The Right to Self-Fuel

DETAILS

81 pages | | PAPERBACK
ISBN 978-0-309-42988-7 | DOI 10.17226/22985

AUTHORS

THE RIGHT TO SELF-FUEL

By C. Daniel Prather
Prather Airport Solutions, Inc.

I. INTRODUCTION

The primary objective of this report is to inform aviation attorneys and other aviation personnel precisely how federal and local guidelines pertaining to self-fueling have been applied under different circumstances. This report will provide readers with a broad-based understanding regarding the Federal Aviation Administration's (FAA's) position on self-fueling at federally-obligated airports.

There is a need for aviation attorneys and aviation personnel alike to possess a broad-based understanding of the legal issues involved with the development and implementation of rules or regulations that restrict an aircraft owner's right to "self-service." In addition, the airport sponsor is obliged to balance the aircraft owner's right to self-serve against the requirement to effectively control activities that may affect the safe and efficient operation of the airport and the civil aviation needs of the public. This report contains an expansive compilation and interpretation of related source documents including FAA administrative decisions, advisory circulars (ACs), and grant assurances necessary to inform concerned parties of the need to develop rules and regulations, as well as enforcement proceedings relating to self-fueling. However, it is important to note that the final interpretation of the United States Code, federal grant assurances, and FAA policy is ultimately the responsibility of the FAA. The FAA evaluates the reasonableness of any particular rule in the context of the circumstances surrounding the imposition of the rule. Therefore, the development of rules, regulations, and policies to control self-fueling activities should be done on an airport-specific basis.

The Right to Self-Fuel section will serve as a primer to introduce readers to the topic of self-fueling, as well as to the basic information vital to understanding the methodology used in determining compliance with federal grant assurances. This report should provide readers with an understanding of how to proceed with the development of rules and regulations to effectively control self-fueling activity by providing a list of non-airport-specific requirements that have been determined to be in compliance with FAA policy. This section provides an in-depth discussion of topics such as security, environmental concerns, insurance requirements, exclusive rights violations, economic nondiscrimination, and the overall safe and efficient operation of the airport. Definitions of the terms used throughout this report and in FAA opinions can be found in Appendix A. Appendix B summarizes significant federal grant assurances, and AC 150/5190-6*,* Exclusive Rights at Federally-Obligated Airports, is contained in Appendix C.

Appendix D contains an index and abstracts of director's determinations and final agency decisions, under FAA's administrative procedures, that resolve self-fueling cases. These abstracts provide extensive insight on how particular cases have been decided.

II. THE RIGHT TO SELF-FUEL

A. Aircraft Owner/Operator's Right to Self-Fuel

The FAA defines self-fueling as "the fueling or servicing of an aircraft…by the owner (or operator)[1] of the aircraft with his or her own employees and using his or her own equipment."[2] The right to perform such services is protected at all airports in which an airport sponsor has entered into a grant agreement with the FAA (binding the sponsor to all federal airport obligations). It is important to distinguish self-fueling from commercial self-service, which is defined by the FAA as "a fueling concept that enables a pilot to fuel an aircraft from a commercial fuel pump installed for that purpose by a fixed-base operator (FBO) or the airport sponsor."[3]

Perhaps the most clear and concise statement regarding the aircraft owner/operator right to self-fuel can be found in FAA AC 150/5190-6, which states the following:

> 2. Restrictions on Self-Service. An aircraft owner or operator may tie down, adjust, repair, refuel, clean, and otherwise service his/her own aircraft, provided the service is performed by the aircraft owner/operator or his/her employees with resources supplied by the aircraft owner/operator. Moreover, the service must be conducted in accordance with reasonable rules, regulations or standards established by the airport sponsor. Any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation.[4]

This provision describes additional circumstances under which the airport sponsor can restrict the right to self-fuel. These reasons center on airport safety and efficiency. Most of the controversy in this area focuses

[1] The definitions in Appendix 1 of Advisory Circular (AC) 150/5190-6 refer only to the owner; however, the text in AC 150/5190-6 § 1.3(a)(2) refers to the "owner or operator" when referencing self-service rights.

[2] AC 150/5190-6 App. 1.1(o).

[3] AC 150/5190-6 App. 1.1(e).

[4] AC 150/5190-6 § 1.3(a)(2), Jan. 2007. *See also* Grant Assurance 23, App. C.

on whether the sponsor has appropriately denied an owner/operator's specific proposal for self-fueling.

B. Airport Owner Rights and Responsibilities

Grant Assurance 5, Preserving Rights and Powers, in pertinent part, requires of an airport sponsor that has entered into a grant agreement with the FAA the following:

> It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights claims or claims of right of others which would interfere with such performance by the sponsor.[5]

The right of an owner/operator to self-fuel under the rights of self-service has the potential, under many circumstances, to interfere with the performance of other airport obligations. It is the responsibility of the airport sponsor to establish policies, rules, and regulations necessary to control any self-fueling activity in a manner conducive with preserving the public interest of aeronautical users as well as the investment of federal funds. FAA Order 5190-6A, Airport Compliance Requirements,[6] discusses the provisions within Grant Assurance 5 concerning the responsibilities of airport sponsors operating public-use airports that have been developed with federal assistance. One of these obligations that is highly relevant to the analysis of any regulation or restriction of self-fueling activity is Grant Assurance 19, Operation and Maintenance, which requires, in pertinent part, the following:

> The airport and all facilities that are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal state and local agencies for maintenance and operation.

The Airport Improvement Program (AIP)[7] allows for the development of public-use airports with federal funds. Upon acceptance of federal funds from the AIP, the airport sponsor must agree to the federal grant assurances in accordance with Title 49 U.S.C. § 47107, *et seq*., which results in a binding contractual agreement between the federal government and the airport sponsor. The grant agreement, including the grant assurances, spells out requirements for carrying out AIP-grant-funded projects and for operating the airport.

C. Agency's Policy Concerning the Granting of Exclusive-Rights Leases and Permits

AC 150/5190-6[8] contains guidance concerning the position of the FAA on the existence of exclusive rights at federally-obligated airports. The AC on exclusive rights contains a broad and generalized overview of the many issues involved with self-fueling and, in pertinent part, the contractual grant obligations assumed by the operators of public-use airports. However, it is important to understand that ACs are *not* controlling in regards to airport compliance. Rather, they are strict recommendations, and any determination concerning the technical aspects of self-fueling would be decided on an airport-specific basis. In *Lanier Aviation v. Gainesville, GA,*[9] the Director stated, "Advisory Circular AC 150/5190-5 does not impose obligations on a sponsor separate from those imposed by the assurances and federal law…."[10]

In accordance with the Airport and Airway Improvement Act of 1982[11] and the FAA,

> the owner or operator of any airport that has been developed or improved with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity and without granting an exclusive right."[12]

The aircraft owner's right to self-fuel (tie down, repair, adjust, wash, and otherwise service) his or her own aircraft is one of the many self-service activities that is afforded to an aircraft owner or operator protected under Grant Assurance 22, Economic Nondiscrimination. However, this right is subject to the authority of the airport sponsor to establish reasonable and not unjustly discriminatory conditions as may be necessary to assure the safe and efficient operation of the airport.[13]

Grant Assurance 23, Exclusive Rights, states in pertinent part:

> It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public…. It further states that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities including…(the) sale of aviation petroleum products.

In accordance with the FAA, "any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation."[14] The Direc-

[5] Grant Assurance 5(a).

[6] FAA Airport Compliance Requirements, Order 5190/6A, Oct. 1, 1989.

[7] Tit. 49 U.S.C. § 47101, *et seq*.

[8] App. C.

[9] Director's Determination, FAA Docket No. 16-05-03, DOT Docket No. FAA 2005-22367 (Nov. 25, 2005).

[10] *Id*. at 11.

[11] 97 Pub. L. No. 248, 96 Stat. 324.

[12] AC 150/5190-6 § (4).

[13] Grant Assurance 22 § (h).

[14] AC 150/5190-6 § 1.3(a)(2).

tor stated in *Scott v. DuPage*,[15] "[W]e have taken the position that the application of any unreasonable requirement or any standard that is applied in an unjustly discriminatory manner may constitute the constructive grant of an exclusive right to the entity or entities not subject to the same requirements or standards." [16] Exclusive rights can be manifested in several different ways. They can exist through unreasonable minimum standards, rules and regulations, or lease agreements, as well as written or oral contracts that contain the intentions of the involved parties, known as "express agreements." If any of the aforementioned results in channeling self-service activities to a commercial aeronautical service provider, the airport sponsor may be in violation of Grant Assurance 23 regardless of the airport sponsor's intent.[17]

D. Exclusive Rights Violations and Exceptions to the Policy

Pursuant to 49 U.S.C. § 40103(e), "A person does not have an exclusive right to use an air navigation facility (this includes airports) on which government money has been expended." This statutory requirement is parallel to the grant assurance requirement of 49 U.S.C. § 47107(a)(4), which provides an exception to the exclusive rights policy if both of the following apply:

> (1) It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and…and, (2) If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. [18]

There are a few other exceptions to the prohibition on exclusive rights at federally-obligated airports. There are occasions when the revenue potential from a proposed aeronautical service is sufficient to make the sponsoring airport more financially self-sustaining. In these cases, airport sponsors may exercise, but not grant, an exclusive right to provide any or all of the aeronautical services (including the sale of aviation petroleum products), using its own employees and resources.[19] Essentially, the airport itself may exercise an exclusive right for the benefit of the airport, but it may not grant that right to another user (usually an FBO). However, if an airport sponsor chooses to provide such aeronautical services exclusively, the aeronautical users may still choose to exercise their right to self-service, which includes self-fueling.[20]

Also, if an airport sponsor exercises its right to provide any or all of the aeronautical services at the airport in an effort to become more financially self-sustaining, the airport can restrict in full or in part any services of an independent FBO that it chooses to perform exclusively. However, the airport sponsor cannot choose to allow certain FBOs the opportunity to provide a service while excluding others from offering competitive services. Furthermore, any limitation or prohibition of service must be applied uniformly to all aeronautical service providers.[21]

E. Agency's Policy Concerning Economic Nondiscrimination (Grant Assurance 22)

Grant Assurance 22, Economic Nondiscrimination, requires, in pertinent part, that the owner or sponsor of a federally-obligated airport:

- Will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds, and classes of aeronautical activities (this includes the act of self-fueling), including commercial aeronautical activities offering services to the public at the airport. [Assurance 22(a)].
- Shall provide that each air carrier using such airport shall have the right to service itself or to use any fixed-base operator that is authorized or permitted by the airport to serve any air carrier at such airport. [Assurance 22(d)].
- Will not exercise or grant any right or privilege that operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including but not limited to maintenance, repair, and fueling] that it may choose to perform. [Assurance 22(f)].
- May establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport. [Assurance 22(h)].
- May prohibit or limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public. [Assurance 22(i)].

Subsection (i) represents an exception to subsection (a) to allow the airport owner or sponsor to exercise the necessary discretion required to eliminate conditions that would be deemed unsafe or inefficient or would be injurious to the civil aviation needs of the public aeronautical users. This indicates that an airport sponsor is

[15] Director's Determination, FAA Docket No. 16-00-19, 2002 FAA LEXIS 398, 2002 WL 31429252 (July 19, 2002).

[16] *Id*. at 14.

[17] *See also* Pompano Beach v. FAA, 774 F.2d 1529 (1985), unsuccessful challenge to FAA's finding against the granting of exclusive rights as a violation of the Federal Aviation Act of 1956 (49 U.S.C.S. App. § 1349(a)).

[18] Grant Assurance 23 § (a)(b). Grant Assurance 23 is available in its entirety in App. B.

[19] AC 150/5190-6 § 1.3(a)(2).

[20] The position of the FAA concerning the existence of exclusive rights as it relates to single activity is discussed in detail within AC 150/5190-6 § [b.(1)(2)(3)(4)], as well as Grant Assurance 23, which contains similar language.

[21] Grant Assurances 22 and 23.

under no obligation to allow airport tenants to dictate any one preferred method for conducting self-fueling. Rather, an airport sponsor is only obligated to provide an opportunity for self-fueling in a manner that is in the best interest of the public users, not unjustly discriminatory, and without creating an exclusive right.[22]

In *Monaco Coach Corp. v. Eugene Airport*, the Director states:

> The Order describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on reasonable terms without unjust discrimination. [Order, Secs. 4-14(a)(2) and 3-1]. The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. [Order Sec. 3-8(a)].[23]

As applied to the right to self-fueling, the grant assurances require any rules or regulations on self-fueling to be applied on a uniform basis. Additionally:

> In all cases involving restrictions on airport use imposed by airport owners for safety and efficiency reasons, the FAA will make the final determination on the reasonableness of such restrictions when those restrictions deny or limit access to, or use of, the airport. [FAA Order, Sec. 4-8].
>
> …
>
> In regard to self-fueling, the Order states that aircraft owners should be permitted to fuel and otherwise take care of their own aircraft. [Order, Sec. 3-9(e)(1)]. However, an airport owner is under no obligation to permit aircraft owners to introduce on the airport practices that would be unsafe, unsightly, detrimental to the public welfare or that would affect the efficient use of airport facilities. [Order, Sec. 3-9(e)(3)] [].[24]

F. Minimum Standards, Rules, Regulations, and Lease Agreements

Airports generally use minimum standards to control *commercial* activity on the airfield. But if an aircraft owner or operator is fueling his or her aircraft using his or her own employees and equipment, this act is considered to be self-fueling.[25] Self-fueling is not considered to be commercial activity.[26] The FAA recommends that all noncommercial activities be controlled by separate documentation such as rules and regulations or by using specific language within lease agreements.[27] However, it is noted that the term "minimum standards" is often referred to in a generic sense by airports to include any regulatory documents.

G. Restrictions and Requirements on Self-Service

Airport sponsors should not, under any circumstances, impose restrictions that serve to prevent a specific aircraft from fueling at the airport. Rather, the airport sponsor should control such activity through rules and regulations or through specific language within lease agreements. Any and all controls placed on self-fueling should be applied in a uniform manner to all aeronautical users of the airport so as not to create economic discrimination and violation of Grant Assurance 22. Furthermore, the controlling of any such activity must be done without directly or constructively granting an exclusive right to any aeronautical service provider.[28] An airport sponsor is so obligated by Grant Assurance 23 (Exclusive Rights), as interpreted by the FAA in AC 150/5190-6, which provides that, "[A]ny unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation."[29]

The primary obligation of the airport sponsor is to ensure the welfare of its collective aeronautical users and to protect the investment of federal funds. A sponsor is, therefore, under no obligation to consider any preferred method of self-fueling or level of service to accommodate the interest of a specific aeronautical user. Rather, the airport is responsible for providing an opportunity for self-fueling conducive with protecting the collective interest of its aeronautical users, including the safe and efficient operation of the airport.[30]

1. Advisory Circular Guidelines

The FAA has published general guidelines for imposing restrictions on self-service within AC 150/5190-6 as not to infringe on aircraft owner operator rights established within the Federal Grant Assurances (Assurances 22 and 23). These guidelines are listed as follows:

- An airport sponsor may not prevent an owner or operator of an aircraft from performing services on his/her own aircraft with his/her own employees and equipment. Restrictions imposed by an airport sponsor that have the effect of channeling self-service activities to a commercial aeronautical service provider may be an exclusive rights violation;
- An airport sponsor must reasonably provide for self-servicing activity, but is not obligated to lease airport facilities and land for such activity. That is, the

[22] Monaco Coach Corp. v. Eugene Airport, Final Agency Decision (FAD), FAA Docket No. 16-03-17, DOT Docket No. FAA-2004-17366, 2005 FAA LEXIS 195, 2005 WL 82555 (Mar. 4, 2005), at 18; Airborne Flying Serv. Inc. v. City of Hot Springs, Ark., Director' Determination, FAA Docket No. 16-07-06, DOT Docket No. FAA-2008-0189 (Dec. 18, 2007), at 18; Federal Grant Assurance 22 is available in its entirety in App. B.

[23] Monaco, FAD 16-03-17, at 9.

[24] *Id*.

[25] AC 150/5190-6 § 1.3(a)(2).

[26] AC 150/5190-7 § 1.3(c).

[27] AC 150/5190-7 § 1.3(c).

[28] Grant Assurance 23.

[29] AC 150/5190-6 § 1.3(a)(2).

[30] Grant Assurance 22(h).

airport sponsor is not required to encumber the airport with leases and facilities for self-servicing activity; and

- An airport sponsor is under no obligation to permit aircraft owners or operators to introduce equipment, personnel, or practices on the airport that would be unsafe, unsightly, or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public.[31]

2. Restrictions Upheld by Case Precedent

The following is a list of general requirements imposed by airport sponsors on self-fueling operations that the FAA has determined to be reasonable.[32]

- Proof of ownership of the aircraft being fueled.
- Proof of ownership of the fuel truck being used to transport fuel.
- Requirement that the fuel truck being used be equipped with a certified meter used to measure gallons pumped.
- Requirement that all fuel trucks be licensed with the Department of Transportation.
- A plan (complying with all federal, state, and local regulations) for the containment of any spills.
- All licenses and permits required by federal, state, or local governments for the transportation of fuel must be secured and kept current; copies of all required certificates, permits, or licenses shall be submitted to the airport sponsor.
- Insurance coverage in the amount necessary to adequately protect the airport sponsor from any and all environmental damages incurred as a result of self-fueling operations.
- Insurance coverage for any vehicle involved in self-fueling in an amount necessary to adequately protect the airport sponsor from damages incurred as a result of the vehicles used in self-fueling operations.
- A deposit or bond in the amount necessary to cover the deductible of the environmental and vehicle insurance to be held by the airport sponsor.
- A daily log illustrating the quantity of fuel pumped by individual aircraft.
- Notification to the airport sponsor prior to the self-fueling operation, to allow the airport the opportunity to observe before and after readings on the flow meter.[33]

It may be necessary for an airport sponsor to establish further requirements or restrictions to adequately provide for the safe and efficient operation of the airport and the protection of public interest.

3. FAA Involvement

It is vital to note that the development of rules, regulations, and policies necessary to control self-fueling activity should be airport-specific. It is advisable for an airport sponsor to consult with the FAA before attempting to directly apply the rules, regulations, or policies of precedent involving another airport to the sponsor's airport.

4. Fuel Storage Tanks and Environmental Contamination

There are many additional circumstances under which it would be prudent for an airport sponsor to impose restrictions on self-fueling activity. These include situations in which the introduction of "equipment, personnel, or practices, on the airport would be unsafe, unsightly, or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public."[34] There are cases in which an airport tenant has proposed the installation of fuel storage tanks on private leaseholds for the purposes of self-fueling. The installation of private fuel farms is subject to the imposition of restrictions by the airport sponsor on several grounds. If the fuel storage tanks are below ground, the airport sponsor should carefully examine environmental concerns. Environmental contamination resulting from underground fuel storage tanks remains a central concern for all airport managers today. The removal of petroleum contaminants from soil and groundwater can result in a tremendous financial burden for the airport sponsor. Contracts alone have largely proven ineffective in insuring that an airport tenant is the solvent responsible party for the environmental contamination caused by fueling activity. In many instances, airport tenants have filed bankruptcy, leaving the entire cost of cleanup to the airport as the only solvent responsible party. Furthermore, even if the tenant covers the cleanup cost, the removal of contaminants unavoidably involves airport resources and staff, resulting in a reduction of efficiency and the welfare of the airport's aeronautical users.[35]

If the proposed fuel storage tanks are to be above ground, the airport sponsor must reasonably determine and assess all safety concerns, especially if the proposed location is at or near aircraft movement areas. The airport sponsor must also consider that the implementation of private fuel farms would require an inspection and monitoring program and, in many circumstances, additional personnel. All of these requirements could be financially burdensome to the airport.[36]

---

[31] AC 150/5190-6 § (a)(2)(1-3).

[32] *See* Scott Aviation, Inc. v. DuPage Airport Auth., Director's Determination, FAA Docket No. 16-00-19, 2002 FAA LEXIS 398, 2002 WL 31429252 (July 19, 2002).

[33] *Id*. at 8–9.

[34] AC 150/5190-6 § 1.3(a)2(3).

[35] *See, e.g.*, Monaco Coach Corp. v Eugene Airport, Director's Determination, FAA Docket No. 16-03-17, DOT Docket No. FAA-2004-17366 (July 27, 2004), at 7; *aff'd by* Final Agency Decision dated Mar. 4, 2005, 2005 WL 825551.

[36] *Id*. at 8.

5. Reasonable Opportunity for Self-Fueling

The airport sponsor may reasonably restrict self-fueling activities in a way commensurate with protecting the public interest. In the case of *Monaco Coach Corporation v. Eugene Airport and the City of Eugene, Oregon*,[37] Monaco Coach Corporation (complainant) was denied its request to install an aircraft hangar fueling station. Eugene Airport (respondent) contended that the proliferation of private fuel storage facilities would affect the safe and efficient operation of the airport. The airport offered an alternate proposal involving the construction of a fueling area within the vicinity of the existing centralized fuel farm, fulfilling their obligation to provide an opportunity for self-fueling.

6. Airport Layout Plan Restrictions

Eugene Airport also argued that the installation of private fuel farms was not part of the approved Airport Layout Plan (ALP). Grant Assurance 29 requires that all airports have an ALP illustrating all current facilities and future development plans that will be approved by the FAA before any federal funding is granted for airport improvements. Any airport sponsor desiring an improvement, modification, or construction contradictory to the approved ALP would require a revision and approval of the current ALP by the FAA. The Director's Determination stated:

> An airport operator does have limited proprietary powers to impose reasonable and non-discriminatory restrictions on the use of an airport.... One element of this proprietary power is to plan and develop the airport. The segregation of airport users and support facilities (fuel farms) by function is a reasonable and relevant means of developing a consistent plan for the growth and development of the airport.[38]

The Director further states, "Since the Complainant's [Monaco Coach Corp.] proposal does not conform to the City's plan for the development of the Airport, the City has no further obligation to review it."[39]

7. Obligation to Regulate

It is essential for all parties concerned with self-fueling activities to understand that an airport sponsor is obligated to reasonably restrict all aeronautical activities (including self-fueling) that pose a threat to the public interest and the investment of federal funds. It would be advisable for all airports to be proactive in their efforts to establish a self-fueling program (including the adoption and enforcement of rules, regulations, and policies) to maintain compliance with federal obligations. However, it would not be appropriate for an airport sponsor to rely purely on an AC as a means of denying aeronautical activity, and any attempt to do so could render the airport noncompliant with FAA policy. But any party preparing a complaint regarding airport standards for compliance must fully understand the method in which the FAA determines an airport sponsor's compliance with its federal obligations:

> It is the FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place, which in the FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out. [FAA Order 5190.6A, Sec. 5-6(a)(2)].[40]

8. Issues of Noncompliance

In the case of *Cedarhurst Air Charter, Inc. v. County of Waukesha, Wisconsin*,[41] the airport sponsor (County of Waukesha) did not have any formal rules, regulations, or policies in place regarding self-fueling operations. Cedarhurst issued a request to perform self-fueling, which was indefinitely tabled by the sponsor. On September 30, 1999, Cedarhurst filed with the FAA a formal complaint against the county pursuant to the Rules of Practice under 14 C.F.R. Part 16. On April 6, 2000, the FAA issued a Director's Determination finding the County of Waukesha in violation of Grant Assurances 22 and 23. The Director stated in his Determination:

> [T]he Sponsor's actions and lack of action over several years in this matter effectively have prevented tenants or potential tenants, including the Complainant, from making reasonable judgments about the appropriate procedures to exercise and equipment to purchase, in order to conduct safe and efficient self-fueling on the Airport; and the Respondent's (Waukesha) vague and unreliable position regarding self-fueling, in itself, constitutes the exercise of a privilege (to set policy on the safe and efficient use of the Airport) which operates to prevent self-fueling at the Airport. [42]

Cedarhurst clearly illustrates the importance of establishing programs (airport rules, regulations, minimum standards, express agreements) necessary to allow safe and efficient self-fueling at the airport. The development of any such programs should be handled by experienced personnel with the necessary expertise or under close contact with the FAA Airport District Office having jurisdiction over the airport involved.[43]

---

[37] Director's Determination, Docket No. 16-03-17, DOT Docket No. FAA-2004-17366, 2004 WL 3198205 (July 27, 2004).

[38] *Id*. at 20.

[39] *Id*.

[40] Ashton v. City of Concord, N.C., Director's Determination, FAA Docket No. 16-99-09, 2000 FAA LEXIS 150, 2000 WL 132770 (Jan. 28, 2000), at 26. (Ashton filed a complaint against the City of Concord, sponsor of the Concord Regional Airport, alleging that the city, in operating the airport, engaged in activity contrary to its federal obligations.

[41] Director's Determination, FAA Docket No. 16-99-14, 2000 FAA LEXIS 751, 2000 WL 1130495 (Apr. 6, 2000): *aff'd*, Final Decision and Order dated Aug. 7, 2000, 2000 FAA LEXIS 806, 2000 WL 1642462.

[42] *Id*. at 16.

[43] All contact information for the FAA regional and district offices is located at the FAA Web site, http://www.faa.gov.

H. Aircraft Owner/Operator Rights Regarding Self-Fueling

For many purposes, the right of an aircraft owner to self-service (which includes self-fueling) has been extended to operators by the FAA. The term "owner/operator" allows for the owner's right to self-fuel, and otherwise service his or her own aircraft using his or her own employees, to be extended to the operator. The operator would include, but may not be limited to, airlines, charter companies, flight schools, and flying clubs that possess owner-like powers by demonstrating complete operational control, exclusive use of the aircraft, and long-term lease of the aircraft. It is unclear if the FAA uses additional criteria in determining whether a particular operator possesses owner-like powers. However, it is clear that the FAA is required by the statutory provision implemented by Grant Assurances 22(d) and (f) to consider an operator's right to self-service. Each air carrier using the airport shall have the right to service itself or the use of an FBO that is authorized or permitted by the airport to serve any air carrier at such airport.[44] This frequently occurs with airlines who do not own, but rather lease, aircraft under terms that result in the airline (operator) having owner-like powers.[45] The FAA has not issued any formal methodology for determining if a specific operator would possess owner-like powers for the purposes of the right to self-fuel; however, AC 150/5190-6 does offer the general criteria that must be satisfied. Airlines, charter companies, flight schools, and flying clubs may possess owner-like powers without owning the aircraft operated if they meet the following conditions:

- Complete operational control.
- Exclusive use of the aircraft.
- Aircraft leased under long-term contract.[46]

In any case, concerned parties are advised by the FAA to contact their local Airport District Office if there is any doubt concerning the rights of a particular operator in regards to performing self-fueling.

The question of whether an operator has the right to self-fuel is also discussed within the language of Grant Assurance 22, Economic Nondiscrimination. An airport sponsor "will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform."[47] It would be necessary for any party preparing a complaint regarding the violation of Grant Assurance 22(f) to provide evidence verifying which of the vehicles to be self-fueled are owned and which it merely operates. In the case of *AmAv, Inc. v. Maryland Aviation Administration*,[48] such a complaint was filed with the FAA. AmAv is a Part 135 air charter service[49] that operates several business jets, as well as several turboprop aircraft. The record establishes that at least some of the aircraft used in the scope of its charter service were not owned by AmAv, nor did it provide any evidence to the contrary. The Director stated in his Determination that the Maryland Aviation Administration was not required by Grant Assurance 22(f) to allow AmAv to self-fuel these aircraft.[50] However, the Director did find cause under Grant Assurance 22(d) to consider AmAv's self-fueling interest as an air carrier and further reviewed it on that basis.[51]

Just as with the owner, "An aircraft…operator may tie down, adjust, repair, refuel, clean, and otherwise service his/her own aircraft, provided the service is performed by the aircraft owner/operator or his/her employees with resources supplied by the aircraft owner or operator."[52] It is important for those involved in self-fueling activity to distinguish between employees and independent contractors. The FAA does not offer guidance on the status of an "employee" as opposed to an independent contractor. However, airports commonly consider the status of an employee (for the purposes of self-fueling) consistent with the definition provided by the U.S. Internal Revenue Service rules and regulations.[53] Independent contractors perform work independently, and this work is not subject to the control of a supervisor with regard to the methods used to provide services. Independent contractors are usually paid a prearranged fee for fulfilling a specific scope of work within a set period of time. Independent contractors are not employees and are not permitted to perform self-fueling. Aircraft owner/operators who are self-fueling must use their own employees and their own equipment as well. It is necessary to establish what an airport sponsor may reasonably consider to be "equipment" for the purposes of self-fueling. Equipment generally "means all machinery, together with the necessary supplies, tools, and apparatus necessary to properly con-

[44] 49 U.S.C. § 47107(a)(6), Grant Assurance 22(d), *See* AmAv v. Md. Aviation Admin., Docket No. 16-05-12, at 10.

[45] AC 150/5190-6 (n.8).

[46] AC 150/5190-6, at 4 (footnote).

[47] Assurance 22(f).

[48] Director's Determination, FAA Docket No. 16-05-12, DOT Docket No. FAA-2005-22376, 2006 WL 2038717 (Mar. 20, 2006).

[49] 14 C.F.R. pt. 135. (An FAA pt. 135 owner/operator corporation that provides emergency air ambulance and air charter service for local, national, and international clients.)

[50] *Id*. at 10 (footnote).

[51] Grant Assurance 22(d) states "each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport."

[52] AC 150/5190-6 1.3(a) 2.

[53] See IRS code definitions of employee and independent contractor available at http://www.irs.gov/businesses/small/article/0,,id=99921,00.html .

duct the activity or services being performed."[54] This would clearly include any tank vehicle (tank truck, tank fuel trailer, tank semi-trailer) employed in the transportation, storage, or transfer of fuel into or from an aircraft.

I. Part 16 Enforcement Proceedings

Pursuant to 14 C.F.R., Part 16, § 16.23, any person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complaint shall provide a concise but complete statement of the facts relied upon to substantiate each allegation. The complaint shall also describe how the complainant was directly and substantially affected by the things done or omitted by the respondents.[55] If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. However, the claim will be dismissed out of hand if any of the following apply:

- It appears on its face to be outside the jurisdiction of the Administrator under the Acts listed in § 16.1;
- On its face it does not state a claim that warrants an investigation of further action by the FAA; or
- The complainant lacks standing to file a complaint under §§ 16.3 and 16.23. The Directors' Determination will include any and all reasons for dismissal within 20 days following the receipt of the complaint.[56]

Ultimately, in rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance.[57]

The proponent of a motion, request, or order has the burden of proof. A party who has asserted an affirmative defense has the burden of proving the affirmative defense. This standard burden of proof is consistent with the Administrative Procedures Act (APA)[58] and federal case law. The APA provision states, "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof."[59] Title 14 C.F.R. § 16.29(b) is consistent with 14 C.F.R. § 16.23, which requires submittal of all available documents necessary to support the complaint. Further, 14 C.F.R. § 16.29 states that "[e]ach party shall file documents that it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance.[60]

Any party that feels that it has been adversely affected as a result of the Director's initial Determination has 30 days from the initial date of service of the Determination to file an appeal. If any party fails to file an appeal or chooses not to do so, the Director's Determination will become the final decision and order of the FAA, thus resulting in no further action. It is important to note that in accordance with 14 C.F.R. Part 16, § 16.33, any Director's Determination that becomes final as a result of failure to appeal may be subject to judicial review.

Pursuant to 14 C.F.R. Part 16, § 16.23(b)(3), all relevant facts necessary to corroborate the allegations are to be presented within the complaint documents. The review of the Director's Determination by the Associate Administrator shall be limited to the facts presented therein, and no new allegations should be presented on appeal. A complainant who fails to raise all issues necessary to substantiate its claims in the initial complaint may in certain circumstances forfeit the right to introduce new allegations or issues, and any such new evidence would not be reviewable upon appeal.[61]

Pursuant to 14 C.F.R. Part 16, § 16.33, the Associate Administrator will review the Director's Determination and issue a final decision. This may be done without a hearing in circumstances where the complaint is dismissed following an investigation. Upon appeal of the Director's Determination, it is the responsibility of the Associate Administrator to determine that the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence, and that each conclusion of law is made in accordance with applicable law, precedent, and public policy.[62] Judicial review of a final agency decision is made by petition to the U.S. Court of Appeals in the jurisdiction of the complaining party.[63] The standard of judicial review of the final agency decision is governed by the Federal Aviation Act[64] and the APA.[65] Reviewing the adminis-

[54] King County Department of Transportation, Airport Division (Jan. 2007). *King County International Airport: Minimum Standards,* Jan. 2007, at 12, http://your.kingcounty.gov/airport/tenants/minimum_standards.pdf.

[55] 14 C.F.R., pt. 16, § 16.23(b)(3,4).

[56] 14 C.F.R., pt. 16, § 16.25(a)(b)(c).

[57] 14 C.F.R., pt. 16, § 16.29.

[58] 5 U.S.C. § 500, *et seq*.

[59] 5 U.S.C. § 556(d). *See also* Director, Office of Worker's Compensation Programs, Dep't of Labor v. Greenwich Collieries, 512 U.S. 267, 272, 114 S. Ct. 2251, 2255, 129 L. Ed. 2d 221, 227 (1994); Air Canada et al. v. Dep't of Transp., 148 F.3d 1142, 1155 (D.C. Cir. 1998).

[60] 14 C.F.R. pt. 16.29, AmAv FAD, 16-05-12, at 16.

[61] *See also* Sims v. Apfel, 530 U.S. 103, 108-110, 120 S. Ct. 2080, 2084–85, 147 L. Ed. 2d 80, 86–87 (2000), citing Hormel v. Helvering, 312 U.S. 552, 61 S. Ct. 719, 85 L. Ed. 1037 (1941) and United States v. LA Tucker Truck Lines, 344 U.S. 33, 36 n.6, 73 S. Ct. 67, 97 L. Ed. 54 (1952); AmAv FAD, 16-05-12, at 16.

[62] *See, e.g.*, Ricks v. Millington Municipal Airport, FAA Docket No. 16-98-19, 1999 FAA LEXIS 800, 1999 WL 636161 (July 1, 1999) (Final Decision and Order, at 21; 14 C.F.R. pt. 16 § 16.27; AmAv FAD, 16-05-12, at 17.

[63] 14 C.F.R. § 16.247, 49 U.S.C. 46110, *et seq*. *See* Ashton v. City of Concord, 337 F. Supp. 2d 735, 740, 2004 U.S. Dist. Lexis 19217 (2004).

[64] 49 U.S.C. § 46110(c).

[65] 5 U.S.C. § 706.

trative record in its entirety, the FAA's findings of fact are conclusive if supported by substantial evidence.[66] Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[67] Not only must the FAA's factual findings be supported by substantial evidence, but the agency's nonfactual analysis, including its interpretation of any governing statute, application of that statute to the facts, and conclusion be reasonable and not arbitrary and capricious.[68] In other words, there must be a rational connection between the facts found and the decision made by the agency.[69]

Individual self-fueling complainants[70] also have brought direct actions against grant holders; these have included federal antitrust monopoly challenges and civil rights claims in U.S. district courts.[71] Because these cases do not challenge FAA rulings or regulations, the courts have ruled in favor of the claimants against preliminary motions to dismiss based on claim preclusion and failure to exhaust administrative remedies.[72]

III. CONCLUSION

The right to "self-fuel" at federally-obligated airports has been interpreted in many different ways throughout a wide variety of complex circumstances. Further, the many technical aspects that are inevitably involved with self-fueling (such as fuel storage and delivery) require extensive regulation to control, as well as the need to maintain safe and efficient operations. Although there is no clear and concise guide to the rules and regulations that govern self-fueling, the FAA has made available a comprehensive compilation of cases involving self-fueling that provide insight into how such rules and regulations are interpreted under specific circumstances. Abstracts of cases mentioned in this report and other relevant cases are included in this report as Appendix D.

---

[66] See BMI Salvage Corp. v. FAA, 272 Fed. Appx. 842, 845, 2008 U.S. App. LEXIS 7964 (11th Cir. 2008).

[67] *Id*.

[68] *Id*. at 845, 846 (citations omitted). *See also* Boca v. FAA, 363 U.S. App. D.C. 397, 401, 389 F.3d 186, 204 U.S. App. Lexis 23883 (2004).

[69] *Id*. at 845. *See also* Wilson Air v. FAA, 372 F.3d 807, 2004 U.S. App. LEXIS 12430 (2004).

[70] The plaintiff in Scott v. Dupage, 393 F. Supp. 2d 638, 2005 U.S. Dist. LEXIS 9582 (2005) was the founder and principal shareholder of Plaintiff Scott Aviation, Inc.

[71] *See* Cedarhurst v. Waukesha County, 110 F. Supp. 2d 891, 2000 U.S. Dist. LEXIS 12182 (2000); Scott Aviation v. Dupage, 393 F. Supp. 2d 638, 2005 U.S. Dist. LEXIS 9582 (2005).

[72] *Id*.

APPENDIX A

Relevant Terms and Definitions

Bona Fide Employees—Person who is employed by the owner of the aircraft and whose employment can be verified by the United States Internal Revenue Service.

Commercial Self-Service—A fueling concept that enables a pilot to fuel an aircraft from a commercial fuel pump installed for that purpose by an FBO or the airport sponsor. The fueling facility may or may not be attended.

Directly and Substantially Affected—Any person doing business with the airport and paying fees or rentals to the airport shall be considered directly and substantially affected by alleged revenue diversion as defined in 49 U.S.C. 47107(b).

Director's Determination—The initial determination made by the Director of the Office of Airport Safety and Standards following an investigation, which is a nonfinal agency decision.

Equipment—Should include machinery, together with the necessary supplies, tools, and apparatus required to properly conduct the activity being performed. This would clearly include any tank vehicle (tank truck, tank fuel trailer, tank semi-trailer) employed in the transportation, storage, or transfer of fuel into or from an aircraft.

Express Agreements—Written or oral contracts that contain the intentions of the involved parties.

Federally-obligated—Any sponsor of a public-use airport that has accepted federal assistance, either in the form of grants or property conveyances.

Final Decision and Order—A final agency decision that disposes of a complaint or determines a respondent's compliance with any act.

Fixed Base Operator (FBO)—A business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, and flight instruction.

General Standard of Compliance—The FAA's position that the airport owner meets commitments when: (a) the obligations are fully understood, (b) a program (preventive maintenance, leasing policies, operating regulations, etc.) is in place which in the FAA's judgment is adequate to reasonably carry out these commitments, and (c) the owner satisfactorily demonstrates that such a program is being carried out.

Grant Assurances—Once an airport accepts a federal grant, it becomes "federally obligated" and is responsible for adhering to numerous grant assurances. See "Federal Grant Assurance" in Advisory Circular 150/5190-6A for detailed information.

Independent Contractors—Perform work independently, and this work is not subject to the control of a supervisor with regard to the methods used to provide service. Independent contractors are usually paid a prearranged fee for fulfilling a specific scope of work within a set period of time.

Margin—The amount the sponsor charges on retail fuel sales above the actual cost of fuel. It is similar to what is commonly referred to as a fuel-flowage fee, in that it provides financing for the capital and operating costs of the airport.

Minimum Standards—Standards or requirements necessary to ensure that a safe, efficient, and adequate level of operation and services is offered to the public. Minimum standards are developed to control commercial activity. Since self-service operations performed by the owner or operator of the aircraft using his or her own employees and equipment are not commercial activities, the FAA recommends that airport sponsor requirements concerning those noncommercial activities be separate from the document designed to address commercial activities. Airport rules and regulations or specific requirements within leases can better address requirements concerning self-service operations and other airport activities.

Net Cost—Total operational expenses less rent/lease revenues and tax revenues.

Self-Fueling—The fueling or servicing of an aircraft by the owner or operator of the aircraft with his or her own employees and using his or her own equipment. Self-fueling and other self-services cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from a source of his/her preference. As one of many self-service activities that can be conducted by the aircraft owner or operator by his or her own employees using his or her own equipment, self-fueling differs from using a self-service fueling pump made available by the airport, an FBO, or an aeronautical service provider. The use of a self-service fueling pump is a commercial activity, is not considered self-fueling as defined herein, and can be subject to minimum standards. In addition to self-fueling, other self-service activities that can be performed by the aircraft owner with his or her own employees includes activities such as maintaining, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner. Title 14 C.F.R. Part 43 permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot.

Sponsor—1) An airport sponsor is any public agency which, either individually or jointly with one or more other public agencies, has received federal financial assistance for airport development or planning under the Federal Airport Act, Airport and Airway Development Act or Airport and Airway Improvement Act; 2) any private owner of a public-use airport that has received financial assistance from the FAA for such airport; and 3) any person to whom the federal government has conveyed property for airport purposes under section 13(g) of the Surplus Property Act of 1944, as amended.

APPENDIX B

Selected Federal Grant Assurances

5. Preserving Rights and Powers

Grant Assurance 5 is cited under circumstances where a specific aeronautical user is demanding that the airport sponsor allow a preferred method of "self-fueling" or a particular level of service. If the allowance of any specific method of self-fueling would affect the performance of any other federal obligation, then the airport sponsor is under no obligation to allow that activity. In short, the sponsor is only required to provide an opportunity for self-fueling. Further, once the sponsor has provided an opportunity for "self-fueling," the airport sponsor's obligation has been satisfied.

a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.

c. For all noise compatibility program projects that are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

22. Economic Nondiscrimination

Grant Assurance 22(a) has been the source of significant debate within the cases discussed. It is the position of the FAA that federally-obligated airports are required to ensure the collective welfare of the aeronautical users of the airport. In essence, the airport is not required to consider the personal benefit (financial or otherwise) of any one specific user of the airport if it would adversely affect the collective users of the airport, and would inevitably result in an environment of economic discrimination by creating an economic advantage for a specific user of the airport. With that said, this does not allow the airport sponsor to ignore grant assurance 22a, or any other assurance for that matter. Rather, the airport is not required to accommodate the preferred methods of use (self-fueling in this case) just because it would be most suitable for that specific aeronautical user if it would adversely affect the collective users of the airport

a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to- (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.

d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.

e. Each air carrier using such airport (whether as a tenant, non tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non tenants and signatory carriers and non signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.

f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.

g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.

h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights

It is important to understand for all parties involved in "self-fueling" that any and all controls placed on the "self-fueler" must be applied in a uniform manner to all aeronautical users of the airport. This principle should be applied to all aspects of self-fueling to insure that all users of the airport are afforded an equal economic opportunity, as well as avoiding any granting (unintentional or otherwise) of an exclusive right.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

29. Airport Layout Plan

a. It will keep up to date at all times an airport layout plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner

or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

APPENDIX C
AC 150/5190-6

Advisory Circular

U.S. Department
of Transportation
Federal Aviation
Administration

Subject: EXCLUSIVE RIGHTS AT FEDERALLY-OBLIGATED AIRPORTS	**Date:** January 4, 2007 **Initiated by:** AAS-400	**AC No:** 150/5190-6 **Change:**

1. PURPOSE. This advisory circular (AC) provides basic information pertaining to the Federal Aviation Administration's (FAA's) prohibition on the granting of exclusive rights at federally-obligated airports. The prohibition on the granting of exclusive rights is one of the obligations assumed by the airport sponsors of public airports that have accepted federal assistance, either in the form of grants or property conveyances. This AC provides guidance on how an airport sponsor can comply with the statutory prohibition on the granting of exclusive rights. Section 1 explains FAA's policy on exclusive rights, the statutory basis for the policy, and exceptions to the policy. Section 2 provides an overview of how the FAA ensures compliance with applicable federal obligations.

2. CANCELLATION. AC 150/5190-5, *Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities* (Change 1), dated June 10, 2002, is cancelled.

3. DEFINITIONS. Definitions for some of the terms used in this AC are found in Appendix 1.

4. BACKGROUND. In accordance with the FAA Airport and Airway Improvement Act of l982, 49 U.S.C. § 47101, et seq., 49 U.S.C. § 40103(e), and the Airport Improvement Program (AIP) grant assurances, the owner or operator of any airport that has been developed or improved with federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity and without granting an exclusive right.[73] The Surplus Property Act of l944 (as amended by 49 U.S.C., §§ 47151–47153) contains parallel obligations under its terms for the conveyance of federal property for airport purposes.

Similar obligations exist for airports that have received non-surplus government property under 49 U.S.C. § 47125 and previous corresponding statutes. Airports that have received real property under AP-4 agreements remain obligated by the exclusive rights prohibition even though all other obligations are considered expired by the FAA.[74]

[73] The legislative background for the exclusive rights provisions discussed in this AC began as early as l938 and evolved under the Federal-Aid Airport Program (FAAP), Airport Development Aid Program (ADAP), and Airport Improvement Program (AIP), and was also adopted in land conveyances.

[74] See FAA Order 5190.6A (§ 2-18) for additional information.

It is FAA policy that the sponsor of a federally obligated airport will not grant an exclusive right for the use of the airport to any person providing, or intending to provide, aeronautical services or commodities to the public and will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct aeronautical activities. The exclusive rights prohibition applies to both commercial entities engaging in providing aeronautical services and individual aeronautical users of the airport. The intent of the prohibition on exclusive rights is to promote fair competition at federally-obligated, public use airports for the benefit of aeronautical users. The exclusive rights prohibition remains in effect as long as the airport is operated as an airport, even if the original period for which an airport sponsor was obligated has expired.

The granting of an exclusive right for the conduct of any aeronautical activity on a federally-obligated airport is generally regarded as contrary to the requirements of the applicable federal obligations, whether such exclusive right results from an express agreement, from the imposition of unreasonable standards or requirements, or by any other means. Existence of an exclusive right at an airport limits the usefulness of the airport and deprives the public of the benefits that flow from competition.

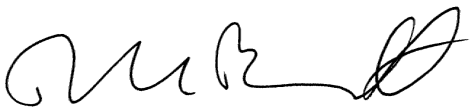
5. RELATED READING MATERIALS.

a. *Federal Aviation Agency Policy Statement, Exclusive Rights at Airports*, Order 5190.1A, as published in the Federal Register (30 FR 13661), October 27, l965.

b. *Rules of Practice for Federally Assisted Airport Proceedings*, as published in the Federal Register (61 FR 53998), October 16, l996.

c. *FAA Airport Compliance Requirements*, Order 5190.6A, October 1, 1989.

d. Further information can be obtained at the Airports District Office (ADO) in your area. A listing of ADOs can be found at http://www.faa.gov/airports_airtraffic/airports/regional_guidance/.



DAVID L. BENNETT
Director, Office of Airport Safety
and Standards

SECTION 1—EXCLUSIVE RIGHTS

1.1. OBLIGATION AGAINST GRANTING EXCLUSIVE RIGHTS. Most exclusive rights agreements violate the grant assurances contained in FAA grant agreements or similar obligations in surplus property conveyances. With few exceptions, an airport sponsor is prohibited from granting a right to a single operator for the provision of an aeronautical activity to the exclusion of others. See definition of exclusive right in Appendix 1. Accordingly, FAA policy prohibits the creation or continuance of exclusive rights agreements at obligated airports where the airport sponsor has received federal airport development assistance for the airport's improvement or development. This prohibition applies regardless of how the exclusive right was created, whether by express agreement or the imposition of unreasonable minimum standards and/or requirements (inadvertent or otherwise).

1.2. AGENCY POLICY. The existence of an exclusive right to conduct any aeronautical activity at an airport limits the usefulness of the airport and deprives the public of the benefits that flow from competitive enterprise. The purpose of the exclusive rights provision as applied to civil aeronautics is to prevent monopolies and combinations in restraint of trade and to promote competition at federally-obligated airports. An exclusive rights violation occurs when the airport sponsor excludes others, either intentionally or unintentionally, from participating in an on-airport aeronautical activity. A prohibited exclusive right can be manifested by an express agreement, unreasonable minimum standards, or by any other means. Significant to understanding the exclusive rights policy, is the recognition that it is the impact of the activity, and not necessarily the airport sponsor's intent, that constitutes an exclusive rights violation.

1.3. EXCLUSIVE RIGHTS VIOLATIONS AND EXCEPTIONS TO THE GENERAL RULE. The following paragraphs address exclusive rights violations and certain exceptions to the exclusive rights policy due to circumstances that make an exception necessary.

a. Exclusive Rights Violations

1. Restrictions Based on Safety and Efficiency. An airport sponsor can deny a prospective aeronautical service provider the right to engage in an on-airport aeronautical activity for reasons of safety and efficiency. A denial based on safety must be based on evidence demonstrating that airport safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. Airport sponsors should carefully scrutinize the safety reasons for denying an aeronautical service provider the opportunity to engage in an aeronautical activity if the denial has the possible effect of limiting competition.

The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. As such, an airport sponsor that is contemplating the denial of a proposed on-airport aeronautical activity is encouraged to contact the local Airports District Office (ADO) or the Regional Airports Office. Those offices will then seek assistance from FAA Flight Standards (FS) and Air Traffic (AT) to assess the reasonableness of the proposed action and whether unjust discrimination results from the proposed restrictions on aeronautical activities because of safety and efficiency.[75]

[75] Here the word "efficiency" refers to the efficient use of navigable airspace, an inherent FAA Air Traffic Control function. That is the reason why FAA Air Traffic (AT) is to be consulted in such cases. It is not meant to be an interpretation that could be construed as protecting the "efficient" operation of an existing aeronautical service provider, for example.

2. Restrictions on Self-Service. An aircraft owner or operator[76] may tie down, adjust, repair, refuel, clean, and otherwise service his/her own aircraft, provided the service is performed by the aircraft owner/operator or his/her employees with resources supplied by the aircraft owner or operator. Moreover, the service must be conducted in accordance with reasonable rules, regulations or standards established by the airport sponsor. Any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft may be construed as an exclusive rights violation. In accordance with the FAA grant assurances:

> **(1)** An airport sponsor may not prevent an owner or operator of an aircraft from performing services on his/her own aircraft with his/her own employees and equipment. Restrictions imposed by an airport sponsor that have the effect of channeling self-service activities to a commercial aeronautical service provider may be an exclusive rights violation.
>
> **(2)** An airport sponsor must reasonably provide for self-servicing activity but is not obligated to lease airport facilities and land for such activity. That is, the airport sponsor is not required to encumber the airport with leases and facilities for self-servicing activity, and
>
> **(3)** An airport sponsor is under no obligation to permit aircraft owners or operators to introduce equipment, personnel, or practices on the airport that would be unsafe, unsightly, or detrimental to the public welfare or that would affect the efficient use of airport facilities by the public.

NOTE: Fueling from a pull up commercial fuel pump is not considered self-fueling under the FAA grant assurances since it involves fueling from a self-service pump made available by the airport or a commercial aeronautical service provider. For the actual definition, see definition "e" Commercial Self-Service Fueling in Appendix 1.

Safety concerns are not limited to aeronautical activities but may include Occupational Safety and Health Administration (OSHA) standards, fire safety standards, building codes, or sanitation considerations. Restrictions by airport sponsors for safety must be reasonable. Examples of reasonable restrictions include restrictions placed on the handling of aviation fuel and other flammable products, including aircraft paint and thinners; requirements to keep fire lanes open; weight limitations placed on vehicles and aircraft to protect pavement from damage; and other similar safety based restrictions.

b. Exceptions to the General Rule

1. Aeronautical Activities Provided by the Airport Sponsor (Proprietary Exclusive Right). The owner of a public-use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. The airport sponsor may exercise, but not grant, an exclusive right to provide aeronautical services to the public. If the airport sponsor opts to provide an aeronautical service exclusively, it must use its own employees and resources. Thus, an airport owner or sponsor cannot exercise a proprietary exclusive right through a management contract.

---

[76] For many purposes, the FAA has for a long time interpreted an aircraft owner's right to self-service to include operators. For example, a significant number of aircraft operated by airlines are not owned but leased under terms that give the operator airline owner-like powers. This includes operational control, exclusive use, and long-term lease terms. The same is true for other aeronautical operators such as charter companies, flight schools, and flying clubs, all of which may very well lease aircraft under terms that result in owner-like powers. If in a particular case, a doubt exists on whether a particular "operator" can be considered as the owner for the purpose of this guidance, please contact the Airports District Office (ADO) in your area. A listing of ADOs can be found at http://www.faa.gov/airports_airtraffic/airports/regional_guidance/.

As a practical matter, most airport sponsors recognize that aeronautical services are best provided by profit-motivated, private enterprises. However, there may be situations that the airport sponsor believes would support the airport providing aeronautical services. Examples include situations where the revenue potential is insufficient to attract private enterprises and it is necessary for the airport sponsor to provide the aeronautical service, or situations where the revenue potential is so significant that the airport sponsor chooses to perform the aeronautical activity itself in order to become more financially self-sustaining. An example of an airport sponsor choosing to provide an aeronautical service would be aircraft fueling. While the airport sponsor may exercise its proprietary exclusive to provide fueling services, aircraft owners may assert the right to obtain their own fuel and bring it onto the airport to service their own aircraft, but only with their own employees and equipment and in conformance with reasonable airport rules, regulations and standards.

2. Single Activity. The fact that a single business or enterprise may provide most or all of the on-airport aeronautical services is not, in itself, evidence of an exclusive rights violation. What is an exclusive rights violation is the denial by the airport sponsor to afford other qualified parties an opportunity to be an on-airport aeronautical service provider. The airport sponsor may issue a competitive offering for all qualified parties to compete for the right to be an on-airport service provider.[77] The airport sponsor is not required to accept all qualified service providers without limitation. The fact that only one qualified party pursued an opportunity in a competitive offering would not subject the airport sponsor to an exclusive rights violation. However, the airport sponsor cannot as a matter of convenience choose to have only one FBO provide services at the airport regardless of the circumstances at the airport.

> **(A) Statutory Requirement Relating to Single Activities.** Since 1938, there has been a statutory prohibition on exclusive rights, 49 U.S.C. § 40103(e), independent of the parallel grant assurance requirement at 49 U.S.C. § 47107(a)(4). This statutory prohibition currently states, "A person does not have an exclusive right to use an air navigation facility on which Government money has been expended." (An "air navigation facility" includes, among other things, an airport. See "Definitions" at 49 U.S.C. § 40102.) The statutory prohibition, however, contains an exception relating to single activities. Specifically, providing services at an airport by only one fixed base operator (FBO) is not an exclusive right if it is unreasonably costly, burdensome, or impractical for more than one FBO to provide the services, and allowing more than one FBO to provide the services requires a reduction in space leased under an existing agreement between one FBO and the airport sponsor. Both conditions must be met. See 49 U.S.C. § 47107(a)(4) (A and B).
>
> **(B)** The grant assurance relating to exclusive rights contains similar language.

3. Space Limitation. A single enterprise may expand as needed, even if its growth ultimately results in the occupancy of all available space. However, an exclusive rights violation occurs when an airport sponsor unreasonably excludes a qualified applicant from engaging in an on-airport aeronautical activity without just cause or fails to provide an opportunity for qualified applicants to be an aeronautical service provider. An exclusive rights violation can occur through the use of leases where, for example, all the available airport land and/or facilities suitable for aeronautical activities are leased to a single aeronautical service provider who cannot put it into productive use within a reasonable period of time, thereby denying other qualified parties the

[77] The grant assurances do not prohibit an airport sponsor from entering into long-term leases with commercial entities, by negotiation, solicitation, or other means. An airport sponsor may choose to select FBOs or other aeronautical service providers through an RFP process, and, if it chooses to do so, it can do it each time a new applicant is considered. This in and by itself is not unreasonable or contrary to the federal obligations.

opportunity to compete to be an aeronautical service provider at the airport. An airport sponsor's refusal to permit a single FBO to expand based on the sponsor's desire to open the airport to competition is not a violation of the grant assurances. Additionally, an airport sponsor may exclude an incumbent FBO from participating under a competitive solicitation in order to bring a second FBO onto the airport to create a more competitive environment.

A lease that confers an exclusive right will be construed as having the intent to do so and, therefore, be an exclusive rights violation. Airport sponsors are better served by requiring that leases to a single aeronautical service provider be limited to the amount of land the service provider can demonstrate it actually needs and can be put to immediate productive use. In the event that additional space is required later, the airport sponsor may require the incumbent service provider to compete along with all other qualified service providers for the available airport land. The grant of options or preferences on future airport lease sites to a single service provider may be construed as intent to grant an exclusive right and therefore, the use of leases with options or future preferences, such as rights-of-first refusal, must generally be avoided. This is because a right of first refusal can allow an existing tenant, at little or no cost, to hold a claim on airport land that could be used for a second FBO, then lease that land when there is a prospect of competition.

4. Monopolies Beyond the Airport Sponsor's Control. Certain exclusive franchises exist on public airports that are sanctioned by local or federal law and do not contravene the FAA's policy against exclusive rights agreements. One such franchise that exists at most public airports is UNICOM, which provides frequencies for air-to-ground communications at airports. The Federal Communications Commission (FCC), which regulates and authorizes the use of UNICOM frequencies, will not issue more than one ground station license at the same airport. Thus, an exclusive franchise is created. A legally supported franchise, such as UNICOM, grants the recipient licensee an advantage over competitors, but does not result in a violation of the agency's prohibition against exclusive rights. In cases such as this, the FAA recommends that the airport sponsor obtain the subject license in its own name. Using droplines, the airport sponsor can then make the facility available to all fixed base operations on an as needed basis. Regardless of which method the airport sponsor uses, control over the facility must be held by the individual or entity that holds the license.

1.5. THROUGH 1.8. RESERVED.

SECTION 2. THE ENFORCEMENT PROCESS

2.1. AIRPORT COMPLIANCE PROGRAM. The FAA ensures airport sponsor compliance with federal grant obligations through its Airport Compliance Program. The Airport Compliance Program arises from requirements in the Airport and Airway Improvement Act of l982, as amended, 49 U.S.C. § 47101, *et seq*., and the airport sponsor's agreement to comply with the assurances contained in the grant agreement in exchange for federal airport development assistance. The Airport Compliance Program is designed to maintain a system of safe and properly maintained airports that are operated in a manner that protects the public's interest and investment in a national airport system.

a. Under the Airport Compliance Program, any person who believes that an airport sponsor may be in noncompliance with a grant assurance may register their concerns with the local FAA Airport District Office (ADO). ADO personnel may investigate informally under

14 C.F.R. 13.1 the allegations of noncompliance and, in the event that the allegations are confirmed, attempt to persuade the airport sponsor to come back into compliance. Should this measure prove unsatisfactory, the concerned party may file a formal complaint under 14 C.F.R. Part 16, Rules of Practice for Federally-Assisted Airport Proceedings. In addition, as described in §16.29(b), the FAA may initiate its own investigation.

b. Complaints filed with the FAA under 14 C.F.R. Part 16 are subject to an administrative review, which entails consideration of the complainant's allegations and the airport sponsor's response to the allegations. The FAA will make a formal written determination on the complaint. A determination against the airport sponsor can result in an FAA action to withhold current and future grant funding for the airport. The FAA's final determination under 14 CFR Part 16 may be appealed to the U.S. Court of Appeals.

2.2. THROUGH 2.5. RESERVED.

APPENDIX 1. DEFINITIONS

1.1. The following are definitions for the specific purpose of this AC.

a. Aeronautical Activity. Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted on airports, include, but are not limited to, the following: general and corporate aviation, air taxi and charter operations, scheduled and nonscheduled air carrier operations, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute or ultralight activities, and any other activities that, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities. Activities, such as model aircraft and model rocket operations, are not aeronautical activities.

b. Airport District Office (ADO). These FAA offices are outlying units or extensions of regional airport divisions. They advise and assist airport sponsors with funding requests to improve and develop public airports. They also provide advisory services to the owners and operators of both public and private airports in the operation and maintenance of airports. See the FAA Web site for a complete listing of all ADO offices at http://www.faa.gov/airports_airtraffic/airports/regional_guidance/.

c. Airport. An area of land or water which is used, or intended to be used, for the aircraft takeoff and landing. It includes any appurtenant areas used, or intended to be used, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon. It also includes any heliport.

d. Airport Sponsor. The airport sponsor is the entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations required of sponsors, which are contained in the AIP grant agreement and property conveyances.

e. Commercial Self-Service Fueling. A fueling concept that enables a pilot to fuel an aircraft from a commercial fuel pump installed for that purpose by an FBO or the airport sponsor. The fueling facility may or may not be attended.

f. Exclusive Right. A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

g. Federal Airport Obligations. All references to a federal grant program, federal airport development assistance, or federal aid contained in this AC are intended to address obligations arising from the conveyance of land or from grant agreements entered under one of the following acts:

(**1) Surplus Property Act of l944 (SPA), as amended, 49 U.S.C. §§ 47151–47153.** Surplus property instruments of transfer were issued by the War Assets Administration (WAA) and are now issued by its successor, the General Services Administration (GSA). However, the law imposes upon the FAA (delegated to FAA from The Department of Transportation) the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-federal public agencies pursuant to the SPA. 49 U.S.C. § 47151(b).

(2) Federal-Aid Airport Program (FAAP). This grant-in-aid program administered by the agency under the authority of the Federal Airport Act of 1946, as amended, assisted public agencies in the development of a nationwide system of public airports. The Federal Airport Act of 1946 was repealed and superseded by the Airport Development Aid Program (ADAP) of 1970.

(3) Airport Development Aid Program (ADAP). This grant-in-aid program administered by the FAA under the authority of the Airport and Airway Development Act of 1970, as amended, assisted public agencies in the expansion and substantial improvement of the Nation's airport system. The l970 act was repealed and superseded by the Airport and Airway Improvement Act of l982 (AAIA).

(4) Airport Improvement Program (AIP). This grant-in-aid program administered by the FAA under the authority of the Airport and Airway Improvement Act of l982, 49 U.S.C. § 47101, *et seq*., assists in maintaining a safe and efficient nationwide system of public-use airports that meet the present and future needs of civil aeronautics.

h. Federal Grant Assurance. A federal grant assurance is a provision within a federal grant agreement to which the recipient of federal airport development assistance has agreed to comply in consideration of the assistance provided.

i. Fixed Base Operator (FBO). A business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, and flight instruction.

j. Grant Agreement. A federal grant agreement represents an agreement made between the FAA (on behalf of the United States) and an airport sponsor for the grant of federal funding.

k. Proprietary Exclusive. The owner of a public-use airport (public or private owner) may elect to provide any or all of the aeronautical services needed by the public at the airport. In fact, the statutory prohibition against exclusive rights does not apply to such owners. However, while they may exercise the exclusive right to provide aeronautical services, they may not grant or convey this exclusive right to another party. The airport sponsor that elects to engage in a proprietary exclusive must use its own employees and resources to

carry out its venture. An independent commercial enterprise that has been designated as an agent of the airport sponsor may not exercise nor be granted such an exclusive right.

l. Public Airport. Means an airport open for public use and that is publicly owned and controlled by a public agency.

m. Public-Use Airport. Means either a public airport or a privately owned airport open for public use.

n. Specialized Aviation Service Operations (SASO). SASOs are sometimes known as single-service providers or special FBOs performing less than full services. These types of companies differ from a full service FBO in that they typically offer only a specialized aeronautical service such as aircraft sales, flight training, aircraft maintenance and avionics services for example.

o. Self-Fueling and Self-Service. Self-fueling means the fueling or servicing of an aircraft (i.e. changing the oil, washing) by the owner of the aircraft with his or her own employees and using his or her own equipment. Self-fueling and other self-services cannot be contracted out to another party. Self-fueling implies using fuel obtained by the aircraft owner from the source of his/her preference. As one of many self-service activities that can be conducted by the aircraft owner or operator by his or her own employees using his or her own equipment, self-fueling, differs from using a self-service fueling pump made available by the airport, an FBO or an aeronautical service provider. The use of a self-service fueling pump is a commercial activity and is not considered self-fueling as defined herein and can be subject to minimum standards. In addition to self-fueling, other self-service activities that can be performed by the aircraft owner with his or her own employees includes activities such as maintaining, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner. Title 14 CFR Part 43 permits the holder of a pilot certificate to perform specific types of preventative maintenance on any aircraft owned or operated by the pilot.

APPENDIX D

Self-Fueling and Related Abstracts

The following abstracts through December 2007 are excerpted, in alphabetical order, from Transportation Research Board, Compilation of DOT and FAA Airport Legal Determinations and Opinion Letters Through December 31, 2007, ACRP Legal Research Digest 4, CD-ROM, prepared by Spiegel & McDiarmid LLP, Washington, D.C. (principal contributors were Pablo O. Nüesch, John J. (Jack) Corbett, Elaine C. Lippmann, Vivian W. Chum, and Jeffrey J. Berns). The CD-ROM is available at the Transportation Research Board Business Office, 500 Fifth Street, NW, Washington, DC 20001. Subsequent decisions were abstracted by Jocelyn Sands, J.D., Washington, D.C.

USA Order URL: http://www.trb.org/news/blurb_detail.asp?id=9675

Full FAA decisions may be accessed through the FAA Web site case search located at http://part16.airports.faa.gov/index.cfm

ISSUE INDEX

PRESERVING RIGHTS AND POWERS (GRANT ASSURANCE 5)

ACCOUNTING SYSTEM, AUDIT, AND RECORD KEEPING REQUIREMENTS (GRANT ASSURANCE 13)

OPERATION AND MAINTENANCE (GRANT ASSURANCE 19)

HAZARD REMOVAL AND MITIGATION (GRANT ASSURANCE 20)

ECONOMIC DISCRIMINATION (GRANT ASSURANCE 22)

EXCLUSIVE RIGHTS (GRANT ASSURANCE 23)

Airborne Flying Serv., Inc., v. City of Hot Springs, Ark.

FAA Docket No. 16-07-06, DOT Docket No. FAA-2008-0189.

Director's Determination (December 18, 2007).

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Airborne Flying Service, Inc.

Respondent: Hot Springs (Ark.).

Airport: Hot Springs Memorial Airport (HOT).

Holding: Dismissing complaint.

Abstract:

Complainant Airborne Flying Service, Inc. filed a complaint against Respondent, City of Hot Springs, Arkansas, sponsor of Hot Springs Memorial Airport, alleging that Respondent was in violation of Grant Assurance 22 for its failure to allow Complainant to self-fuel its aircraft. The Director found Respondent was not in violation of grant assurances and dismissed the Complaint.

Self-fueling:

Evidence of motive is not irrelevant to a claim that a sponsor has unreasonably restricted self-fueling, but must be accompanied by proof that a sponsor unreasonably denied access. (pp. 14–15).

Respondent did not unreasonably restrict Complainant's ability to self-fuel its aircraft in violation of Grant Assurance 22 where Respondent required Complainant to place above-ground fuel tanks at the Airport Fuel Farm and truck the fuel across the Airport. (pp. 18–19).

Airborne v. City of Hot Springs, AR.

FAA Docket No. 16-07-06.

Final Decision and Order (May 2, 2008).

Author: Shaffer, D. K., Associate Administrator for Airports.

Complainant: Airborne Flying Service, Inc.

Respondent: City of Hot Springs, Ark.

Airport: Hot Springs Memorial Airport (HOT).

Holding: Affirmed Director’s Determination of December 18, 2007.

Abstract:

In the original complaint, Airborne, the Complainant, alleged the City of Hot Springs, The Respondent, refused to accommodate, in a reasonable manner, the Complainant’s desire to self-fuel its aircraft in violation

of the Respondent's federal obligations under Grant Assurance 22. The Respondent denied the allegation, stating it did not unreasonably restrict the Complainant's ability to self-fuel, because the Complainant proposed a method of self-fueling that was unacceptable. The Director found that the record did not provide sufficient evidence to sustain the complaint, and therefore dismissed the complaint. The Complainant's appeal states that the Director committed errors in conducting the investigation and interpreting the evidence, causing the dismissal of its complaint. The Associate Administrator affirmed all findings of the Director's Determination and additionally found the following:

- The Director did not err in relying on *Monaco Coach* to support his determination that the City is not in violation of its federal obligations by refusing to accept the Complainant's preferred method of self-fueling and instead, offering a method of self-fueling that is more costly and less convenient to the Complainant.

- The Director did not err in relying on *BMI Salvage* to support its determination that motive is not sufficient to support a finding of noncompliance when there has been no denial of access.

AmAv, Inc. v. Md. Aviation Admin.

FAA Docket No. 16-05-12, DOT Docket No. FAA-2005-22376.

Director's Determination (March 30, 2006).

2006 WL 2038717.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: AmAv, Inc.

Respondent: Maryland Aviation Administration.

Airport: Martin State Airport (MTN).

Holding: Dismissing complaint.

Abstract:

Complainant AmAv, a Part 135 Air Carrier, filed a complaint against Respondent, Maryland Aviation Administration, sponsor of Martin State Airport, alleging that Respondent denied Complainant access to self-fuel its aircraft on reasonable terms in violation of Grant Assurance 22(d). Complainant alleged that Respondent had (1) instituted unreasonable standards regarding self-fueling at the Airport or implemented standards in an unreasonable manner; and/or, (2) refused to accept and accommodate specific proposals from Complainant regarding their preferred method of self-fueling at the Airport. The Director found Respondent not in violation of Grant Assurance 22 and dismissed the Complaint.

Reasonable Conditions for Safe and Efficient Operation:

Grant Assurance 22(h) recognizes Respondent's "proprietary right to operate its airport safely and efficiently, including reasonable conditions to promote compliance with reasonable terms of use, safety and environmental issues with regard to fueling, including self-fueling." (p. 16).

Where Respondent's standards mirrored requirements or guidance set forth by the EPA and were, in fact, agreed to by Complainant, they were not unreasonable. (p. 20).

Requiring secondary containment of refueler trucks was not, necessarily, unreasonable.

Respondent did not act unreasonably by applying to Complainant the EPA requirement that fuelers build a containment area while allowing self-fuelers with existing facilities additional time to comply, where the EPA guidance permitted this and Complainant was actually self-fueling along side other operators by special permission of Respondent. (p. 20).

Lease Terms:

A contract term of three years was not unreasonably short given Respondent's stated desire to have all its fuel farm leases expire at the same time to facilitate uniformity of lease terms. (p. 21).

"The FAA does not find a sponsor in noncompliance because a party to an agreement with that sponsor later objects to a provision in that agreement." (p. 21). The lease/contract entered into by Claimant and Respondent expired in less than three years; included no automatic renewal clause; the Airport Authority could cancel on short notice for no reason and the Claimant would be reimbursed only for the undepreciated value of its leasehold improvements. The FAA considered actual actions or inactions of a sponsor when considering questions of compliance, rather than the terms of an agreement freely entered into by the parties. Had Respondent insisted on an unreasonable term over the objections of an aeronautical user, that might have constituted evidence of a violation. But where Respondent did not cancel its lease with Complainant until after Complainant had altered its self-fueling operations to be inconsistent with Minimum Standards, and failed to pay a fuel flowage fee, no discriminatory treatment was shown. (p. 21).

Fuel Flowage Fees:

"[R]egardless of contract terms between parties, it is reasonable and customary, as well as consistent with the grant obligations of an airport sponsor to assess a fuel flowage fee for refueling aircraft on its airport." (p. 24). Under Grant Assurance 22(d), the Airport Authority "may use any acceptable methodology in assessing fees, provided one group of aeronautical users is not subsidizing another group." (p. 24).

Right to Self-fuel:

The fact that Complainant was, actually, self-fueling for the 13 months of negotiations, albeit on a temporary basis, discredited the argument that it was denied the right to self-fuel. (p. 24).

Affirmed by Final Decision and Order of Aug. 8, 2006.

AmAv, Inc. v. Md. Aviation Admin.

FAA Docket No. 16-05-12, DOT Docket No. FAA-2005-22376.

Final Decision and Order (August 8, 2006).

2006 FAA LEXIS 594. 2006 WL 2528731.

Author: Lang, Catherine M., Acting Associate Administrator for Airports, FAA.

Complainant: AmAv, Inc.

Respondent: Maryland Aviation Administration.

Airport: Martin State Airport (MTN).

Holding: Affirming Director's Determination of Mar. 20, 2006.

Abstract:

In the original complaint, Complainant AmAv alleged that Respondent, Maryland Aviation Administration, sponsor of Martin State Airport, denied Complainant access to self-fuel its aircraft on reasonable terms in violation of Grant Assurance 22(d). Complainant alleged that Respondent had (1) instituted unreasonable standards regarding self-fueling at the Airport or implemented standards in an unreasonable manner; and/or, (2) refused to accept and accommodate specific proposals from Complainant regarding their preferred method of self-fueling at the Airport. The Director found Respondent not in violation of Grant Assurance 22 and dismissed the Complaint and Complainant appealed. The Associate Administrator affirmed all findings of the Director's Determination and additionally found the following:

Through-the-fence:

An airport sponsor is obligated to provide an opportunity for self-fueling, which Respondent had fulfilled through its on-site fueling program. But there is no requirement for an airport sponsor to permit through-the-fence operations, including self-fueling activities. (p. 19)

Should an airport sponsor decide to allow fueling from an off-site location, it should have sufficient reasonable controls in place to ensure safe operations, including parking and dispersing constraints, training requirements, minimum mandatory insurance, special permits and licenses. (p. 19).

Minimum Standards:

Airport sponsor did not unjustly discriminate against an airport user when it subjected the user to new requirements imposed by updated minimum standards. "An airport sponsor may appropriately modify its minimum standards from time to time to reflect changes in law, policy, technology, or airport operations, as well as other relevant issues that may arise." (p. 20).

Ashton v. City of Concord, N.C. (1999)

FAA Docket No. 16-99-09.

Director's Determination (January 28, 2000).

2000 FAA LEXIS 150. 2000 WL 132770.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Ashton, Kent J.

Respondent: Concord (N.C.).

Airport: Concord Regional Airport (JQF).

Holding: Dismissing complaint.

Abstract:

Complainant Kent J. Ashton filed a complaint against Respondent City of Concord, NC, sponsor of the Concord Regional Airport, alleging violations of Grant Assurance 22 and Grant Assurance 23. Complainant

parked his experimental aircraft on the ramp at the Airport. A year later he became dissatisfied with the services offered by airport management. Complainant alleged that Respondent violated its grant assurances by (1) restricting certain aeronautical activities through the establishment of unreasonable rules and procedures and the failure to provide certain facilities and services, (2) unjustly discriminating against certain aeronautical users, and (3) granting a constructive exclusive right through these discriminatory practices. Director found Respondent not in violation and dismissed the Complaint.

Unreasonable Restriction of Access:

Respondent's requirement that aircraft stored at the Airport be airworthy did not unreasonably restrict access to the Airport in violation of Grant Assurance 22(a), because "storage of aircraft parts is not a protected aeronautical activity under the grant assurances, leaving the Sponsor with the discretion to regulate such storage in leaseholds." (p. 18). "Restricting final-stage experimental aircraft assembly to particular locations on the Airport, and requiring that the nonairworthy components be delivered to the Airport at a certain level of construction are reasonable requirements separately and cumulatively and do not constitute a denial of access for an aeronautical activity." (p. 19).

Respondent's restriction of maintenance operations to designated areas only (and not to users' storage areas) was not an unreasonable restriction. It was a reasonable exercise of a Sponsor's discretion under Grant Assurance 22(h) and (i) to determine that to protect the safety and welfare of tenants and users, and for environmental protection, liability, and managerial reasons, the Airport was best served by requiring maintenance to be performed only in designated areas. (pp. 19–20).

It was not an unreasonable restriction to prohibit painting aircraft in the aircraft storage areas, because "an airport owner is under no obligation to permit aircraft owners to introduce on the airport equipment, personnel or practices which would be unsafe, unsightly, detrimental to the public welfare, or which would affect the efficient use of the airport facilities by others." (pp. 20–21).

Respondent's private hangar building rules, which required significant investment, did not unreasonably restrict access in violation of Grant Assurance 22(a); "the fact that some people may not be able to afford to meet the minimum standards is not tantamount to an unreasonable restriction to aeronautical access." (p. 21). Moreover, Complainant did not establish that Respondent turned down any reasonable proposal for the leasing of available space appropriate for building. (pp. 21–22). Finally, constructing an aircraft was not an aeronautical activity and did not enjoy the same protections by the grant assurances as did self-maintenance of aircraft. (p. 22).

A Sponsor's discretion to manage its airport as stated in Grant Assurance 22(h) and (i) clearly included the ability to restrict T-hangar storage to single aircraft. (p. 22).

Respondent's decision not to offer auto fuel was a business decision within its rights to make and it was not obligated to provide any further justification. (p. 23).

Complainant's allegation that use of the designated maintenance area was inconvenient or impractical was insufficient for a claim of unreasonable restriction where Complainant and other users used the facility regularly. A Sponsor may require the aeronautical user to use equipment commensurate to the job being done, but does not require the Sponsor to provide such equipment, nor does the Sponsor have to provide facilities to perform hazardous operations, absent a proposal to pay for such a facility and the availability of space to locate such a facility. (p. 23).

Respondent's requirement that Complainant waive rights to recover damages against it and that Respondent be named an Additional Insured on Complainant's insurance policy were not unreasonable restrictions in violation of Grant Assurance 22. "It is consistent with the Sponsor's grant assurances for the sponsor to protect itself against exposure to the liability associated with public use of airport property. The Sponsor may protect its ability to remain a going concern, while continuing to make itself available on a fair, reason-

able and not unjustly discriminatory basis, by establishing general liability insurance requirements for users of the airport.…." (pp. 24–25).

FAA would not order Respondent to cease and desist from limiting or restricting the access of members of the general public to use the Airport. "Providing protection to an individual from the consequences of his or her nonaeronautical activity, such as being cited for trespassing, is not the responsibility of the Sponsor under the Grant Assurances and is not within the jurisdiction of the FAA." (p. 25).

"The FAA notes that the Sponsor's obligation to make the airport available to the public, does not mean that the sponsor is obligated to provide a specific level of service or level of convenience." (p. 25).

Economic Nondiscrimination (Grant Assurance 22):

"Management issues such as economy of collection and efficient use of the airport's limited facilities can be justifications for differing treatment of differing users of the airport." (p. 26).

"…incidental or isolated failings to treat all users exactly the same are not sufficient to determine that the Sponsor is in noncompliance." (p. 26). "[I]ncidental noncompliance by Airport users does not constitute a Sponsor's unjust economic discrimination." (p. 30).

Where Respondent had provided private building opportunities to certain parties on the Airport through individual lease agreements, Respondent was not automatically obligated to also offer such private building opportunities to all other users. "If the Sponsor has a demand for a particular private aeronautical use of the facilities, and the proponents of that use are willing and eager to pay for that use, then the Sponsor is not obligated to withhold suitable property for the convenience of some other individual aeronautical use." (p. 27).

Respondent had not unjustly discriminated against Complainant by failing to provide certain services (on-grass parking, condominium hangars, shadeports, auto-fuel). Since none of these facilities and/or services were available on the Airport, there could be no unjust discrimination among users of the Airport. (pp. 27–28).

It was consistent with Grant Assurance 22(h), which allowed the sponsor to provide for the safe and efficient operation of the airport, to limit the usage of T-hangars to the storage of a single, airworthy aircraft. (p. 28).

The fact that an owner of a corporate jet was permitted by its lease to perform maintenance in its hangar while Complainant was not, was not unjust discrimination where Complainant and owner of a corporate jet were not similarly situated. "This lease provision constitutes an increased level of convenience that is afforded the tenant due to the appropriate nature of the hangar and the fact that the tenant is paying a fee for the increased level of convenience." (p. 29).

"The grant assurances, and long-standing FAA policy recognize that leaseholders, based at the Airport, are not similarly situated to transient users." Therefore, requiring leaseholders, but not transient users, to carry liability insurance was not unjustly discriminatory. (p. 31).

Exclusive Rights (Grant Assurance 23):

None of the above-described restrictions were so unreasonable as to rise to the level of granting an exclusive right. (p. 33).

Affirmed by Final Decision and Order of July 3, 2000.

Ashton v. City of Concord, N.C. (1999)

FAA Docket No. 16-99-09.

Final Decision and Order (July 3, 2000).

2000 FAA LEXIS 881.

Author: Woodward, Woodie, Acting Associate Administrator for Airports, FAA.

Complainant: Ashton, Kent J.

Respondent: Concord (N.C.).

Airport: Concord Regional Airport (JQF).

Holding: Affirming Director's Determination of Jan. 28, 2000.

Abstract:

In the original complaint, Complainant Kent Ashton alleged that Respondent Concord Regional Airport engaged in activities that were contrary to its Federal obligations pertaining to reasonable public access to the Airport without unjust discrimination and exclusive rights. The Director found no violation and dismissed the Complaint. On appeal, Complainant claimed that the Director committed procedural errors in the conduct of the investigation and substantive errors in his interpretation of the evidence causing the FAA to erroneously dismiss the Complaint. The Associate Administrator affirmed all findings of the Director's Determination and additionally found the following:

Alleged Procedural Errors:

Under Part 16, the FAA may seek additional information from a party as needed to complete its investigation outside of the defined pleadings, but is not required to provide the other party an opportunity to rebut that evidence. (p. 8).

Communication by an FAA investigator with the Respondent to clarify facts in the record was not improper ex parte communication. To be considered an improper ex parte communication, the communication must be with an FAA decisional employee as defined by 14 C.F.R. § 16.301. (p. 10).

Petitions for review denied sub nom. Ashton v. FAA, 19 Fed. Appx. 81 (4th Cir. 2001), cert. denied, 535 U.S. 906 (2002).

Ashton v. City of Concord, N.C. (2000)

FAA Docket No. 16-00-01.

Director's Determination (October 16, 2000).

2000 FAA LEXIS 1017. 2000 WL 1642458.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Ashton, Kent J.

Respondent: Concord (N.C.).

Airport: Concord Regional Airport (JQF).

Holding: Dismissing complaint.

Abstract:

Complainant Kent Ashton filed a complaint against Respondent, City of Concord North Carolina, sponsor of the Concord Regional Airport, alleging that Respondent, in operating the Airport, had engaged in activity that violated Grant Assurance 22 and the Fourteenth Amendment of the U.S. Constitution. Complainant alleged that Respondent's requirement that he sign an Aircraft Storage Permit which contained a 'non-voluntary lease termination provision' violated Grant Assurance 22 because it was not necessary for the safe and efficient operation of the Airport, confusing, ambiguous, open to interpretation and contradictory in nature. Complainant further alleged that Respondent violated his liberty interest guaranteed by the Fourteenth Amendment by restricting his use of the Airport without procedural due process. The Director dismissed the Complaint.

Unreasonable Restriction:

Where Complainant photographed, bothered and harassed other tenants, used the Airport for non-aeronautical purposes and entered areas of the Airport that he knew he was not to enter, his eviction from the T-hangar was not an unreasonable restriction of his access to the Airport. Complainant could still take-off, land, drop-off and pick up passengers, he could have his aircraft serviced, and he could fuel his aircraft. He had the same rights to use the Airport as any other non-tenant. (pp. 8, 11).

Fourteenth Amendment:

Complainant's claim that the right to use a federally funded airport was a "liberty interest" protected by the Fourteenth Amendment of the United States Constitution would not be heard by the FAA. "The FAA's administrative complaint process for matters pertaining to federally assisted airports is not the proper forum for review of Complainant's claims of violations of constitutional, state, or local laws." (p. 14).

Economic Nondiscrimination (Grant Assurance 22):

Respondent's required Aircraft Storage Permit that contained a non-voluntary lease termination provision allowing the City to terminate the lease without cause did not, by itself, establish a violation of Grant Assurance 22. In order to establish a violation of Grant Assurance 22 Complainant would have to demonstrate that Respondent exercised the provision for unjust reasons or in an unjustly discriminatory manner. (p. 15).

Complainant had not shown that Respondent unjustly discriminated against him by evicting him from the hangar where Complainant admitted that he entered the Airport to observe the activity of other T-hangar tenants and to photograph their activities; admitted that the process was bothersome and unpleasant for the parties involved; and admitted that on several occasions the airport authorities gave him various verbal instructions to, among other things, "not enter any area not required for his aviation activity," which he ignored. Complainant provided no evidence to show that another tenant at the Airport had been repeatedly warned of violations of airport rules and regulations and did not have their T-hangar permit terminated. (p. 16).

Affirmed by: Final Decision and Order of Apr. 17, 2001.

Ashton v. City of Concord, N.C. (2000)

FAA Docket No. 16-00-01.

Final Decision and Order (April 17, 2001).

2001 FAA LEXIS 448. 2001 WL 865709.

Author: Woodward, Woodie, Acting Associate Administrator for Airports, FAA.

Complainant: Ashton, Kent J.

Respondent: Concord (N.C.).

Airport: Concord Regional Airport (JQF).

Holding: Affirming Director's Determination of Oct. 16, 2000.

Abstract:

In the original complaint, Complainant Kent Ashton alleged that Respondent, City of Concord North Carolina, sponsor of the Concord Regional Airport, engaged in activity that violated Grant Assurance 22 and the Fourteenth Amendment of the U.S. Constitution. Complainant alleged that Respondent's requirement that he sign an Aircraft Storage Permit containing a 'non-voluntary lease termination provision' violated Grant Assurance 22 because it was not necessary for the safe and efficient operation of the Airport, confusing, ambiguous, open to interpretation and contradictory in nature. Complainant further alleged that Respondent violated his liberty interest guaranteed by the Fourteenth Amendment by restricting his use of the Airport without procedural due process. The Director found no violation of Grant Assurance 22 and found that it had no jurisdiction to consider the Fourteenth Amendment claim. Complainant appealed. The Associate Administrator affirmed all findings of the Director's Determination.

Petitions for review denied sub nom. Ashton v. FAA, 19 Fed. Appx. 81 (4th Cir. 2001), cert. denied, 535 U.S. 906 (2002).

The Aviation Center, Inc. v. City of Ann Arbor, Mich.

FAA Docket No. 16-05-01, DOT Docket No. FAA-2005-20913.

Director's Determination (December 16, 2005).

2005 WL 3722716.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: The Aviation Center, Inc.

Respondent: Ann Arbor (Mich.).

Airport: Ann Arbor Municipal Airport (ARB).

Holding: Dismissing complaint.

Abstract:

Complainant FBO filed a complaint against the City of Ann Arbor, Michigan, owner and operator of Ann Arbor Municipal Airport, alleging that Respondent was engaged in economic discrimination and had granted another FBO an exclusive right in violation of Grant Assurances 22 and 23 by permitting the other FBO to operate at the Airport in violation of the Airport's Minimum Standards. The Director found the City not to be in violation of either Grant Assurance 22 or 23 and dismissed the Complaint.

Exclusive Rights (Grant Assurance 23):

Respondent had not granted an exclusive right by terminating its T-hangar lease with Complainant and renting the T-hangar directly to Complainant's sublessee where neither of the other two FBOs had exclusive control of the Airport's T-hangars. Complainant leased five T-hangars and the other two FBOs leased one and three respectively. Therefore, no FBO had an exclusive right. (p. 21).

Economic Nondiscrimination (Grant Assurance 22):

Respondent's refusal to allow Complainant to install and operate a self-fueling facility did not amount to unjust discrimination where there was no evidence that Respondent granted this opportunity to anyone else and Respondent had a reasonable explanation for its refusal, namely, Complainant's failure to meet certain commitments under its FBO agreement and Respondent's concern over possible contamination of its water supply. (p. 22).

Respondent allowing a competing FBO to operate without complying with the City's Operational Standards did not unjustly discriminate against Complainant where city council did not make Operational Standards mandatory, the Operational Standards were not part of Complainant's lease or other leases executed after their adoption and Operational Standards were not a recognized threshold to obtain an FBO contract. "An airport sponsor has the continuing right to revise, change or eliminate its minimum standards." (pp. 23–24).

Complainant was not similarly situated with competing FBO regarding lease terms, conditions, and facilities. Although they provided the same services (with the exception of aircraft storage), Complainant could provide additional services without prior approval from the City while competitor had to obtain prior approval before introducing a new service; the lease terms were significantly different—Complainant had a ten-year lease with two five-year options and competitor had a three-year lease with an option for two years and no minimum capital investment requirement. (p. 25).

The fact that competing FBO operated out of the terminal even though there was unused land elsewhere on the Airport did not unjustly discriminate against Complainant where Respondent contended that the vacant building was uninhabitable and the other parcel was not available without relocation of the air traffic control tower. "It is the City's right, under Grant Assurance 29, Airport Layout Plan to determine how airport land will be used, specifically…the location and nature of all existing and proposed airport facilities and structures." (pp. 25–26).

The fact that competing FBO may have had a competitive advantage by using the terminal and terminal apron to provide aeronautical services did not amount to unjust discrimination against Complainant where Respondent had not restricted Complainant's access to the terminal and terminal apron and Complainant and all other FBOs were free to provide aeronautical services to the public at the terminal and terminal apron. "The key here is whether the airport's actions effectively promote competition, the public's use of the airport and the interest of civil aviation overall, and we conclude that the City's acts don't hinder these important aeronautical purposes." (p. 27).

The fact that Complainant was exposed to higher costs associated with its long term lease than competing FBO had with its short term lease did not amount to unjust discrimination where Complainant voluntarily negotiated its lease to amortize improvements to its real property facilities and airport tenants paid the same rental rate per square foot. "There is no Federal requirement that an airport sponsor equalize the capital and operating costs of competing fixed-base operators." (p. 27).

BMI Salvage Corp. v. Miami-Dade County, Fla.

FAA Docket No. 16-05-16, DOT Docket No. FAA-2005-22380.

Director's Determination (July 25, 2006).

2006 FAA LEXIS 561. 2006 WL 2512974.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainants: BMI Salvage Corp.; Blueside Services, Inc.

Respondent: Miami-Dade County (Fla.) Aviation Department.

Airport: Opa-Locka Airport (OPF).

Holding: Dismissing complaint.

Abstract:

Complainants BMI Salvage Corp. and Blueside Services, Inc., two companies with a common owner, filed a complaint against Miami-Dade County's Aviation Department regarding its management of the Opa Locka Airport, which they claimed violated Grant Assurance 22. The Director found Respondent not in violation and dismissed the Complaint.

Personal Complaints:

"The FAA does not enforce contracts or leases between parties, investigate allegations of criminal behavior, nor review personal complaints." Complainants' assertions regarding personal motives, personal behavior, corruption, poor management strategies and other inadequacies that were not specifically part of a properly submitted allegation of noncompliance by a sponsor with its federal obligations were therefore not considered. (p. 11).

Economic Nondiscrimination (Grant Assurance 22):

A proposed NOTAM that required 72-hours notice for the landing of all aircraft over 100,000 lbs was not unjustly discriminatory where (1) the requirement had never been implemented (no aircraft had ever been denied access to the airport because it failed to provide the required notice); and (2) it was a reasonable restriction given that a salvage company like the Complainant might be a source of a build-up of aircraft in various stages of demolition. (p. 14).

Motive or ill will did not, alone, amount to non-compliance. Such evidence must be accompanied by an actual unreasonable denial of access for an aeronautical activity or unjust discrimination. (p. 16).

Nothing in the federal obligations prevented Respondent from recognizing that two separate businesses share the same owner and therefore the actions of one business might make similar actions by the other business more likely. (p. 18).

Respondent's "derelict aircraft ordinance" that mandated notification of non-operating aircraft after 60 days was not an unreasonable burden and therefore did not violate Grant Assurance 22 where 60 days "appears to be a reasonable point for the airport sponsor to make a judgment as to whether the aircraft, or parts of

aircraft, have any chance of returning to aeronautical-use within a reasonable period of time, or need to be removed from aeronautically-designated leaseholds." (p. 20).

Complainants had not shown a violation of Grant Assurance 22 where they had demonstrated that other leaseholders had non-flying aircraft on their leaseholds in violation of the "derelict aircraft ordinance," but they had not demonstrated that Respondent's efforts to achieve compliance from other parties had been less strict than that applied to Complainants. (p. 22).

Affirmed by Final Decision and Order of Mar. 5, 2007.

BMI Salvage Corp. v. Miami-Dade County, Fla.

FAA Docket No. 16-05-16, DOT Docket No. FAA-2005-22380.

Final Decision and Order (March 5, 2007).

Author: Shaffer, D. Kirk, Associate Administrator for Airports, FAA.

Complainants: BMI Salvage Corp.; Blueside Services, Inc.

Respondent: Miami-Dade County (Fla.) Aviation Department.

Airport: Opa-Locka Airport (OPF).

Holding: Affirming Director's Determination of July 25, 2006.

Abstract:

In its original complaints, Complainants BMI Salvage Corp. and Blueside Services, Inc., alleged that Respondent, Miami-Dade County's Aviation Department, unjustly discriminated against them in violation of Grant Assurance 22. On appeal Complainants argued that the Director erred by (1) concluding that Respondent was not currently in violation of Grant Assurance 22 by failing to offer Complainants a lease comparable to leases offered to similarly situated tenants; and (2) making decisions about the evidence without conducting an evidentiary hearing in violation of Complainants' due process rights guaranteed by the Fifth Amendment to the U.S. Constitution. The Associate Administrator affirmed the Director's Determination and dismissed the Appeal. In addition, the Final Decision and Order found the following:

Similarly Situated:

Complainant BMI and Clero Aviation, another tenant, were not similarly situated in the context of Grant Assurance 22 even though they both attempted to lease condemned buildings, because (1) the businesses were engaged in different activities—Complainant was an aircraft demolition business while Clero was an aircraft repair business; (2) the leases had different purposes—Clero entered into a lease to operate its existing repair station business while Complainant either wanted to establish permanent facilities for the demolition business or a new repair facility; and (3) Complainant had a nonaeronautical element to its business while Clero did not. (pp. 14–15).

Complainant BMI and Miami Executive Aviation, another tenant, were not similarly situated in the context of Grant Assurance 22, because Complainant specialized in the teardown and demolition of aircraft while Miami Executive was an FBO. (p. 15).

Complainant Blueside and Miami Executive Aviation were not similarly situated in the context of Grant Assurance 22, because Miami Executive was a current tenant operating an established FBO business and Blueside was proposing to introduce a new FBO business. (p. 16).

Complainants failed to allege sufficient facts for a claim of unjust discrimination where they did not allege that (1) they had made a clear, definitive and consistent proposal to Respondent; (2) their proposal and the proposal of another aeronautical tenant were similar; (3) what they asked for and did not get was the same thing—and under the same circumstances—as what another comparable aviation entity asked for and did get. (p. 19).

Part 16 Procedure:

The Part 16 process does not mandate the opportunity for a complainant to have a hearing. (p. 21).

The Director did not err by characterizing the required evidence as "credible." (p. 20).

Part 16 requires that all relevant facts be presented in the complaint documents and no new allegations or issues should be presented on appeal. (p. 22).

Review by the Associate Administrator was limited to an examination of the Director's Determination and the Administrative Record upon which such Determination was based. (p. 22).

Reversed and remanded sub nom. BMI Salvage Corp. v. FAA, No. 07-12058 (11th Cir. Apr. 8, 2008) (unpublished).

Boca Raton Jet Ctr., Inc. v. Boca Raton Airport Auth.

FAA Docket No. 16-97-06.

Director's Determination (December 22, 1997).

1997 FAA LEXIS 1527. 1997 WL 1120747.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainants: Boca Raton Jet Center, Inc.

Respondent: Boca Raton (Fla.) Airport Authority.

Airport: Boca Raton Airport (BCT).

Holding: Finding violation.

Abstract:

Complainant Boca Raton Jet Center, Inc., an FBO, filed a complaint against Respondent, Boca Raton Airport Authority, owner and operator of the Boca Raton Airport, alleging that Respondent, by denying Complainant the opportunity to lease and develop the last remaining available parcel of land on the Airport and instead granting the incumbent FBO a lease to expand its facilities on that parcel, violated the exclusive rights prohibition of Grant Assurance 23. The Director found Respondent to be in violation of Grant Assurance 23.

Pre-Complaint Resolution:

Complainant's effort to resolve the dispute informally prior to filing a complaint by seeking assistance from its ADO was sufficient to fulfill the requirements of Section 16.21, even though it occurred before Respondent took the action alleged to be in violation of its Grant Assurances. (p. 11).

Intervention:

The FAA has discretion to determine whether intervention by a party is appropriate. (p. 11).

Incumbent FBO, to whom Respondent granted a lease instead of Complainant, was not permitted to intervene in the proceeding because until the FAA actually found that Respondent was in violation of Grant Assurances the case was not ripe for its involvement. (pp. 11–12).

Exclusive rights (Grant Assurance 23):

Where the record showed that incumbent FBO was awarded the lease despite not having an immediate need to develop the land, Respondent granted an exclusive right in violation of Grant Assurance 23. "A single aeronautical enterprise, although meeting all reasonable standards and qualifications should be limited, as a result of FAA policy, to the lease of such space as is demonstrably needed. The advance grant of options or preferences on all future sites to the incumbent enterprise must be viewed as an exclusive right." (p. 16).

Complaint dismissed upon receipt of Corrective Action Plan by Final Director's Determination of Aug. 20, 1999.

Boca Raton Jet Ctr., Inc. v. Boca Raton Airport Auth.

FAA Docket No. 16-97-06.

Final Director's Determination (August 20, 1999).

1999 FAA LEXIS 806. 1999 WL 732710.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Boca Raton Jet Center, Inc.

Respondent: Boca Raton (Fla.) Airport Authority.

Airport: Boca Raton Airport (BCT).

Holding: Dismissing complaint. See Director's Determination of Dec. 22, 1997**.**

Abstract:

The Director's Determination found that Respondent, Boca Raton Airport Authority, owner and operator of the Boca Raton Airport, violated the exclusive rights prohibition of Grant Assurance 23 by leasing the only remaining undeveloped parcel of land to the incumbent FBO to expand its facilities even though the incumbent did not have an immediate need for such expansion. The Complaint was dismissed upon receipt of an acceptable corrective action plan that would eliminate the exclusive right by establishing that the Respondent, under its proprietary rights, would construct and operate several aeronautical facilities on the last remaining undeveloped land at the Airport.

Petition for review denied sub nom. Boca Airport, Inc. v. FAA, 389 F.3d 185 (D.C. Cir. 2004).

Boca Airport, Inc. v. Boca Raton Airport Auth. (2000)

FAA Docket No. 16-00-10.

Director's Determination (April 26, 2001).

2001 FAA LEXIS 284. 2001 WL 438619.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainants: Boca Airport, Inc.; Boca Aviation.

Respondent: Boca Raton (Fla.) Airport Authority.

Airport: Boca Raton Airport (BCT).

Holding: Dismissing complaint.

Abstract:

Complainant Boca Aviation, incumbent FBO, filed a complaint against Respondent, Boca Raton Airport Authority, owner and operator of the Boca Raton Airport alleging that Respondent's change to a previously accepted Corrective Action Plan (CAP) and subsequent lease of the only undeveloped parcel of land to a competing FBO violated Grant Assurances 1, 5, 6, 7, 8, 22, 24, 25, and 29. In a previous proceeding filed by Boca Jet Center (another FBO), Respondent was found to have violated the exclusive rights prohibition of Grant Assurance 23 by leasing the only remaining undeveloped parcel of land to the incumbent FBO, Boca Aviation, the Complainant in this proceeding, to expand its facilities even though the incumbent did not have an immediate need for such expansion. The FAA had approved a CAP that would eliminate the exclusive right by establishing that the Respondent, under its proprietary rights, would construct and operate several aeronautical facilities on the last remaining undeveloped land at the Airport. Subsequent to the FAA's acceptance of the CAP, Respondent passed a resolution to amend the CAP to permit the issuance of a Request for Proposals for a qualified proposer to lease and improve for use the remaining parcel of land. FBO Premier Aviation was ultimately awarded the lease. The Director concluded that the Respondent was not in violation of the Grant Assurances and dismissed the Complaint.

Alteration of CAP:

Where the express intent of the Director's Determination and the Final Director's Determination in the prior proceeding was to have Respondent eliminate the exclusive right granted to incumbent, Respondent did not violate Grant Assurance 1 (General Federal Requirements) by entering into an agreement with another FBO to construct facilities instead of constructing them itself as the CAP provided. This alteration of the CAP was consistent with the overall aim of the FAA and was therefore consistent with federal requirements (p. 24).

Funding for Projects:

Where none of the projects contained in the competing FBO's proposal for airport development would be funded, in part or in whole, with Airport Improvement Program Funds, Respondent could not be in violation of Grant Assurance 6, 7 or 8. (p. 26).

Operation and Maintenance (Grant Assurance 19):

Respondent's plan to convert land previously committed to aeronautical use to non-aeronautical use and not to construct certain facilities did not conflict with Grant Assurance 19 (Operation and Maintenance). "The purpose of Grant Assurance No. 19(a) is to ensure existing facilities that serve the aeronautical users of the airport will be operated, at all times, in a safe and serviceable condition." (p. 29). There was nothing in Respondent's plan which indicated that facilities were not being operated at all times in a safe and serviceable condition. (p. 29).

Airport Layout Plan:

Complainant could not challenge a change in the Airport Layout Plan (ALP) under Grant Assurance 29 in a Part 16 proceeding where the ADO had conditionally approved it. Part 16 is the appropriate forum for complaints against airports, not against the FAA. (p. 30).

Preserving Rights and Powers:

Since the FAA had determined elsewhere in this decision that Respondent's decision to lease the only remaining parcel to a competing FBO was not in violation of its federal obligations, the FAA could not determine that Respondent was in violation of Grant Assurance 5 (Preserving Rights and Powers). (p. 32).

Economic Nondiscrimination (Grant Assurance 22):

Respondent prohibiting Complainant from submitting a proposal to develop a parcel of land that the FAA previously determined could not be awarded to Complainant without granting an exclusive right was not unjust discrimination in violation of Grant Assurance 22. FAA allows a sponsor to exclude an FBO from responding to a request for proposals based on the sponsor's desire to create competition at the airport. Moreover, allowing Complainant to submit a proposal would have defeated the purpose of the Director's Determination and Final Director's Determination in the prior proceeding. (p. 33).

Complainant's allegation that Respondent unjustly discriminated against it by filing a counterclaim in Complainant's state court lawsuit against Respondent was without merit. (p. 35).

Fee and Rental Structure (Grant Assurance 24):

Where Respondent's Minimum Standards stated that an FBO must have "a minimum of 12 acres of land upon which all required improvements for facility, ramp area, vehicle parking, roadway access, and landscaping will be located," FAA agreed with Respondent's interpretation that this required that an FBO's leasehold be at least 12 acres upon which required facilities and services must be constructed or provided. (p. 36).

Complainant's allegation that Respondent violated Grant Assurance 24 (Fee and Rental Structure) by granting permission for a temporary use of aviation land for a parking lot without rent was moot where Respondent demonstrated that it was then receiving rent for the parcel. (p. 40).

Airport Revenues:

Respondent's agreement with a private law firm to pay it $500,000 if it successfully nullified Respondent's lease with Complainant did not violate Grant Assurance 25 (Revenue Diversion). "The FAA's Policy Concerning the Use of Airport Revenue was not intended to provide a vehicle for a party to challenge the reasonableness of fees paid to private entities for airport-related services provided. Rather it was to ensure that airport sponsors do not use airport revenues to create non-airport related benefits for other governmental activities." (p. 42).

Affirmed by Final Decision and Order of Mar. 20, 2003.

Boca Airport, Inc. v. Boca Raton Airport Auth. (2000)

FAA Docket No. 16-00-10.

Final Decision and Order (March 20, 2003).

2003 FAA LEXIS 143. 2003 WL 1963859.

Author: Woodward, Woodie, Associate Administrator for Airports, FAA.

Complainants: Boca Airport, Inc.; Boca Aviation.

Respondent: Boca Raton (Fla.) Airport Authority.

Airport: Boca Raton Airport (BCT).

Holding: Affirming Director's Determination of Apr. 26, 2001.

Abstract:

In its original complaint, Complainant Boca Aviation, an FBO, filed a complaint against Respondent, Boca Raton Airport Authority, owner and operator of the Boca Raton Airport alleging that Respondent's change to a previously accepted Corrective Action Plan and subsequent lease of the only undeveloped parcel of land to a competing FBO violated Grant Assurances 1, 5, 6, 7, 8, 22, 24, 25, and 29. The Complainant argued on appeal that the Director (a) failed to make findings of fact supported by a preponderance of reliable, probative, and substantial evidence; and (b) made conclusions of law not in accordance with applicable law, precedent, and public policy. Specifically, Complainant appealed the findings with respect to minimum standards for an FBO and Grant Assurances 1, 5, 19, 25 and 29. Associate Administrator affirmed the Director's Determination with one exception which amounted to harmless error.

Exception to the Director's Determination:

Director's Determination held that by giving conditional approval for the Airport Layout Plan, the FAA had given implied approval for the interim non-aviation use of a portion of the parcel at issue. Associate Administrator disagreed and found that "explicit FAA approval for interim non-aviation use of aeronautical property is required." (pp. 4, 44). This was harmless error and therefore did not affect the outcome of the decision.

The Director did err in finding that the temporary parking facility had already been implicitly approved by the FAA, because Respondent did not, in fact, make a formal request for approval. However, when the ADO became aware of Respondent's interim use it did not object because it found no adverse impact to the safety, utility, or efficiency of the Airport. Therefore, the Director's error was harmless. (p. 44).

Airport Layout Plan (Grant Assurance 29):

Grant Assurance 29 (Airport Layout Plan) did not require a costly revision to the approved Airport Layout Plan for each interim use anticipated. It is common FAA practice to permit temporary, interim use without annotating such use directly on the Airport Layout Plan. Rather, such use is generally annotated through supporting documents such as letters, emails, records of telephone conversations, and notes maintained by

the FAA in the airport's Airport Layout Plan file. Interim use may also be designated through attached maps, overlays, or pencil notations to the Plan, among other methods. (p. 46).

Boston Air Charter v. Norwood Airport Commission, Norwood, Massachusetts

FAA Docket No. 16-07-03.

Director's Determination (April 11, 2008).

Author: Solco, Kelvin, Acting Director, Office of Airport Safety and Standards.

Complainant: Self Serve Pumps, Inc.

Respondent: Norwood Airport Commission (Town of Norwood, Mass.).

Airport: Norwood Memorial Airport (OWD).

Holding: The Respondent was in violation of Grant Assurance 5, Preserving Rights and Powers; Grant Assurance 22, Economic Nondiscrimination; and Grant Assurance 23, Exclusive Rights.

Abstract:

Complainant, Boston Air Charter, filed a complaint against Respondent, the Town of Norwood, alleging that the Respondent was engaged in economic discrimination and had granted a fixed-based operator (FBO) an exclusive right in violation of 49 U.S.C. § 47107(a)(1), Grant Assurance 22, Economic Nondiscrimination, and Grant Assurance 23, Exclusive Rights. The Complainant alleged that the Respondent discriminated against it by denying Complainant access to permit installation of electric utilities for its proposed aircraft fueling facility. The only source of power on airport property was accessible through an area leased by the single airport FBO. The FBO refused to grant its consent for the Complaint to access its leasehold. The Respondent argued that the dispute was between two private tenants over access rights and it could not take sides. It did not have the right to force the FBO to provide access for utilities through its leasehold; it does not have an exclusive agreement with the FBO; and the existence of one FBO does not constitute an exclusive right. The Respondent further argued that since the Complainant did not have a current lease, the case should be dismissed as moot and that it was under no obligation to enter a lease agreement with the Complainant.

The Director concluded that (1) The Respondent was in violation of Grant Assurance 5, Preserving Rights and Powers, when it signed a lease agreement with a tenant depriving Respondent of certain rights and powers necessary to comply with its federal obligations under the grant assurances; (2) the Respondent was in violation of 49 U.S.C. § 47107(a)(1), and Grant Assurance 22, Economic Nondiscrimination, for denying the Complainant reasonable use and access to the airport on reasonable terms for the purpose of conducting a commercial aeronautical activity. The Respondent's actions in this regard constituted an unreasonable denial of access and unjust economic discrimination; and (3) The Respondent was in violation of 49 U.S.C. § 40103(e), and Grant Assurance 23, *Exclusive Rights*, as it granted an exclusive right to the FBO to operate a fueling facility on the airport by entering into leases enabling the FBO to control the only source of power to the airport ramps to operate a fueling the facility. By denying Complainant access to power to install a fueling facility, the Respondent granted the FBO the exclusive right to operate a fueling facility on the airport. The Director ordered Respondent to submit a corrective action plan or face suspension of future grant applications for AIP discretionary grants.

A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. Of particular concern to the FAA is granting a property

interest to tenants on the airport. These property interests may restrict the sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations. (p. 15).

The right of access and the right to grant utility easements and maintain and install utilities by an airport sponsor on an airport leasehold are essential rights integral to the operation and development of any public use airport. A sponsor must have control of its land in order to support development and growth of the airport. (p. 22).

A lease with a current tenant cannot excuse a sponsor from complying with its federal obligations. The granting of a superior property interests for airport property that restricts the sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations is unlawful. "The airport sponsor must take the actions necessary to regain its rights and powers including extinguishing rights of other parties that prevent the sponsor from complying with its federal obligations." (p. 23).

"Sponsors should place a subordination clause in all of its tenant leases and agreements that subordinate the term of the leases and agreements to the grant assurances and surplus property obligations of the sponsor." "A typical subordination clause will state that if there is a conflict between the terms of a lease and the FAA grant assurances, the grant assurances shall take precedence and govern." (p. 23).

Boston Air Charter v. Norwood Airport Commission, Norwood, Mass.

FAA Docket No. 16-07-03.

Final Decision and Order (August 14, 2008).

Author: Shaffer, D. Kirk, Associate Administrator for Airports.

Complainant: Self Serve Pumps, Inc. (Appellee).

Respondent: Town of Norwood (Appellant).

Airport: Norwood Memorial Airport

Holding: Affirmed the Director's Determination.

Abstract:

Appellant (Respondent) Norwood Airport Commission appealed the Director's Determination of April 11, 2008, specifically questioning (1) whether the Director properly concluded the Appellant violated Grant Assurance 5, Preserving the Rights and Powers, by surrendering significant rights and powers when it entered into a leaseback agreement. Appellant also argues that this finding exceeded the Director's scope since the Complainant did not allege a violation of Grant Assurance 5; (2) Whether the Director properly concluded the Appellant violated Grant Assurance 22, Economic Nondiscrimination, by denying the Complainant access to conduct a commercial aeronautical activity and by restricting its ability to self-fuel; and (3) whether the Director properly concluded the Appellant violated Grant Assurance 23, Exclusive Rights, by entering into lease agreements that gave control of the only power source to one tenant, effectively restricting commercial fuel sales to that one enterprise. The Associate Administrator affirmed the Director's Determination in all respects and added the following:

Grant Assurance 5, Preserving the Rights and Powers:

The FAA does not dispute the right of the Appellant to lease the property, only the failure to retain the absolute right of access and the right to grant utility easements and to maintain and install utilities. (p. 26).

The FAA is responsible for enforcing the grant assurances. Any action that is contrary to the sponsor's grant assurances is within the scope of the FAA to review and address. When information contained in the administrative record to a Part 16 complaint leads the agency to review areas of noncompliance—whether or not they are alleged by the complainant—the agency will, nonetheless, make a finding on those areas. All potential grant assurance violations are within the scope of the FAA to review and address, whether alleged in a Part 16 complaint or identified through any other means.

Request for a Hearing:

On Appeal the Appellant requested that Associate Administrator conduct a hearing. The Associate Administrator will issue a final decision on appeal from the Director's Determination, without a hearing, where a hearing is not required by statute and is not otherwise made available by the FAA. In accordance with 14 C.F.R. ¶16.109, if the Director in his determination proposes to issue an order withholding approval of an application for a grant apportioned, or a cease and desist order, or any other compliance order issued by the Administrator to carry out the provisions of a statute listed in 14 C.F.R. 16.1, and required to be issued after notice and opportunity for a hearing, then a respondent will have the opportunity for a hearing. Such were not the circumstances here. (p. 34).

Brown Transp. Co. v. City of Holland, Mich.

FAA Docket No. 16-05-09, DOT Docket No. FAA-2005-22373.

Director's Determination (March 1, 2006).

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Brown Transport Co.

Respondent: Holland (Mich.).

Airport: Tulip City Airport (BIV).

Holding: Finding violation.

Abstract:

Complainant, Brown Transport Co. filed a complaint against Respondent, City of Holland, Michigan, which owned and operated the Tulip City Airport, alleging that some of the self-fueling requirements imposed by Respondent, namely the $1 million additional ability to pay and the $5 million liability coverage, were unreasonable and unjustly discriminatory in violation of Grant Assurance 22 and Respondent had therefore granted an exclusive right in violation of Grant Assurance 23. The Director found Respondent in violation of Grant Assurance 22.

Economic Nondiscrimination (Grant Assurance 22):

There was no conflict of interest where the Assistant City Attorney who was involved in the writing and interpretation of the fueling regulations also performed some legal work for Respondent's FBO. This potential conflict was not, per se, related to a violation of the grant assurances. (pp. 9–10).

Because an airport user was able to meet a particular requirement for use of the airport did not necessarily mean that the requirement was reasonable under the grant assurances. (p. 11).

Although the requirement for a self-fueler to carry $5 million in liability insurance was not inherently unreasonable as applied to the Complainant, who fuels a C-550 aircraft, the requirement was unreasonable if it was applied to all users wanting to self-fuel, regardless of the size of the fuel truck and the aircraft being fueled. "[T]he level of insurance, as with other self-fueling requirements, should reflect the risk of the operation being conducted." Therefore, although this requirement was not inherently inconsistent with Grant Assurance 22, Respondent should reassess the requirement. (pp. 14–15).

Respondent's $1 million "ability to pay" requirement violated Grant Assurance 22 because the amount was unreasonable. "Requiring any self-fueler to have at least $1 million set aside in pledged personal assets or a letter of credit or bond in order to self-fuel, is, on its face, unreasonable." (p. 16).

The fact that another self-fueler at the Airport was not subject to the same requirements as the Complainant, namely the $5 million liability insurance and $1 million ability to pay, was unjustly discriminatory in violation of Grant Assurance 22, even though this self-fueler chose to have the FBO fill its tanks and dispense fuel. What it chose to do is irrelevant; the fact that it had the right to self-fuel means it should be treated the same as another party who had the right to self-fuel. (p. 20).

When an airport changes its safety and environmentally related fueling requirements it does not need to wait for existing leases to expire before applying these requirements to those leases. (p. 21).

Despite being dissimilar entities, Complainant self-fueler and FBO were similarly situated with respect to fueling aircraft because Respondent's exposure to risk existed for the operation of both entities. (p. 22).

It was unjustly discriminatory in violation of Grant Assurance 22 to impose the $5 million liability insurance and $1 million ability to pay requirements on Complainant and not on the FBO, because both entities produced risk to the Airport. (p. 23).

Exclusive Rights (Grant Assurance 23):

Because the Director found that the $5 million liability insurance and $1 million ability to pay requirements violated Grant Assurance 22, it did not need to determine whether they granted an exclusive right in violation of Grant Assurance 23. (p. 24).

Cedarhurst Air Charter, Inc. v. County of Waukesha, Wis.

FAA Docket No. 16-99-14.

Director's Determination (April 6, 2000).

2000 FAA LEXIS 751. 2000 WL 1130495.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Cedarhurst Air Charter, Inc.

Respondent: Waukesha County (Wis.).

Airport: Waukesha County Airport (UES).

Holding: Finding violation in part.

Abstract:

Complainant Cedarhurst Air Charter, Inc. filed a complaint against Respondent, County of Waukesha, Wisconsin, operator of Waukesha County Airport, alleging that Respondent violated Grant Assurance 22 and 23 by refusing to allow Complainant to self-fuel and refusing to lease or sell hangar facilities on reasonable terms. The Director found Respondent to be partially in violation of these grant assurances.

Self-fueling (Grant Assurance 22(f)):

Where Respondent did not have a policy prohibiting self-fueling but Respondent postponed indefinitely a determination of a policy permitting self-fueling, provided no guidance to any aircraft owner about that owner's ability to self-fuel, and Complainant was not permitted to self-fuel for 2 years, Respondent had prevented self-fueling at the Airport in violation of Grant Assurance 22(f). (pp. 15–16).

Exclusive Right (Grant Assurance 23):

Respondent's failure to develop a policy to permit self-fueling had granted an exclusive right to the FBO to conduct aircraft fueling at the Airport. (p. 18).

Unreasonable Denial of Access (Grant Assurance 22(a)):

Federal law does not require a sponsor to credit a leaseholder for improvements made while the leaseholder was a tenant or subtenant; such matters are subject to negotiation between the parties and more appropriately handled at the state or local level. (p. 18).

A sponsor is not required to agree to the preferred, unstated terms of any one potential tenant, nor to disregard competing interests for the use of aeronautical facilities. (p. 19).

Where Complainant did not present evidence that it submitted a clear, definitive offer for lease of hangar space, and did not present evidence that Respondent's stated price for the space was unreasonably high, Respondent did not unreasonably deny Complainant access to the Airport in violation of Grant Assurance 22(a). (p. 20).

Economic Nondiscrimination (Grant Assurance 22):

Despite tenants' differing lease terms regarding the issue of fuel storage, Respondent did not unjustly discriminate against Complainant by not allowing it to self-fuel where Complainant failed to allege that any other entity at the Airport had ever enjoyed the privilege of self-fueling. (p. 20).

Affirmed by Final Decision and Order of Aug. 7, 2000.

Cedarhurst Air Charter, Inc. v. County of Waukesha, Wis.

FAA Docket No. 16-99-14.

Final Decision and Order (August 7, 2000).

2000 FAA LEXIS 806. 2000 WL 1642462.

Author: Woodward, Woodie, Acting Associate Administrator for Airports, FAA.

Complainant: Cedarhurst Air Charter, Inc.

Respondent: Waukesha County (Wis.).

Airport: Waukesha County Airport (UES).

Holding: Affirming Director's Determination of Apr. 6, 2000.

Abstract:

In the initial complaint, Complainant Cedarhurst Air Charter, Inc. alleged that Respondent, County of Waukesha, Wisconsin, operator of Waukesha County Airport, violated Grant Assurance 22 and 23 by refusing to allow Complainant to self-fuel and refusing to lease or sell hangar facilities on reasonable terms. The Director's Determination found that Respondent was in violation of Grant Assurance 22(f), preventing an airport sponsor's denial of self-servicing, and Grant Assurance 23, prohibiting a sponsor's granting of an exclusive right by force of an unreasonable restriction on self-servicing. On appeal, Respondent reiterated its position that it never had a policy against self-fueling, had authorized self-fueling in leases with airport users, and was in the process of authorizing a formal self-fueling policy. The Associate Administrator affirmed all findings of the Director’s Determination.

Ervin v. Northumberland County Airport Auth.

FAA Docket No. 13-82-03.

Record of Decision (October 17, 1994).

Author: Mudd, Leonard E., Director, Office of Airport Safety and Standards, FAA.

Complainants: Ervin, Harry D.

Respondents: Northumberland County Airport Authority.

Airport: Northumberland County Airport (N79).

Holding: Dismissing complaint.

Abstract:

Complainant, Harry D. Ervin, filed a complaint against Respondent, Northumberland County Airport Authority, alleging that Respondent violated Grant Assurance 22 by (1) the terms of its leasing arrangements with Complainant; (2) restricting Complainant's authority to offer commercial flight support services at the Airport; and (3) requiring Complainant to have its underground fuel tank inspected more frequently than required by Pennsylvania regulations; that Respondent violated Grant Assurance 23 by (1) requiring Complainant to remove its fuel tank as a condition of its lease; and (2) refusing to permit Complainant to engage in retail fuel sales; and also that Respondent violated Grant Assurance 19 by failing to cut the grass and plow the snow on a timely basis. The Director found Respondent not in violation of these grant assurances and dismissed the Complaint.

Economic Nondiscrimination (Grant Assurance 22):

Respondent did not unjustly discriminate against Complainant by charging it more for the same hangar space than it charged a subsequent tenant, where Complainant was comparing the rental rate paid for the

use of the main hangar alone with the combined rental rate it paid for the main hangar and office space. (p. 18).

It was reasonable, and therefore not unjustly discriminatory, for Respondent to refuse to resume Complainant's lease for the main hangar where Complainant had in the past been unable to meet its required payments for rent of that space and had unilaterally terminated its previous lease because it could not afford the agreed-upon rent. Such action by Respondent was consistent with Respondent's responsibility to "operate the airport efficiently and to make the airport as self-sustaining as possible in the circumstances existing at that particular airport." (p. 18).

Respondent did not unjustly discriminate against Complainant by entering into a lease with Muller Air Service for property on which to conduct commercial aeronautical activities despite Complainant's interest in the same property, where Complainant did not meet the reasonable qualifications set by Respondent. "FAA policy provides that an airport owner is responsible for setting the level and quality of services available at the airport based on the particular airport-specific circumstances." (p. 19).

It was not unjustly discriminatory for Respondent to require Complainant to sign a lease for the property on which it was conducting its commercial aeronautical activity where other tenants conducting commercial aeronautical activities at the Airport were required to enter into leases with terms and conditions comparable to those offered to Complainant. (p. 20).

Whether or not Complainant met the requirements for a State Commercial Operator's license was irrelevant, because those requirements did not preempt Respondent's management responsibility for establishing minimum standards for commercial flight support operations. (p. 21).

Respondent did not unreasonably deny Complainant authority to offer a full range of commercial flight support services where Complainant failed to provide documentation to demonstrate that Respondent denied Complainant permission to offer any commercial flight support service that it was qualified to provide and for which it requested such authorization. (p. 21).

The fact that Respondent's underground storage tank inspection requirements were more stringent than those prescribed by federal and state regulations did not place Respondent in noncompliance with grant assurances. "Federal obligations do not preclude the establishment of airport health and safety standards more stringent than State or Federal requirements, so long as the standards are applied in a fair and not unjustly discriminatory manner." (p. 24).

Exclusive Rights (Grant Assurance 23):

Respondent had not granted an exclusive right to the Airport's only seller of retail fuel where Complainant failed to demonstrate that it either requested or was denied authority to engage in competitive retail fuel sales at the Airport. "The existence of a sole provider of a particular aeronautical service at a federally obligated airport is not conclusive proof that the airport owner has granted an exclusive right in violation of its Federal obligations." (p. 22).

Respondent did not grant an exclusive right to the Airport's only seller of retail fuel by requiring Complainant to remove its underground storage tank where Complainant was not, with the occasional exception, engaged in commercial retail fuel sales at the Airport and Complainant was not prevented from self-fueling its own aircraft. (p. 25).

Operation and Maintenance (Grant Assurance 19):

"The FAA considers a sponsor's compliance with the maintenance obligation to be satisfactory when the sponsor (i) understands that airport facilities must be kept in a safe and serviceable condition; (ii) has im-

plemented a cyclical preventive maintenance program; and (iii) has made arrangements to implement its maintenance program." (p. 26).

A single photograph purporting to show the allegedly unserviceable condition of the Airport on one day is insufficient to demonstrate that Respondent was not meeting its safety responsibilities. (p. 26).

Executive Air Taxi Corp. v. City of Bismarck, N.D.

FAA Docket No. 13-91-05, 13-92-04.

Record of Decision (June 29, 1993).

Author: Mudd, Leonard E., Director, Office of Airport Safety and Standards, FAA.

Complainants: Executive Air Taxi Corp.

Respondents: Bismarck (N.D.).

Airport: Bismarck Municipal Airport (BIS).

Holding: Dismissing complaint.

Abstract:

Complainant, Executive Air Taxi Corp., filed a complaint against Respondent, the City of Bismarck, owner and operator of Bismarck Municipal Airport, alleging that Respondent violated federal law and Grant Assurances 22 and 23 by (1) refusing to lease Complainant its preferred site; (2) regulating the services that Complainant must and may provide; (3) prohibiting self-fueling; and (4) imposing fuel flowage fees and other restrictions on Complainant that it did not impose on itself. The Director found Respondent not in violation of the Grant Assurances and dismissed the Complaint.

Economic Nondiscrimination (Grant Assurance 22):

Respondent did not unjustly discriminate against Complainant in violation of Grant Assurance 22 by refusing to lease Complainant a parcel it desired to develop where Respondent's decision appeared to have been based on the inadequacy of the site to accommodate any commercial aeronautical activity and not the possibility of a competitor needing the area in the future. (p. 15).

Respondent did not unjustly discriminate against Complainant in violation of Grant Assurance 22 by requiring Complainant to provide multiple aeronautical services where Respondent applied the Minimum Standards in effect when Complainant entered into its original lease and Respondent applied the same Minimum Standards to other tenants that entered into leases contemporaneously with Complainant. The fact that the Minimum Standards were subsequently changed to no longer require multiple services did not make Complainant's requirement unjustly discriminatory. (p. 17).

"As a practical matter, an airport sponsor may quite properly adjust the airport's minimum standards to reflect the changing needs of the public and to accommodate changes in the level of commercial aeronautical services available at the airport. Such changes in minimum standards for commercial aeronautical activities, whether prescribed in leases or in airport regulations, are not inconsistent with an airport sponsor's Federal obligations." (p. 17).

Respondent did not unjustly discriminate against Complainant in violation of Grant Assurance 22 by imposing restrictions on Complainant's fueling operations that it did not impose on itself where the reason for the different standards was that Complainant's facility was built later than Respondent's facility and was subject to fire and building codes to which Respondent was not subject. (p. 19).

"Fuel flowage fees are a generally accepted method for recovering the cost of providing airport facilities, since fuel consumption is often regarded as a measure of relative usage or benefit derived from the availability of the public landing area." (p. 20).

The fuel flowage fee charged to Complainant was not unjustly discriminatory in violation of Grant Assurance 22 where the fuel flowage fees at the Airport appeared to be applied fairly and the amount of revenues being collected from all sources on the Airport did not appear to be in excess of the needs for sustaining the airport operation. (p. 22).

Self-fueling:

"A requirement that aircraft owners obtain a self-fueling permit from the city as a prerequisite for exercising their right to fuel their own aircraft is neither unreasonable nor inconsistent with FAA policy." (p. 18).

Complainant was not unreasonably denied the right to self-fuel where there was no evidence that Complainant had asked for and been denied a permit to do so. (p. 18).

Exclusive Rights (Grant Assurance 23):

Respondent offering a volume discount for into-plane fueling service did not grant an exclusive right in violation of Grant Assurance 23 by inhibiting competition. "Volume discounts to aviation fuel purchasers are not inconsistent with the city's Federal grant agreements." (p. 22).

Federal grant assurances do not require a sponsor to permit rapid or "hot" refueling and a sponsor may adopt reasonable rules and regulations applicable to this type of operation. (p. 24).

Respondent did not grant an exclusive right in violation of Grant Assurance 23 by not enforcing its prohibition on hot refueling in the past when Respondent's employees were performing the service but enforcing it later when Complainant was performing the service. Respondent had the right to begin enforcing the ordinance as long as it did so fairly. (p. 24).

Air Taxi:

Respondent's application of its airport Minimum Standards to Complainant's air taxi activities was not preempted by Section 105(a) of the FAA Act. (p. 24).

Jet 1 Ctr., Inc. v. Naples Airport Auth.

FAA Docket No. 16-04-03, DOT Docket No. FAA-2004-18968.

Director's Determination (January 4, 2005).

2005 WL 389218.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainants: Jet 1 Center, Inc.

Respondents: Naples (Fla.) Airport Authority.

Airport: Naples Municipal Airport (AFP).

Holding: Finding violation in part.

Abstract:

Complainant, Jet 1 Center, Inc., filed a complaint against Respondent, Naples Airport Authority, operator of the Naples Municipal Airport, alleging that Respondent violated Grant Assurances 22 and 23 by (1) improperly invoking the exclusive right to sell fuel; (2) preventing Complainant from selling fuel to its subtenants and others after having allowed this practice in the past; (3) revoking and denying Complainant a fueling permit, thereby preventing Complainant from self-fueling its own aircraft; (4) collecting a fuel flowage fee when fuel was transferred from the Respondent to airport tenants; and (5) charging a lower fuel flowage fee to one airport tenant. The Director found Respondent in violation of Grant Assurance 22.

Exclusive Rights (Grant Assurance 23):

The prohibition against exclusive rights does not apply to airport owners, who may exercise, but not grant, the exclusive right to conduct any aeronautical activity. (p. 12) (citing FAA Order 5190.6A, 3-9d).

Respondent Naples Airport Authority, as the Airport's sponsor, was entitled to invoke the proprietary exclusive right exception even though it was not the owner of the Airport. "It is FAA's intent to allow the public entity having control and responsibility over the airport's operation to invoke a proprietary exclusive right to conduct any of the aeronautical services needed at the airport without violating Assurance 23, Exclusive Rights." (p. 12).

Respondent did not, in the past, properly invoke its proprietary exclusive right regarding fuel sales where it permitted tenants to fuel subtenants using the tenants' employees rather than Respondent's employees and permitted subtenants to take advantage of bulk rates for fuel through the tenants' participation in the Prepaid Fuel Program. (pp. 15–16). However, Respondent cured this defect by amending its Rules and Regulations to eliminate these allowances. Therefore, it was not in violation of Grant Assurance 23. (p. 17).

Respondent did not lose its ability to invoke a proprietary exclusive right by previously having policies inconsistent with that right. "So long as the airport owner or sponsor is not violating any of its grant obligations by doing so, it may invoke its proprietary exclusive right at any time." (p. 17).

Economic Nondiscrimination (Grant Assurance 22):

Respondent did not discriminate against Complainant in violation of Grant Assurance 22 by amending its Rules and Regulations to prohibit airport tenants from providing fuel for its subtenants where the new policies were applied equally to all aeronautical users on the Airport. (p. 20).

Respondent was not in violation of Grant Assurance 22 as a result of refusing to allow Complainant to self-fuel where Complainant's self-fueling permit had been revoked and the revocation had been upheld by state court, and Complainant owned no aircraft. (p. 24).

Respondent was not in violation of Grant Assurance 22 as a result of assessing a fuel flowage fee for self-fueling operations or for collecting that fee at the time the fuel was transferred from Respondent to the aeronautical user. This was a valid business decision. (p. 25).

"Differences in rates may be justified based on many diverse factors, including but not limited to, location, length of lease term, financial commitment by the tenant, risks accepted by the tenant, and timing of the agreement." (p. 27).

Respondent was in violation of Grant Assurance 22 by allowing one tenant to pay a fuel flowage fee of 16 cents per gallon while other similarly situated tenants operating under the same type of fuel permit were paying a fee of 40 cents per gallon. (p. 29).

Affirmed by Final Agency Decision of July 15, 2005.

Jet 1 Ctr., Inc. v. Naples Airport Auth.

FAA Docket No. 16-04-03, DOT Docket No. FAA-2004-18968.

Final Agency Decision (July 15, 2005).

Author: Woodward, Woodie, Associate Administrator for Airports, FAA.

Complainant: Jet 1 Center, Inc.

Respondent: Naples (Fla.) Airport Authority.

Airport: Naples Municipal Airport (AFP).

Holding: Affirming Director's Determination of Jan. 4, 2005.

Abstract:

In its original complaint, Complainant, Jet 1 Center, Inc., alleged that Respondent, Naples Airport Authority, operator of the Naples Municipal Airport, violated Grant Assurances 22 and 23 by (1) improperly invoking the exclusive right to sell fuel; (2) preventing Complainant from selling fuel to its subtenants and others after having allowed this practice in the past; (3) revoking and denying Complainant a fueling permit, thereby preventing Complainant from self-fueling its own aircraft; (4) collecting a fuel flowage fee when fuel is transferred from the Respondent to airport tenants; and (5) charging a lower fuel flowage fee to one airport tenant. The Director's Determination found that Respondent was not in violation of Grant Assurance 23, but was in violation of Grant Assurance 22 by charging one airport tenant a lower fuel flowage fee than that charged to the others. Complainant only appealed the Director's use of the concept of the Airport's proprietor's right to hold an exclusive concession on fuel sales at the Airport. The FAA affirmed the Director's Determination.

Proprietary Exclusive Right:

The FAA's airport proprietary exclusive right interpretation is a valid interpretive rule under Section 553(b) of the Administrative Procedure Act. (p. 16).

The FAA's airport proprietary exclusive right interpretation is a valid interpretation of statute, because it arises from two basic concepts: (1) airport owners hold proprietary rights that are not restricted by the exclusive rights prohibitions, and (2) the provisions of 49 U.S.C. §§ 40103(e) and 47107(a)(4) are intended to prevent monopolies by airport users. (p. 17).

Lanier Aviation LLC v. City of Gainesville, Ga.

FAA Docket No. 16-05-03, DOT Docket No. FAA-2005-22367.

Director's Determination (November 25, 2005).

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Lanier Aviation LLC.

Respondent: Gainesville (Ga.); Gainesville (Ga.) Airport Authority.

Airport: Lee Gilmer Memorial Airport (GVL).

Holding: Dismissing complaint.

Abstract:

Complainant, Lanier Aviation, LLC, filed a complaint against Respondent, the City of Gainesville, Georgia, sponsor of the Lee Gilmer Memorial Airport, alleging that Respondent violated Grant Assurances 22 and 23 by denying Complainant's proposed self-service retail fuel operation. The Director found Respondent not in violation and dismissed the Complaint.

Economic Nondiscrimination (Grant Assurance 22):

Respondent did not violate Grant Assurance 22 by denying Complainant's proposed self-service retail fuel operation, because aviation fuel retailing is not a Specialized Aviation Services Operation (SASO) as discussed in AC 150/5190-5 and Grant Assurance 22 does not prohibit a sponsor from reasonably bundling services with retail fueling. (p. 12).

Respondent did not violate Grant Assurance 22 by delaying the approval of Complainant's business proposal where Respondent accepted FAA's guidance during the informal complaint process, implemented standards and continued to discuss the site locations with Complainant. (p. 14).

Respondent's Minimum Standards did not unreasonably deny Complainant access in violation of Grant Assurance 22 where Complainant merely argued that they were not consistent with its particular business plan, but did not argue that their level-of-service requirements were excessive to the needs or desires of airport users; were impossible for the Complainant to achieve; or were otherwise in excess of a level-of-service designated by Respondent to achieve a reasonable business goal to develop aeronautical services at the Airport. (p. 15).

"Simply not agreeing to a specific proposal is insufficient evidence of unreasonable denial of access by a sponsor." (p. 17).

Respondent's Minimum Standards were not unjustly discriminatory in violation of Grant Assurance 22 where they applied equally to both FBOs at the Airport. (p. 18).

Exclusive Rights (Grant Assurance 23):

Respondent was not in violation of Grant Assurance 23 for granting a constructive exclusive right where FAA did not make a finding of unjust economic discrimination and the competing FBO's lease contained a clause stating that it did not grant an exclusive right. (p. 18).

Lehigh Valley v. Lehigh-Northampton Airport Auth.

FAA Docket No. 13-90-09.

Record of Decision ([No date]).

Author: Mudd, Leonard E., Director, Office of Airport Safety and Standards, FAA.

Complainant: Lehigh Valley.

Respondent: Lehigh-Northampton Airport Authority.

Airport: Allentown-Bethlehem-Easton International Airport (ABE).

Holding: Dismissing complaint.

Abstract:

Complainants, Lehigh Valley Flying Club and the Lehigh Valley General Aviation Association, filed a complaint against Respondent, the Lehigh-Northampton Airport Authority, owner and operator of the Allentown-Bethlehem-Easton International Airport, alleging that Respondent's requirement of $1 million of personal liability coverage for operation of a personal vehicle in the air operations area violated Grant Assurance 23 by limiting access to only those persons who can afford the insurance rate and Grant Assurance 22(a) and (f) by discriminating against certain users and denying tenants access to their aircraft. The Director found Respondent not in violation and dismissed the Complaint.

Exclusive Rights (Grant Assurance 23):

The opportunity to drive one's personal vehicle to his/her own aircraft was not an aeronautical activity, since it was not required for the operation of such aircraft, and therefore was not subject to exclusive rights prohibitions. (p. 10).

Respondent's imposition of $1 million personal liability insurance coverage did not prevent aircraft owners and pilots from servicing or maintaining their aircraft and therefore did not result in an unreasonable restriction on self-fueling. (p. 11).

Economic Nondiscrimination (Grant Assurance 22):

Respondent's business decision requiring $1 million of personal liability insurance for any person driving a vehicle in an air operations area was a fair, reasonable and not unjustly discriminatory term or condition imposed on all airport users because of the ability of all permit holders to travel in all air operations areas and the resulting potential for tremendous losses. (pp. 11–12).

Respondent's imposition of $1 million personal liability insurance coverage was not unjustly discriminatory where it applied to all tenants and their employees, personnel, and members. (p. 13).

Maxim United, LLC v. Bd. of County Comm'rs of Jefferson County

FAA Docket No. 16-01-10.

Director's Determination (April 2, 2002).

2002 FAA LEXIS 170. 2002 WL 963590.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Maxim United, LLC.

Respondent: Jefferson County (Colo.) Board of County Commissioners.

Airport: Rocky Mountain Metropolitan Airport (BJC); Jefferson County Airport, formerly.

Holding: Finding violation.

Abstract:

Complainant, Maxim United LLC, filed a complaint against Respondent, Board of County Commissioners of Jefferson County, operator of the Jefferson County Airport, alleging that Respondent violated Grant Assurances 22(a) and (f) and Grant Assurance 23 by prohibiting it from self-fueling.

Self-Fueling:

The lease term in Complainant's lease with Respondent, which prohibited Complainant from constructing a self-fueling facility until Respondent revised its Minimum Standards, violated Grant Assurance 22(f), where Respondent enforced this restriction and thereby prevented Complainant from self-fueling for approximately one-and-a-half years. (p. 19).

In the absence of Respondent's timely adoption and implementation of revised Minimum Standards, Grant Assurance 22(f) required Respondent to offer Complainant reasonable standards under which it could self-fuel until such time as the revised standards were adopted and implemented. (p. 19).

Unjust Economic Discrimination:

The fact that some entities were permitted to self-fuel pending adoption of revised Minimum Standards while Complainant was prohibited from doing the same was unjustly discriminatory even though the other leases were agreed to by the Airport Authority, which was abolished before Complainant's lease was executed, because regardless of who was managing the Airport, the County (Respondent) was the sponsor and was therefore bound by the federal grant assurances. (p. 21).

The fact that some entities were permitted to self-fuel pending adoption of revised Minimum Standards while Complainant was prohibited from doing the same was a per se violation of Grant Assurance 22(a). (p. 21).

While minimum standards may, from time to time, be increased to ensure a higher quality of service or to better serve the public interest, they must be reasonable, relevant to the proposed activity, reasonably attainable and uniformly applied. (p. 22).

The fact that leases with Complainant and two other entities required them to comply with revised Minimum Standards while previous leases did not contain that requirement did not necessarily indicate unjust economic discrimination where the previous leases were entered into eight to seventeen years earlier. "No Federal obligation requires a sponsor to forgo improved business practices to equalize terms and conditions among tenants." (p. 24).

Exclusive Rights (Grant Assurance 23):

Since Complainant, alone, was denied the right to self-fuel, Respondent granted a constructive exclusive right to the group of other tenants who were permitted to self-fuel during this period. (p. 24).

Miller v. Bd. of Aviation Comm'rs of the City of Warsaw, Ind.

FAA Docket No. 16-03-03, DOT Docket No. FAA-2003-15032.

Director's Determination (October 20, 2003).

2003 FAA LEXIS 427. 2003 WL 22696922.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Miller, H. Anthony, Jr.

Respondent: Warsaw (Ind.) Board of Aviation Commissioners.

Airport: Warsaw Municipal Airport (ASW).

Holding: Dismissing complaint.

Abstract:

Complainant, Anthony Miller, Jr., filed a complaint against Respondent, Board of Aviation Commissioners of Warsaw Municipal Airport, operator of the Warsaw Municipal Airport, alleging that (1) Respondent's Fuel Price Structure unjustly discriminated against those airport tenants that consume smaller amounts of fuel and use a smaller proportion of airport facilities and personnel services; and (2) Respondent's fuel flowage fee for aeronautical users who choose to self-fuel was unreasonable, both in violation of Grant Assurance 22. The Director found Respondent not in violation and dismissed the Complaint.

Economic Nondiscrimination (Grant Assurance 22):

Respondent's tiered fuel price structure, which gave volume discounts on fuel, was not unjustly discriminatory where the discount was available to any airport tenant who meets the monthly volume criteria. (p. 8).

Respondent's tiered fuel price structure did not violate Grant Assurance 22 where the rates, including profit margin levels, were appropriately based on airport costs incurred and were applied consistently to all tenants. (p. 12).

Respondent was not precluded by Grant Assurance 22 from charging a fuel flowage fee simply because the fee was not contained in an earlier version of its Minimum Standards where Respondent amended the Minimum Standards to include such a fee the day after Complainant requested to self-fuel. "It is appropriate for an airport sponsor to modify or adjust minimum standards based on changing circumstances at the airport." (p. 14).

The language in paragraph 3-9(e)(2) of Order 5190.6A, which limits an airport sponsor to a fuel flowage fee for self-fueling that is no higher than the fuel flowage fee paid by an FBO, does not prevent sponsors that retained the proprietary exclusive right to sell fuel from collecting a flowage fee for self-fueling. (p. 15).

Respondent's fuel flowage fee was reasonable where (1) it was established by taking the total operational expenses for the base year (2001), subtracting rent/lease revenues and tax revenues to determine an annual "net cost" and dividing that number by the total number of gallons sold to arrive at the per-gallon fee required to meet the net operational cost; and (2) the amount was midway between the high and low rates charged at other Indiana airports of comparable size. (p. 16).

Affirmed by Final Decision and Order of Feb. 27, 2004.

Miller v. Bd. of Aviation Comm'rs of the City of Warsaw, Ind.

FAA Docket No. 16-03-03, DOT Docket No. FAA-2003-15032.

Final Decision and Order (February 27, 2004).

Author: Woodward, Woodie, Associate Administrator for Airports, FAA.

Complainant: Miller, H. Anthony, Jr.

Respondent: Warsaw (Ind.) Board of Aviation Commissioners.

Airport: Warsaw Municipal Airport (ASW).

Holding: Affirming Director's Determination of Oct. 20, 2003.

Abstract:

In the original complaint, Complainant, Anthony Miller Jr., alleged that Respondent, Board of Aviation Commissioners of Warsaw Municipal Airport, operator of the Warsaw Municipal Airport, violated Grant Assurance 22 by (1) maintaining a Fuel Price Structure that unjustly discriminated against those airport tenants who consume smaller amounts of fuel and use a smaller proportion of airport facilities and personnel services; and (2) charging an unreasonable fuel flowage fee for aeronautical users who choose to self-fuel. The Director's Determination found no violation and Complainant appealed. The Associate Administrator affirmed all findings of the Director’s Determination.

Monaco Coach Corp. v. Eugene Airport

FAA Docket No. 16-03-17, DOT Docket No. FAA-2004-17366.

Director's Determination (July 27, 2004).

2004 WL 3198205.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Monaco Coach Corp.

Respondent: Eugene (Or.) Airport; Eugene (Or.).

Airport: Mahlon Sweet Field (EUG).

Holding: Dismissing complaint.

Abstract:

Complainant, Monaco Coach Corporation, filed a complaint against Respondent, the City of Eugene, Oregon, owner and operator of Mahlon Sweet Field, alleging that Respondent violated Grant Assurances 22 and 23 by denying Complainant the right to install a self-service fueling station on its leasehold. The Director found Respondent not in violation and dismissed the Complaint.

Economic Nondiscrimination (Grant Assurance 22):

When Respondent offered Complainant a permit to use a fuel truck to service Complainant's aircraft or a land lease for the installation of a private fuel farm at the existing, centralized fuel storage facility, Respondent satisfied its obligation to protect Complainant's self-service rights. (p. 20).

It was not unreasonable for Respondent to deny Complainant's request to install a self-service fueling station adjacent to its hangar where (1) Respondent's FAA-approved Airport Layout Plan called for centralized fuel storage facilities ("since the Complainant's proposal does not conform to the City's plan for the development of the Airport, the City has no further obligation to review it") (p. 20); and (2) Respondent's requirement that all fueling be located in its centralized fuel farm was applied uniformly to all airport users. (p. 21).

Exclusive Rights (Grant Assurance 23):

Since Respondent's denial of Complainant's request to install a self-service fueling station on its leasehold was not unreasonable and was not applied in an unjustly discriminatory manner, it did not grant an exclusive right in violation of Grant Assurance 23. (p. 22).

Affirmed by Final Agency Decision of Mar. 4, 2005.

Monaco Coach Corp. v. Eugene Airport

FAA Docket No. 16-03-17, DOT Docket No. FAA-2004-17366.

Final Agency Decision (March 4, 2005).

2005 FAA LEXIS 195. 2005 WL 825551.

Author: Woodward, Woodie, Associate Administrator for Airports, FAA.

Complainant: Monaco Coach Corp.

Respondent: Eugene (Or.) Airport; Eugene (Or.).

Airport: Mahlon Sweet Field (EUG).

Holding: Affirming Director's Determination of July 27, 2004.

Abstract:

In the original complaint, Complainant, Monaco Coach Corporation, alleged that Respondent, the City of Eugene, Oregon, owner and operator of Mahlon Sweet Field, violated Grant Assurances 22 and 23 by denying Complainant the right to install a self-service fueling station on its leasehold. The Director's Determination found no violation and Complainant appealed. The Associate Administrator affirmed all findings of the Director’s Determination and additionally found the following:

The Director did not err by failing to require the Respondent to consider Complainant's preferred level of service regarding self fueling and making a finding that Complainant's preferred alternative was unreasonable. The Director was to review the facts presented in the case and determine whether or not there was sufficient evidence to determine that Respondent's program unreasonably denied access to an aeronautical activity. (p. 15).

"The Respondent's Federal obligations do not require it to provide a specific level of service, level of convenience or amount of cost savings, simply because a specific proposal might be reasonable. Rather, the standard is that any sponsor will provide a reasonable opportunity to self-fuel…." (p. 16).

Ricks v. Millington Mun. Airport Auth.

FAA Docket No. 16-98-19.

Director's Determination (July 1, 1999).

1999 FAA LEXIS 800. 1999 WL 636161.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainants: Ricks, James Vernon, Jr.; Ricks, Michael Matthew; Ricks, Valley E.; Millington Aviation, LLC.

Respondent: Millington (Tenn.) Municipal Airport Authority.

Airport: Millington Municipal Airport (NQA).

Holding: Dismissing complaint.

Abstract:

Complainant, James Vernon Ricks, Michael Matthew Ricks, Valley E. Ricks, d/b/a Millington Aviation, filed a complaint against Respondent, the Millington Municipal Airport Authority, sponsor of the Millington Municipal Airport, alleging that Respondent violated Grant Assurance 23 by denying Complainant an FBO lease and instead granting a lease to its competitor, Tulsair. FAA also interpreted the Complaint as alleging violations of Grant Assurance 22. The Director found Respondent not in violation and dismissed the Complaint

Economic Nondiscrimination (Grant Assurance 22):

Respondent did not violate Grant Assurances 22 or 23 by denying Complainant's lease application and entering into a lease agreement with Tulsair where each applicant was required to provide similar information and the type of information required was reasonable, Tulsair provided the required business plan and an audited financial statement and Complainant did not. (pp. 20–21).

Complainant's claim that Respondent unjustly discriminated against it by providing bad information regarding Respondent's procedures and intent failed because the record did not support any intent by Respondent to deceive Complainant. (p. 22).

Complainant's claim that Respondent unjustly discriminated against it by undermining Complainant's efforts to obtain the Department of Defense fuels contracts from the FBO in bankruptcy failed, because FAA could not conclude that any truthful information provided to the Department of Defense regarding the contracts constituted unjust economic discrimination against Complainant, nor could FAA conclude that any omission of information regarding Respondent's actions in the FBO's bankruptcy proceeding constituted unjust discrimination against Complainant. (p. 23).

Complainant's claim that Respondent delayed in providing documents to Complainant did not amount to an allegation of unjust economic discrimination as embodied in Respondent's Grant Assurances. (p. 23).

Exclusive Rights (Grant Assurance 23):

The fact that Respondent had only one full service FBO at the Airport did not mean that it had granted an exclusive right. "So long as the opportunity to engage in an aeronautical activity is available to those meeting the reasonable qualifications and standards relevant to such activity, the fact that only one enterprise takes advantage of the opportunity does not constitute the grant of an exclusive right." (p. 24).

Respondent did not grant an exclusive right to Tulsair where there was no convincing evidence that there was space available at the Airport or that Tulsair was not utilizing all of its space. (p. 25).

Affirmed by Final Decision and Order of Dec. 30, 1999.

Ricks v. Millington Mun. Airport Auth.

FAA Docket No. 16-98-19.

Final Decision and Order (December 30, 1999).

1999 FAA LEXIS 1076. 1999 WL 1295210.

Author: Maillett, Louise E., Acting Associate Administrator for Airports, FAA.

Complainants: Ricks, James Vernon, Jr.; Ricks, Michael Matthew; Ricks, Valley E.; Millington Aviation, LLC.

Respondent: Millington (Tenn.) Municipal Airport Authority.

Airport: Millington Municipal Airport (NQA).

Holding: Affirming.

Director's Determination of July 1, 1999.

Abstract:

In the original Complaint, Complainant, James Vernon Ricks, Michael Matthew Ricks, and Valley E. Ricks, d/b/a Millington Aviation, alleged that Respondent, the Millington Municipal Airport Authority, sponsor of the Millington Municipal Airport, violated Grant Assurance 23 by denying Complainant an FBO leasehold and instead granting a lease to its competitor. FAA also interpreted the Complaint as alleging violations of Grant Assurance 22. The Director's Determination found no violation and Complainant appealed. The Associate Administrator affirmed all findings of the Director’s Determination.

Royal Air, Inc. v. City of Shreveport

FAA Docket No. 16-02-06, DOT Docket No. FAA-2002-13063.

Director's Determination (January 9, 2004).

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Royal Air, Inc.

Respondents: Shreveport (La.); Shreveport (La.) Airport Authority.

Airport: Shreveport Downtown Airport (DTN).

Holding: Finding violation in part.

Abstract:

Complainant Royal Air, Inc. filed a complaint against Respondent, City of Shreveport through the Shreveport Airport Authority, owner, operator, and sponsor of Shreveport Downtown Airport, for violating Grant Assurances 22 and 23 by preventing Complainant from establishing a commercial self-service fueling operation, applying Minimum Standards inconsistently, and allowing competing tenants to operate without paying applicable rents and fees. The Director found Respondent in violation in part.

Standing:

“The fact that the Complainant is currently paying fees or rentals to the Respondent demonstrates that he is directly and substantially affected by any alleged noncompliance. The Complainant met the requirement of § 16.23(b)(4) by providing a brief description of how it was affected by the alleged noncompliance.” (p. 15).

Pre-complaint Resolution:

By meeting and corresponding with managers of the Airport, Complainant made substantial and reasonable good faith efforts to informally resolve the dispute. (p. 16). The Rules of Practice for Federally-Assisted Airport Proceedings do "not require any particular informal resolution method" or “state that efforts to resolve an issue must begin or conclude at any given point.” (p. 16).

Motion to Dismiss as Moot:

The Complaint was not moot even though Complainant alleged that Respondent violated grant assurance obligations by permitting two competitors no longer providing aeronautical services to the Airport to operate in violation of Minimum Standards. The focus of Part 16 “is on current compliance, but a necessary part of current compliance is a sponsor’s actions in carrying out its federal obligations. The Respondent’s former actions, as well as current actions, shape its airport compliance efforts regardless of subsequent developments in tenancy at the airport.” (p. 17).

Economic Nondiscrimination (Grant Assurance 22)/Exclusive Rights (Grant Assurance 23):

“Depending on the airport-specific circumstances, it is neither unreasonable nor unjustly discriminatory for an airport sponsor to suspend approval of new aeronautical activities while the standards for those activities are under revision.” (p. 20).

Respondent did not violate Grant Assurances 22 or 23 by delaying approval to establish a self-service fueling facility where it responded to Complainant’s request in less than four months, which was consistent to treatment of other aeronautical tenants making similar requests. (p. 20).

Respondent did not violate Grant Assurance 22 by denying Complainant approval to establish a commercial self-service fueling facility where the record reflected that Complainant established the facility without Respondent’s permission. (p. 24).

Respondent did not grant Complainant's competitors an exclusive right in violation of Grant Assurance 23 by prohibiting Complainant from building a fueling facility at its preferred site where Respondent allowed Complainant to install its own fuel tanks at

Respondent's centralized fuel farm. (p. 25).

Complainant and its competitors were not similarly situated where Complainant made a request to install new fuel tanks while Respondent was in the process of revising its

Minimum Standards and Complainant's competitors had already installed their fuel tanks before Respondent adopted its revisions. (p. 30).

Respondent did not unjustly discriminate against Complainant by strictly enforcing its Minimum Standards on Complainant alone where Complainant and its competitor were both subject to compliance inspections, had both been out of compliance at some time, and had both been given the opportunity to remain on the Airport and correct compliance issues. (p. 37).

Although Respondent may have previously been in violation of grant assurances by allowing Complainant's competitor to initiate flight school services without meeting Minimum Standards for leased office and land area, the FAA only considers current compliance with grant assurances, and Respondent had since corrected this past violation. (p. 40).

Respondent violated Grant Assurance 22 by enforcing minimum leased-space standards against the Complainant but not against its competitor, but business closure of Complainant's competitor would not meet the intent of corrective action in this matter. (p. 43).

Complainant failed to establish that Respondent had improperly allowed its competitor to circumvent Minimum Standards by employing contract mechanics rather than full-time mechanics, because the Minimum Standards did not require mechanics to be full-time employees of an FBO. (p. 45).

Respondent violated Grant Assurance 22 by advising Complainant that mechanics were required to be full-time employees rather than contract mechanics when the Minimum Standards had no such requirement. (p. 46).

Respondent violated Grant Assurance 22 "by permitting—or failing to prevent—unauthorized Aircraft Airframe and Engine Maintenance and Repair Operators to operate on the airport in direct competition with Complainant and without meeting the minimum standards." (p. 48).

Respondent violated Grant Assurance 22 by requiring Complainant to carry the full level of insurance required under the 1999 Minimum Aviation Standards and allowing Complainant's competitor to carry 10% of the insurance required under Respondent's Minimum Standards. (pp. 51–52).

Respondent previously violated Grant Assurance 22 by requiring Complainant to pay appropriate rents and fees while permitting other tenants to operate on the airport without paying the fees, but because Respondent corrected the violation by demanding payment from Complainant's competitor, Respondent was not in violation of Grant Assurance 22. (p. 54).

Scott Aviation, Inc. v. DuPage Airport Auth.

FAA Docket No. 16-00-19.

Director's Determination (July 19, 2002).

2002 FAA LEXIS 398. 2002 WL 31429252.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Scott Aviation, Inc.

Respondent: DuPage (Ill.) Airport Authority.

Airport: DuPage Airport (DPA).

Holding: Dismissing complaint.

Abstract:

Complainant Scott Aviation, Inc. filed a complaint against Respondent DuPage Airport Authority, owner and operator of DuPage Airport, alleging that Respondent had subjected Complainant to unjustly discriminatory restrictions on self-fueling in violation of Grant Assurances 22 and 23. The Director found Respondent not in violation and dismissed the Complaint.

Airport Fuel Flowage Fee:

FAA approved Respondent's airfield cost allocation that included 100% of costs for the Field Maintenance Department, which maintains the entire airfield, including all runways, taxiways, ramps, turf areas, and lighting system, 75% of equipment maintenance, 30% of administrative costs, and 25% of accounting costs. (p. 18).

FAA rejected Respondent's inclusion of capital expenditures in the total airfield costs; capital expenditures should be capitalized and depreciated over time. (p. 18).

In allocating airport costs, the following three issues prevail: (1) the cost allocation methodology may not require any aeronautical user or user groups to pay costs properly allocable to other users or user groups; (2) costs associated with the sponsor's proprietary exclusive fuel operation cannot be included in the fuel flowage fee for those who self fuel; and (3) the sponsor may not include costs of facilities leased on a preferential or exclusive use basis to other aeronautical users in the fuel flowage fee. (pp. 18–19).

One acceptable methodology for allocating airfield costs is to distribute the cost evenly among all airfield users based on the number of gallons of fuel sold or consumed by each, including those who self fuel. (p. 19).

The cost of fuel operations may be allocated only to those airfield users who benefit from the fuel operations by purchasing fuel from the airport. (p. 19).

The $0.25 fuel flowage fee for each gallon pumped by a self-fueler was reasonable and not in violation of Grant Assurance 22, because it was below the reasonable fee per gallon charge of $0.33, which the FAA calculated by dividing the total airfield cost by the gallons of fuel used. (p. 19).

"An aeronautical user is allowed to self-fuel and cannot be forced or coerced into purchasing fuel from a propriety exclusive fuel operation." (p. 20).

Off Airport Parking of Fuel Trucks:

Respondent could restrict fueling to specific locations and did not unjustly discriminate against Complainant when it refused to allow Complainant to park fuel trucks on the public ramp area. (p. 21).

Other Requirements:

It was not unreasonable for Respondent to require Complainant to provide insurance to protect the Airport in the event of a fuel spill at a level that would be sufficient to protect the potential environmental damage that could result from a fuel spill from Complainant's operation. (p. 22).

Because Complainant may not have had the funds readily available to cover the costs of a fuel spill or incident, it was reasonable, even prudent, for Respondent to require Complainant to post a bond in an amount sufficient to cover the insurance deductible and guarantee that the appropriate insurance was in place and could be invoked if required. (p. 23).

Since Respondent's fuel trucks obtained fuel directly from the Airport while Complainant would need to bring fuel onto the Airport, it was reasonable for the requirements for transporting hazardous materials on public roads to be applicable to Complainant's fuel trucks but not to Respondent's. (p. 24).

It was reasonable for Respondent to charge a fuel truck permit fee to Complainant but not to itself since the fuel truck permit fee was used to fund maintenance of the Airport, and Respondent was responsible for maintaining the Airport. (p. 25).

Although Complainant was not subject to an unreasonable or unjustly discriminatory fee, Respondent's methodology in arriving at the permit fee for heavy trucks was not sufficiently transparent. Absent evidence to support the steep increase from $1,000 for 29,999 pounds to $5,000 for 30,000 pounds or higher, the fuel truck permit fee could potentially result in unreasonable and unjustly discriminatory rates among self-fuelers. (p. 27). However, because Complainant was the only self-fueler at the Airport and failed to identify another self-fueler who enjoyed the lower permit fee of $1,000, Respondent was not currently engaged in unjust discrimination against the Complainant. (p. 28).

Exclusive Rights (Grant Assurance 23):

Respondent acted consistently with FAA policy, federal law, and Grant Assurance 23 when it exercised proprietary exclusive fueling operations, because "[u]nder the proprietary exception' the owner of a public-use airport may elect to provide any or all of the aeronautical services needed by the public at the airport." (p. 29).

Although the statutory prohibition against exclusive rights did not apply to Respondent's proprietary exclusive fueling operation, it would have been impermissible for Respondent "to enact overly restrictive requirements on self-fueling in an attempt to divert self-fuelers to the airport's own proprietary exclusive fueling operation." (pp. 29–30).

Self Serve Pumps v. Chicago Executive Airport

FAA Docket No. 16-07-02

Director's Determination (March 17, 2008).

Author: Heibeck, W. T., Acting Director, Office of Airport Safety and Standards, FAA.

Complainant: Self Serve Pumps, Inc.

Respondent: Chicago Executive Airport.

Airport: Chicago Executive Airport (PWK).

Holding: Complaint dismissed.

Abstract:

The Complainant, Self Serve Pumps, Inc. has filed this action against the Respondent, Chicago Executive Airport alleging violations of 49 U.S.C. § 47107(a)(1) and (4) and federal obligations under Grant Assurances 22, Economic Nondiscrimination, and 23, Exclusive Rights, by supporting an unlawful exclusive right to full-service FBOs. The Respondent denies that it unjustly discriminated against the Complainant, or that it granted an exclusive right to incumbent FBOs when the Complainant's application to establish and operate a commercial self-service fueling operation was rejected. The Director found no violation of the law and grant assurances and dismissed the complaint.

The Complainant is a tenant aircraft owner and, allegedly addressing concerns regarding high and mounting fuel prices, had proposed to initiate a fuel concession commercial business at the airport, only retailing fuel from self-service pumps, without bundling this service with other services nor providing full-service fuel. The Respondent had previously adopted General Aviation Minimum Standards that provided for the bundling of retail fuel sales to support other aeronautical services by full-service FBOs. Its FAA District Office had specifically recommended this practice to Chicago Executive Airport. At the time Complainant submitted its application the Respondent had two full-service FBOs. The Respondent denied the Complainant's application based upon its unwillingness to change the Minimum Standards to accommodate the type of business offered by the Complainant.

Burden of Proof:

"In order for the Director to find a sponsor in violation of its federal obligations under a Part 16 proceeding, not only must the Complainant include sufficient factual evidence to support its allegations, but also establish by a preponderance of substantial and credible evidence that the sponsor has violated its federal obligations." (p. 19).

Grant Assurance 22 (Reasonable Standards):

"Minimum standards may reasonably require that certain aeronautical services be bundled with fuel retaining or require a specific level of service for all fuel retailers to meet. This is common industry practice by airport management to ensure that a variety of aeronautical services are available at the airport at a reasonable, determined level of service quality, and not just the services that require the least investment or expense, or are most profitable." (p. 23).

The Airport management believes that its bundling of associated services with the sale of fuel serves the interest of the public in civil aviation. The Complainant does not identify any specific requirements as unreasonable. The Complainant has not presented sufficient evidence to establish that the Airport has unreasonably denied access, to the Complainant for a lease to pursue his preferred, specific business plan for a self-service fuel concession that does not meet the Airport's Minimum Standards. Furthermore, the Complainant has not presented any allegation that any specific condition of a fuel concession is unreasonable. (p. 25).

Grant Assurance 22 (Economic Nondiscrimination):

The Complainant is explicitly requesting to be treated differently; but implies that the Respondent is treating one of the incumbent FBOs preferably by allowing divergence with the Minimum Standards, while insisting that the Complainant adhere to the Minimum Standards. (pp. 25–26).

"In order to sustain an allegation of unjust economic discrimination, the discrimination must be unjust. It can only be unjust if the preferred party is similarly situated to the dispreferred party. In this case, the Complainant (allegedly the dis-preferred party) is so dissimilar from the full-service FBOs at PWK as to in no way be similarly situated." (p. 27).

Grant Assurance 23, (Exclusive Rights) and 49 U.S.C. § 40103(e):

"The mere existence of high fuel prices does not imply the existence of the granting of an exclusive right, especially in this case where there is no allegation that the Respondent is inhibiting price competition between the two existing full-service FBOs on the field." (p. 29).

Sky E. Servs., Inc. v. Suffolk County, N.Y.

FAA Docket No. 13-88-06, 13-89-01.

Final Decision and Order (August 30, 1994).

Author: Mudd, Leonard E., Director, Office of Airport Safety and Standards, FAA.

Complainants: Sky East Services, Inc.; Hampton Air Transport System, Inc.

Respondent: Suffolk County (N.Y.).

Airport: Francis S. Gabreski Airport (FOK).

Holding: Finding violation.

Abstract:

Complainants Sky East Services, Inc. and Hampton Air Transport System, Inc. filed complaints against Respondent, County of Suffolk, New York, owner of the Francis S. Gabreski Airport, alleging that Respondent violated Grant Assurances 22, 23, 25, and 20. In an Order to Show Cause, the FAA tentatively concluded that Respondent was in violation of Grant Assurances 22 and 23 and proposed corrective actions. FAA concluded that there was insufficient basis for further investigation of alleged violations of Grant Assurances 20 and 25. In this decision the FAA made final conclusions on these issues.

Economic Nondiscrimination (Grant Assurance 22) / Exclusive Rights (Grant Assurance 23):

Respondent was in violation of Grant Assurance 22's prohibition against unjust discrimination for refusing to allow Complainant to sell aviation fuel to the general aviation public through the use of a refueling truck which is of the type Respondent authorized for other users. (pp. 2, 5).

Respondent was in violation of Grant Assurance 23's prohibition against exclusive rights for refusing to allow Complainant to sell aviation fuel while permitting such sale by another user. (pp. 2, 5).

Respondent violated the obligation in Grant Assurance 22 to permit a carrier to service itself by prohibiting Complainants from servicing their aircraft with petroleum products. (pp. 2, 5).

The disparity in rental rates between Complainant Sky East and a competitor, Malloy, was not unjustly discriminatory even though Malloy leased substantially more space than Sky East at a more valuable location at a rate that was not in strict numerical proportion to the difference in size or location, because Malloy (1) undertook to provide valuable services for the County that Sky East was not required to provide (such as removing disabled aircraft at no cost to the County and collecting landing fees and other fees); (2) agreed to make $100,000 worth of repairs to the hangar; and (3) agreed to pay a commission of five percent on gross sales while Sky East was obliged to pay a commission of only two percent. (pp. 8–9).

The fact that the lease rate for Malloy, Complainant's competitor, was not based on fair market value was not unjustly discriminatory where Malloy's rate was a result of a competitive request for proposal (RFP) process at a time when Respondent found itself without an FBO at the Airport. "Even if the rental rates agreed to by Malloy might have been less than appraised fair rental market rates, the RFP process itself established market values at the time Malloy entered into its lease. In addition, our policy recognizes that an airport sponsor has flexibility to offer special arrangements in order to induce an FBO to locate on an airport lacing FBO service." (pp. 9–10).

The fact that Complainant Sky East's predecessor signed a lease 15 months after Malloy that did not include the right to sell fuel and Sky East assumed that lease, rather than negotiate directly with Respondent, did not obligate Respondent to renegotiate Sky East's lease. "[T]he grant assurances do not create an obligation on the sponsor to negotiate automatically with each tenant that assumes an existing lease." (p. 10).

Thermco Aviation, Inc. v. L.A.

FAA Docket No. 16-06-07, DOT Docket No. FAA-2006-25158.

Director's Determination (June 21, 2007).

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainants: Thermco Aviation, Inc.; A-26 Co.

Respondents: Los Angeles (Cal.), County of; Los Angeles (Cal.) Board of Airport Commissioners; Los Angeles (Cal.) World Airports.

Airport: Van Nuys Airport (VNY).

Holding: Dismissing complaint.

Abstract:

Complainants Thermco Aviation and A-26 filed a complaint against Respondents, the City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airport, owners and operators of Van Nuys Airport, alleging that Respondents improperly issued a request-for-proposals (RFP) to redevelop the aeronautical property on which Complainants were located, forcing Complainants out of their leased hangars without a reasonable opportunity to lease the same or comparable hangar space and without yielding the highest financial benefit to the Airport in violation of Grant Assurances 5, 13, 22, 23, and 24. The Director found Respondents not in violation and dismissed the Complaint.

Preserving Rights and Powers (Grant Assurance 5):

Respondent’s RFP, which solicited proposals to purchase and demolish existing structures on the Airport, did not violate Grant Assurance 5, because (1) an RFP does not create a transfer of rights or powers; (2) the sale of the structures would not deprive Respondent of any of the rights and powers necessary to perform any terms, conditions, or assurances under its Grant Assurances; and (3) improvements on airport land, loose property, and personal property severable from the land are not covered by Grant Assurance 5. (p. 15).

Fee and Rental Structure (Grant Assurance 24):

Respondents did not violate Grant Assurance 24 by issuing an RFP to redevelop aeronautical property, which included the purchase and demolition of existing structures, rather than accepting Complainants’ 30-

year lease offer where the RFP states that Respondent must receive fair market value for the structures, because Respondents retained the proprietary right to make such decisions. (p. 17).

Respondents did not violate Grant Assurance 24 by issuing an RFP to redevelop aeronautical property where the RFP identified the minimum acceptable monthly rent for the land and for the hangars, office building, and flight lounge and Respondents stated that the RFP was designed to optimize the use of Airport assets by seeking the highest and best use of the parcel by the aviation public. (p. 18).

"The FAA does not consider the self-sustaining obligation to require airport sponsors to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users." (p. 19).

Respondents did not violate Grant Assurance 24 by failing to lease the hangars during the RFP process where they made a business decision not to enter into any long-term leases while redevelopment was underway, because Grant Assurance 24 did not require Respondents to establish fees that would generate the greatest possible income; Respondents were only expected to make appropriate business decisions that would make the Airport as self-sustaining as circumstances would permit while maintaining fair and reasonable prices for aeronautical users. (p. 19).

Economic Nondiscrimination (Grant Assurance 22) / Surplus Property Act:

Respondents' RFP to redevelop aeronautical property did not violate Grant Assurance 22, because its terms placed all proposers in a like position. (p. 17).

Respondents did not violate Grant Assurance 22 or the 1949 quitclaim deed obligations by electing not to enter into a direct hangar lease with Complainants that would prevent Complainants from being displaced during the redevelopment project or by initiating an RFP process that would result in the demolition of Complainants' hangar, because neither the grant assurance nor the quitclaim deed obligates an airport sponsor to enter into a specific lease arrangement to suit a specific tenant as long as the tenant is provided access on reasonable, nondiscriminatory terms. (p. 21).

Complainants' concern that Respondents' redevelopment would yield insufficient space for propeller aircraft to operate at the Airport did not amount to a violation of Grant Assurance 22 where (1) Respondents stated they planned to develop a Propeller Park specifically for the type of aircraft Complainants own and operate and in the interim they would establish an area to be used by propeller aircraft; and (2) any delay in developing the Propeller Park or establishing the interim propeller aircraft area had not prevented Complainants from having access to the Airport. "A sponsor is not required to develop any and all parcels of land in a manner consistent with the wishes of any one party, but rather may exercise its proprietary rights and powers to develop and administer the airport's land in a manner consistent with the public's interest." (p. 22).

Economic Nondiscrimination (Grant Assurance 22)—Self-servicing:

Respondents were not in violation of Grant Assurance 22(f) on the basis of Complainants' concern that they would be unable to continue self-servicing their aircraft after being dislocated from their hangar, because Complainants were occupying the hangar at the time the Complaint was filed. (p. 24). Grant Assurance 22(f) "does not obligate airport sponsors to provide space satisfactory to the aircraft owner for the purpose of performing self-service on the aircraft." (p. 24).

Standing:

Complainants lacked standing to claim that Respondents violated the 1949 quitclaim deed by allowing repeated and continued non-aviation uses of the Airport, because they failed to introduce evidence showing

that they were denied a lease at any time because Respondents favored a nonaeronautical tenant or that they were denied a lease because aeronautical space was not available. (p. 27).

Complainants were not directly or substantially affected by the Airport's failure to comply with federal land use obligations under its 1949 quitclaim deed. (p. 29).

Affirmed by Final Agency Decision of Dec. 17, 2007.

Thermco Aviation, Inc. v. L.A.

FAA Docket No. 16-06-07, DOT Docket No. FAA-2006-25158.

Final Agency Decision (December 17, 2007).

Author: Shaffer, D. Kirk, Associate Administrator for Airports, FAA.

Complainants: Thermco Aviation, Inc.; A-26 Co.

Respondents: Los Angeles (Cal.), County of; Los Angeles (Cal.) Board of Airport Commissioners; Los Angeles (Cal.) World Airports.

Airport: Van Nuys Airport (VNY).

Holding: Affirming Director's Determination of June 21, 2007.

Abstract:

In the original complaint, Complainants Thermco Aviation and A-26 alleged that Respondents, the City of Los Angeles, Los Angeles Board of Airport Commissioners, and Los Angeles World Airport, owners and operators of Van Nuys Airport, improperly began a request-for-proposals (RFP) to redevelop the aeronautical property on which Complainants were located, forcing Complainants out of their leased hangars without a reasonable opportunity to lease the same or comparable hangar space and without yielding the highest financial benefit to the Airport in violation of Grant Assurances 5, 13, 22, 23, and 24. The Director found no violation and Complainant appealed. The Associate Administrator affirmed all findings of the Director's Determination.

Turner v. City of Kokomo, Ind.

FAA Docket No. 16-98-16.

Record of Determination (March 30, 1999).

1997 FAA LEXIS 1526. 1997 WL 1120748.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Turner, Hilton A., Jr.

Respondent: Kokomo (Ind.).

Airport: Kokomo Municipal Airport (OKK).

Holding: Dismissing complaint.

Abstract:

Complainant Hilton A. Turner, Jr., a private aircraft owner, filed a complaint against Respondent, the City of Kokomo, Indiana, owner of Kokomo Municipal Airport alleging that Respondent (1) granted an exclusive right to Flying Eagle Aviation, Inc. by allowing it to provide commercial-refueling, self-refueling and other aeronautical services on the public taxiways and the ramp area; (2) established a restraint on trade in violation of the Sherman Act and the Commerce Clause; and (3) singled Complainant out for enforcement action because he is African-American in violation of 42 U.S.C. § 1983. The Director found Respondent not in violation and dismissed the Complaint.

Self-Fueling:

Respondent did not violate its obligation contained in Grant Assurance 22(f) by prohibiting private aircraft owners from self-fueling their individually owned aircraft near their hangars where Respondent chose a specific fueling location for safety and efficiency. (p. 10).

Respondent did not violate Grant Assurance 22 by taking enforcement actions against Complainant for refusing to comply with reasonable airport rules and regulations requiring that all individually owned aircraft refuel in a designated area. (p. 11). Grant Assurance 22 "does not guarantee access to an airport in noncompliance with reasonable and nondiscriminatory regulations adopted to assure the safe use of the airport." (p. 11).

Respondent's exercise of its right to enforce the Kokomo Minimum Standards did not violate its Grant Assurances where the Minimum Standards did not exclude any aeronautical use at the Airport and there was no evidence that Complainant was being treated differently from other similar users. (p. 11).

Exclusive Rights (Grant Assurance 23):

Although Flying Eagle Aviation was the only operator offering aircraft refueling, Respondent had not granted it an exclusive right where Respondent had not entered into an exclusive agreement with it to provide aircraft fueling and had not excluded self-fueling. (p. 12).

The application of different Minimum Standards was not unjustly discriminatory and did not give rise to an exclusive right to Flying Eagle Aviation, where Flying Eagle Aviation was a commercial FBO while Complainant was a private aircraft owner. (pp. 12–13).

Economic Nondiscrimination (Grant Assurance 22):

Two incidents over a two-year period did not create an established pattern of unsafe practices by Flying Eagle Aviation warranting an investigation by the FAA. (p. 13).

The eight-cent fuel flowage fee did not violate Grant Assurances where both Complainant and Flying Eagle Aviation were charged the same eight-cent fee. (p. 14).

Collateral Issues:

The FAA did not have authority to determine whether or not Respondent violated the Sherman Act or the Commerce Clause. (p. 14).

The Complainant's allegation that enforcement actions were taken against him because he is African-American was referred to the FAA Office of Civil Rights for review. (p. 14).

Motions:

Respondent's failure to provide a copy of the Minimum Standards and Rules and Regulations did not unfairly prejudice Complainant, because it was clear from the Complaint that Complainant had sufficient knowledge of the Minimum Standards. (p. 14).

Complainant's Motion for Judgment on the Pleadings was denied, because Complainant provided additional documents exculpatory to Respondent and all relevant information must be filed with the Complaint. (p. 15).

Although Respondent filed its Answer to Motion after the 10-day period in violation of 14 C.F.R. pt. 16.17(c), the late filing did not prejudice the Complainant's case. (p. 15).

Affirmed by Final Decision and Order of July 27, 1999.

Turner v. City of Kokomo, Ind.

FAA Docket No. 16-98-16.

Final Decision and Order (July 27, 1999).

1999 FAA LEXIS 803. 1999 WL 636158.

Author: Maillett, Louise E., Acting Associate Administrator for Airports, FAA.

Complainants: Turner, Hilton A., Jr.

Respondents: Kokomo (Ind.).

Airport: Kokomo Municipal Airport (OKK).

Holding: Affirming Record of Determination of Mar. 30, 1999.

Abstract:

In the original complaint, Complainant Hilton A. Turner, Jr., a private aircraft owner, alleged that Respondent, the City of Kokomo, Indiana, owner of Kokomo Municipal Airport, (1) granted an exclusive right to Flying Eagle Aviation, Inc. by allowing it to provide commercial-refueling, self-refueling and other aeronautical services on the public taxiways and the ramp area; (2) established a restraint on trade in violation of the Sherman Act and the Commerce Clause; and (3) singled Complainant out for enforcement action because he is African-American in violation of 42 U.S.C. § 1983. The Director's Determination found no violation of grant assurances and determined that it lacked jurisdiction to consider claims of the Sherman Act, Commerce Clause, and Civil Rights statute. Complainant appealed. The Associate Administrator affirmed all findings of the Director's Determination and additionally found the following:

The Director did not err by not considering Respondent's treatment of a prior tenant because "it is not within the scope of FAA's jurisdiction to redress past perceived wrongs done by a Federally funded airport." (p. 6).

Respondent did not unjustly discriminate against Complainant by requiring all airport users to refuel at a designated self-fueling area where any additional cost borne by Complainant in taxiing his aircraft to the designated area was equally borne by all members of his class of airport users. (p. 7).

The fact that Respondent's Minimum Standards were adopted after Respondent signed a contract with Flying Eagle Aviation did not prove that the Minimum Standards were created to protect the aeronautical business of Flying Eagle Aviation. (p. 8).

As an aircraft operator using the Airport, Complainant was engaged in "aviation or aeronautical activity" and thusly required to comply with all airport rules and regulations except those required only of commercial operators. (p. 9).

U.S. Aerospace, Inc. v. Millington Mun. Airport Auth.

FAA Docket No. 16-98-06.

Director's Determination (October 15, 1998).

1998 FAA LEXIS 1129. 1998 WL 1083384.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: U.S. Aerospace, Inc.

Respondent: Millington (Tenn.) Municipal Airport Authority.

Airport: Millington Regional Jetport Airport (NQA); Millington Municipal Airport, formerly.

Holding: Dismissing complaint.

Abstract:

Complainant U.S. Aerospace Corporation filed a complaint against Respondent Millington Municipal Airport Authority, owner and sponsor of the Millington Municipal Airport, alleging that Respondent was granting an exclusive right by not allowing Complainant to lease additional land and facilities to operate a full-service FBO while allowing the incumbent FBO to continue to operate. The Director found Respondent not in violation and dismissed the Complaint.

Exclusive Rights (Grant Assurance 23):

Respondent was not currently granting incumbent FBO an exclusive right, because Complainant had been evicted from the Airport for violating its lease and Respondent's Minimum Standards. (p. 19).

Complainant's speculation that it might not receive fair consideration of its proposal to become a full-service FBO was not a basis for concluding that Complainant had been unreasonably excluded from the Airport. (p. 19).

Respondent did not unreasonably exclude Complainant in violation of Grant Assurance 23 by initiating eviction actions against Complainant and declining to grant Complainant the right to operate an FBO where Complainant's president had damaged the incumbent FBO's property and assaulted one of its employees. (p. 20).

Past Violations:

Because the Part 16 process is not intended to punish past transgressions, no resolution of Complainant's allegations concerning past actions were necessary. (p. 19).

Respondent's past delays in considering Complainant's requests for leasehold expansion and general FBO status were reasonable where the delays resulted from Respondent's request for more information with which to consider Complainant's lease application. (p. 22).

Proprietary Exclusive Right:

"[T]he owner of a public use airport may elect to provide any or all of the aeronautical services needed by the public at the airport. In fact, the statutory prohibition against exclusive rights does not apply to these owners and they may exercise but not grant the exclusive right to conduct any aeronautical activity." (p. 23).

Because Respondent desired to determine if it was economically feasible to construct its own fuel farm, Respondent was justified in refusing to allow Complainant to use its fuel tanks to sell aviation fuel. (p. 22–23).

Wilson Air Ctr., LLC v. Memphis & Shelby County Airport Auth.

FAA Docket No. 16-99-10.

Director's Determination (August 2, 2000).

2000 FAA LEXIS 752. 2000 WL 1130530.

Author: Bennett, David L., Director, Office of Airport Safety and Standards, FAA.

Complainant: Wilson Air Center, LLC.

Respondent: Memphis and Shelby County (Tenn.) Airport Authority.

Airport: Memphis International Airport (MEM).

Holding: Dismissing complaint.

Abstract:

Complainant, Wilson Air Center, LLC, filed a complaint against Respondent, Memphis and Shelby County Airport Authority, sponsor of Memphis International Airport, alleging that Respondent violated Grant Assurances 22 and 23 by providing preferential treatment to a competing FBO. The Director found Respondent not in violation and dismissed the Complaint.

Economic Nondiscrimination (Grant Assurance 22):

The difference in lease rates between Complainant and its competitor was not unjustly discriminatory where the differences resulted from agreements entered into at different times, and with different lease terms. (p. 19). The addition of taxilane acreage to the Complainant's competitor leasehold was not evidence of unjust economic discrimination, because the addition only resulted in a monetary impact too small to be considered dissimilar treatment. (pp. 19–20).

In calculating the rent that the competing FBO would pay for its leasehold, it was permissible to consider the leasehold improvements upon which future rent would be assessed. (p. 22). The differences between the rent terms for a building used by the competing FBO and those for a building under negotiation with Complainant did not constitute unjust economic discrimination, because the facilities were not similarly situated (they differed with respect to age, character, condition, location, potential uses, permanence, and needed improvements). (pp. 22–23).

Respondent did not incur an obligation to make a parcel affordable to Complainant for its expansion simply because it had provided option parcels for continued growth of the competing FBO's operation. (p. 24).

The Respondent's failure to consider Complainant's interest in leasing the competing FBO's option parcels was reasonable, because Complainant only inquired about the parcels after Respondent had resolved to grant them to its competitor and the grant was in keeping with Respondent's attempts to reconfigure airport layout. (p. 26). It was not unreasonable and unjustly discriminatory for Respondent to deny Complainant its desired parcel where Complainant had not submitted a development plan showing how such parcel would be used. (p. 27).

Exclusive Rights (Assurance 23):

FAA could not find that Respondent granted a constructive exclusive right since it did not find that Respondent had unjustly discriminated against Complainant and Complainant did not show that it had been excluded from offering aeronautical services. (p. 28).

"The fact that the Complainant does not enjoy the ability to offer every variety of aeronautical service upon terms it deems sufficiently advantageous or at the location of its choice does not constitute the granting of an exclusive right to its FBO competitor." (p. 28).

Failure to Pursue a Self-Sustaining Strategy:

Respondent could accept required capital investments in lieu of rent upon determining that the improvements benefited Respondent and aeronautical users of the Airport, and such benefits were adequate to constitute a self-sustaining lease structure. (p. 28).

Affirmed by Final Agency Decision and Order of Aug. 30, 2001.

Wilson Air Ctr., LLC v. Memphis & Shelby County Airport Auth.

FAA Docket No. 16-99-10.

Final Agency Decision and Order (August 30, 2001).

2001 WL 1085348.

Author: Woodward, Woodie, Acting Associate Administrator for Airports, FAA.

Complainant: Wilson Air Center, LLC.

Respondents Memphis and Shelby County (Tenn.) Airport Authority.

Airport: Memphis International Airport (MEM).

Holding: Affirming Director's Determination of Aug. 2, 2000.

Abstract:

In the original complaint, Complainant, Wilson Air Center, LLC, alleged that Respondent, Memphis and Shelby County Airport Authority, sponsor of Memphis International Airport, violated Grant Assurances 22 and 23 by providing preferential treatment to AMR, a competing FBO. The Director's Determination found no violation and Complainant appealed. The Associate Administrator affirmed all findings of the Director's Determination.

Affirmed sub nom. Wilson Air Ctr., LLC v. FAA, 372 F.3d 807 (6th Cir. 2004).

ACKNOWLEDGMENTS

This study was performed under the overall guidance of the ACRP Project Committee 11-01. The Committee was chaired by BARRY MOLAR, Unison Consulting, Inc., Wheaton, Maryland. Members are PATRICIA A. HAHN, Patricia A. Hahn Consulting, Washington, DC; TIMOTHY KARASKIEWICZ, General Mitchell International Airport, Milwaukee, Wisconsin; ROBERT S. MAERZ, San Francisco International Airport, San Francisco, California; CARLENE MCINTYRE, Port Authority of New York & New Jersey, New York, New York; DONALD MUETING, Minnesota DOT, St. Paul, Minnesota; E. LEE THOMSON, Clark County, Las Vegas, Nevada; and KATHLEEN YODICE, Yodice Associates, Aircraft Owners and Pilots Association, Washington, DC.

DAPHNE A. FULLER provides liaison with the Federal Aviation Administration, FRANK SANMARTIN provides liaison with the Federal Aviation Administration, MONICA HARGROVE KEMP provides liaison with the Airports Council International-North America, and GWEN CHISHOLM SMITH represents the ACRP staff.

Transportation Research Board
500 Fifth Street, NW
Washington, DC 20001