional due to the absence of prescribed standards for its application and operation.

It may be well to point out here the method in which other states have empowered their state agencies to deal with these matters. Thus, in Kentucky specific statutory provisions have authorized the granting of certificates of public convenience and necessity and to otherwise regulate intrastate air commerce.

Kentucky Revised Statutes, § 183.530, *et seq.*

New York has prescribed standards for the regulation of intrastate flight.

L. 1909, Ch. 25, § 245, as amended, as found in McKinney's Consolidated Laws of New York Ann., General Business Law, § 245.

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In each of these instances the power to regulate has been expressly stated and detailed standards have been prescribed for accomplishing the regulation.

The only provisions of the Indiana statutes from which any power to regulate flight or commerce could possibly emanate are those set out and discussed above. In light of the preceding discussion these provisions must be regarded as limited, if not by their own express terms, then certainly by necessary implication, to those expressed powers contained elsewhere in the act.

Therefore, it is my opinion that the answers to your questions are as follows:

1. The Aeronautics Commission of Indiana has no authority to regulate the flight of aircraft in or over the State of Indiana.
2. The Commission has no statutory authority to license or regulate intrastate air carriers.

OFFICIAL OPINION NO. 7

April 2, 1963

Hon. Richard C. Bodine
State Representative
208 First National Bank Building
Mishawaka, Indiana

Dear Representative Bodine:

This is in response to your request of March 11, 1963, which reads as follows:

“As a member of the Indiana General Assembly, I respectfully request an Official Opinion be given on whether each political party in the City of Mishawaka may nominate seven candidates for city councilman-at-large.”

The “Roster of State and Local Officials, State of Indiana 1962,” page 69, shows that your city is a city of the third class.