

33rd Annual Basics of Airport Law Workshop and 2017 Legal Update

Session #2

RESEARCH TOOLS IN AIRPORT LAW

Marci Greenberger
Transportation Research Board

Nick Clabbers
Kaplan Kirsch & Rockwell

A LAWYER'S ETHICAL OBLIGATION TO CONDUCT RESEARCH

Model Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENTS TO RULE 1.1

1. “In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include...the preparation and study the lawyer is able to give the matter.”
2. “A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar....Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study.”
8. “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice.”

CAN I REALLY GET IN TROUBLE?

- *People v. Barber* (990)
 - “Schmit asked the respondent to take his first step toward the resolution of limitations problem, and it was at this point, two weeks after the date of Marilyn Schmit's injury, that the respondent took his first step toward the resolution of the limitations problem.”
- *In re Fisher*, 202 P.3d 1186 (Colo. 2009)
 - Attorney “did not represent [husband's] OPM beneficiaries in order to secure [client's] rights in the OPM benefits program. In securing those rights.”
 - “Fisher never contacted the OPM, did not consult with experts in the field of federal benefits, and did not consult with experts in the field of federal benefits.”

BUT I DID THE RESEARCH!

- *People v. Maynard*, 238 P.3d 672 (Colo. 2009)
 - “Although Respondent had never filed a RICO suit and had a research folder that she had not updated, she did not review the folder. Respondent clearly did not even review the folder.”
 - “Notwithstanding the clear warnings, Respondent ignored it and proceeded to file the RICO case in violation of almost every pleading standard revealed by her research.”



AIRPORT LEGAL RESEARCH & RULE 1.1

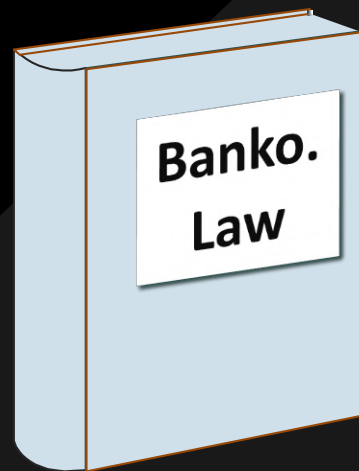


AIRPORT LEGAL RESEARCH & RULE 1.1

- Non-traditional sources
- Highly technical
- Constantly changing

AIRPORT LAW RESEARCH METHODS AND SOURCES

WHAT KIND OF LAW DO YOU PRACTICE?



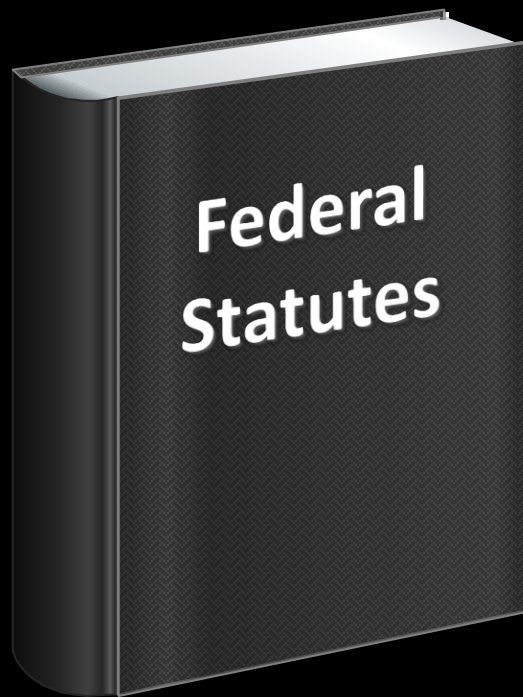
START WITH THE STATUTE, RIGHT?

- Well, maybe...

...BUT ALSO CONSIDER OTHER SOURCES

- Regulations
- FAA Orders
- FAA Guidance (“Advisory” Circulars)
- Agency Decisions (Formal and Informal)
- Agency Opinions
- Case Law
- Secondary Sources

SOURCES OF LAW



- Air Commerce Act of 1926
- Civil Aeronautics Act of 1938
- Surplus Property Act of 1944
- Federal Airport Act of 1946
- Federal Aviation Act of 1958
- Airport and Airway Development Act of 1970
- Airline Deregulation Act of 1978
- Aviation Safety and Noise Abatement Act of 1979 (**ASNA**)
- Airport Airway and Improvement Act of 1982 (**AAIA**)
- Airport Noise and Capacity Act of 1990 (**ANCA**)
- Aviation and Transportation Security Act of 2001 (**ATSA**)
- FAA reauthorization statutes
- **Recodification of Title 49 (1996)**

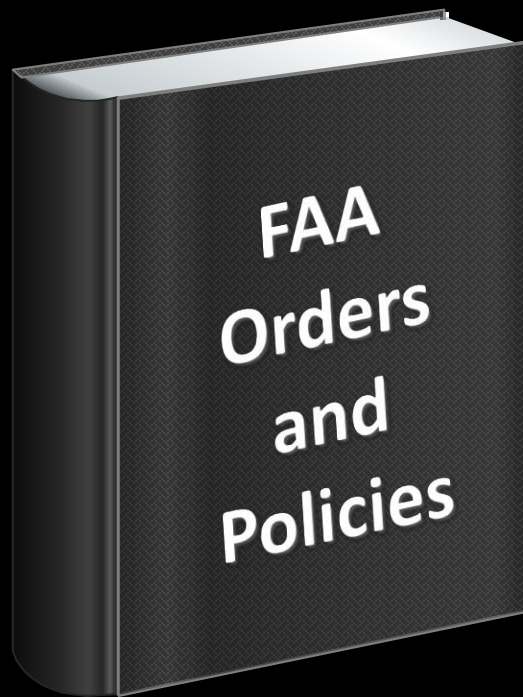
SOURCES OF LAW



Title 14 - Federal Aviation Regulations (FAR)

- Part 13 – Investigative and Enforcement Procedures
- Part 16 – Federally-Assisted Airport Enforcement Proceedings
- Part 77 – Safe, Efficient Use, and Preservation of the Navigable Airspace
- Part 91 – General Operating and Flight Rules
- Part 139 – Certification of Airports
- Part 150 – Airport Noise Compatibility Planning
- Part 161 – Notice and Approval of Airport Noise and Access Restrictions

SOURCES OF LAW



EXAMPLE ORDERS:

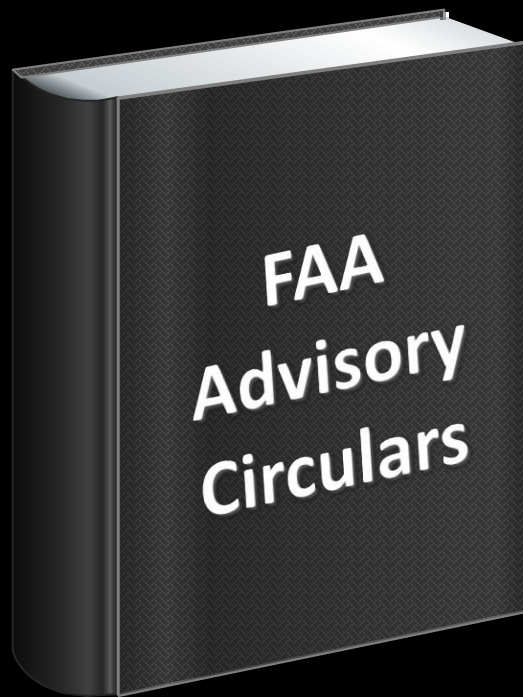
- Airport Improvement Program Handbook (Order 5100.38D)
- Airport Compliance Manual (Order 5190.6B)
- Environmental Impacts, Policies and Procedures (Order 1050.1F)
- Passenger Facility Charge (Order 5500.1)

EXAMPLE POLICIES:

Policy and Procedures Concerning the Use of Airport Revenue

Policy Regarding the Establishment of Rates and Charges

SOURCES OF LAW



EXAMPLES :

Airport Design (**A/C 150/5300-13A**)

Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects (**A/C 150/5100-14E**)

Minimum Standards for Commercial Aeronautical Activities (**A/C 150/5190-7**)

The “150” Series addresses “Airport” issues

HOW DO I FIND WHAT I NEED?

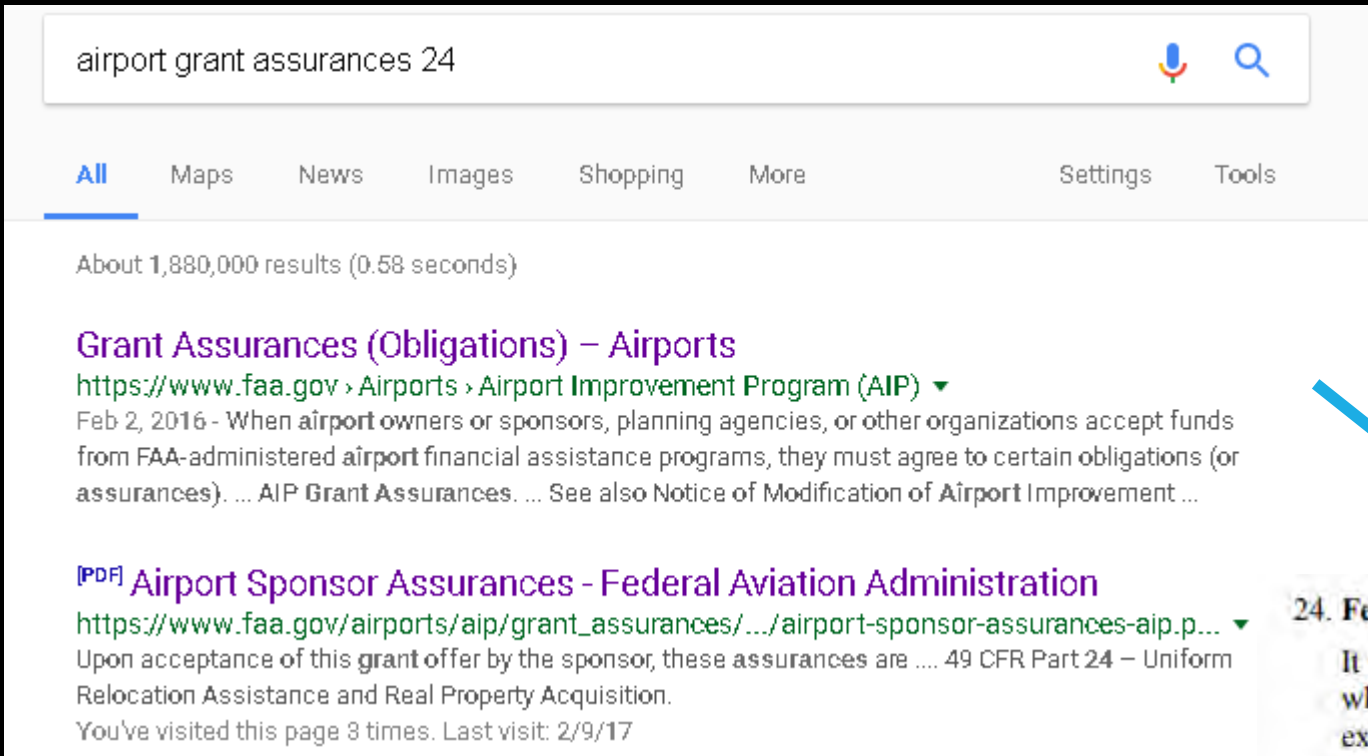
- The lawyerly answer is, as always:

IT DEPENDS.

SINGLE ISSUE EXAMPLE

- An FBO at your airport has filed a complaint with FAA under 14 C.F.R. Part 16, alleging that the sponsor is in violation of Grant Assurance 24, Fee and Rental Structure.
- What now?

GOOGLE IS YOUR FRIEND*



A screenshot of a Google search results page. The search bar at the top contains the text "airport grant assurances 24". Below the search bar, there are navigation tabs for "All", "Maps", "News", "Images", "Shopping", and "More", along with "Settings" and "Tools". The search results show "About 1,880,000 results (0.58 seconds)". The first result is titled "Grant Assurances (Obligations) – Airports" with a URL "https://www.faa.gov › Airports › Airport Improvement Program (AIP) ▾". The snippet below the title reads: "Feb 2, 2016 - When airport owners or sponsors, planning agencies, or other organizations accept funds from FAA-administered airport financial assistance programs, they must agree to certain obligations (or assurances). ... AIP Grant Assurances. ... See also Notice of Modification of Airport Improvement ...". The second result is titled "PDF Airport Sponsor Assurances - Federal Aviation Administration" with a URL "https://www.faa.gov/airports/aip/grant_assurances/.../airport-sponsor-assurances-aip.p... ▾". The snippet reads: "Upon acceptance of this grant offer by the sponsor, these assurances are 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition. You've visited this page 8 times. Last visit: 2/9/17".

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

THE AIRPORT COMPLIANCE MANUAL

(FAA ORDER 5190.6B)

- The Bible for Grant Assurances
https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/
- Check the Table of Contents to find references to specific Grant Assurances, obligations, and topics:

Part V: Financial Responsibilities

- ⊕ [Chapter 15 - Permitted and Prohibited Uses of Airport Revenue \(PDF\)](#)
- ⊕ [Chapter 16 - Resolution of Unlawful Revenue Diversion \(PDF\)](#)
- ⊕ [Chapter 17 - Self-sustainability \(PDF\)](#)
- ⊕ [Chapter 18 - Airport Rates and Charges \(PDF\)](#)
- ⊕ [Chapter 19 - Airport Financial Reports \(PDF\)](#)

MORE TARGETED RESEARCH

- Use a variety of tools to make sure you cover all of your bases.
- Lexis, Westlaw, TRB/ACRP, and FAA Part 16 Database

DEMONSTRATION — GRANT ASSURANCE 24 & FBOs

OTHER FAA MATERIALS AND REPOSITORIES

- Advisory Circulars: https://www.faa.gov/airports/resources/advisory_circulars/
- Airport Orders: <https://www.faa.gov/airports/resources/publications/orders/>
- FAA SOPs: <https://www.faa.gov/airports/resources/sops/>

SECONDARY SOURCES

- Airport Law Digests
- Transportation Research Board, Airports Cooperative Research Program

WHO IS ACRP?

- Airport Cooperative Research Program of the Transportation Research Board
- FAA is our Sponsor

WHAT DOES ACRP DO?

- Applied Research Program
- Driven by and for the Airport Industry

WHAT IS PRODUCED BY ACRP?

- Guidebooks
- Reports
- Legal Research Digests
- Synthesis
- Models and tools
- Searchable databases
- Web-only Documents
- All available to download for FREE

WHAT IS OUR PROCESS?

- Project Panel is formed
 - Develops scope of work
 - Selects proposal
 - Provides oversight and guidance

WHAT IS THE LEGAL STUDIES PROGRAM?

- Provide legal research on topics of interest to the airport legal community, focusing on legal issues and problems having national significance to the airport industry.

LEGAL STUDIES PANEL

- Chair Dave Bannard – Foley & Lardner
- Rod Borden, Elaine Roberts – Columbus Regional Airport Authority
- Jay Hinkel – City of Wichita, Kansas
- Marco Kunz – Salt Lake City Department of Airports
- Clive Otis – Post Polak, Goodsell and Strauchler
- Dan Reimer – Denver International Airport
- Elizabeth Smithers – Charlotte Douglass International Airport

- Daphne Fuller – FAA Liaison
- Tom Devine – ACI-NA Liaison

RECENT LEGAL RESEARCH DIGESTS

- **LRD 30:** Contract Risk Management for Airport Agreements
- **LRD 31:** Preemption of Worker-Retention and Labor-Peace Agreements at Airports

UPCOMING PUBLICATIONS

11-01/8-03 Evolving Law on Airport Implications by Unmanned Aerial Systems Operations

- Tim Ravich
- LRD will (1) summarize current UAS development, uses, and applications, (2) describe applicable fed, state, and local laws, regs and policies, (3) identifies legal issues and (4) identify current airport practices.
- Expected Publication October 2017

UPCOMING PUBLICATIONS

11-01/8-02 Legal Risks of Operating a Public Use Airport

- Jodi Howick
- LRD will be guidance that addresses the full scope of legal risks and responsibilities associated with operating a public use airport as it relates to airport owner or operator liability for aircraft accidents.
- Expected Publication November 2017

CURRENT TOPICS

11-01/8-01 Legal Issues Related to the Implementation and Operation of Safety Management Systems for Airports

- Peter Kirsch, Kaplan Kirsch & Rockwell
- The research is building on LRD 19 and other ACRP publications and will identify legal issues that have resulted from the implementation or operation of SMS programs.
- Expected completion June 2018

CURRENT TOPICS

11-01/8-04 Legal Consideration in the Funding and Development of Multi-Modal Facilities

- Tim Karaskiewicz
- LRD will identify current practices, case studies, FAA decisions/guidance, and legal principles that should provide information for airport operators
- Expected completion December 2017

CURRENT TOPICS

11-01/9-01 Airport Public Health Preparedness & Response: Legal Rights, Powers & Duties

- University of Arizona
- LRD will outline best practices for airport lawyers and managers that outline the legal rights, powers, and duties of an airport in addressing the spread of communicable diseases through air travel.
- Expected completion February 2018

CURRENT TOPICS

11-01/9-02 Legal Issues Relating to Airports Promoting Competition

- Eric Smith, Kaplan Kirsch & Rockwell
- Guidance for regarding the legally permissible means and methods of encouraging and accommodating competition at U.S. airports among air carriers and fixed-base operators
- Expected completion February 2018

CURRENT TOPICS

11-01/9-03 Permitted Airport Involvement in Economic Development

- William Estes, Esq.
- The digest will include a review of federal laws, case law, and FAA Order, policies, and guidance on the permitted extent of airport involvement in community economic development.
- Expected completion April 2018

UPCOMING TOPICS

- 10-01 Update to Compilation of DOT and FAA Airport Legal Determinations and Opinion Letters Through December 2012 (Part 16)
- 10-02 Legal Issues Relating to Large Scale Airport Construction Projects
- 10-03 Legal Issues for Airport Commercial Contracts
- 10-04 Updated Survey of Laws and Regulations applicable to Airport Commercial Ground Transportation- Update to LRD 3

UPCOMING TOPICS — JUST SELECTED

- 11-01 Permissible Uses of Airport Revenue and Property
- 11-02 Accommodation of Federal Agencies – Rights and Obligations of Host Airports
- 11-03 Analysis of Laws, Regulations and Case Laws Regarding Airport Customer Facility Charges

GETTING INVOLVED

- Submit a problem statement
- Volunteer to participate on panel
 - Volunteer to serve as topic expert for the legal topics
- Prepare a proposal
- Use our results
- Respond to inquiries from our contractors

KEY DATES FOR OUR LEGAL TOPICS

Topic Ideas Solicited → August-September

Problem Statements Reviewed → September

Legal Panel Selects → September/October

RFPs Posted → All year long

Proposals Submitted → Approx. 45 days after RFP

FOR MORE INFORMATION WWW.TRB.ORG/ACRP

- IdeaHub (coming soon)
- Search engine
- Publications
- All research projects
- RFPs
- Sign-up to receive notifications
- Online forum for success stories

August 2009

AIRPORT COOPERATIVE RESEARCH PROGRAM
Sponsored by the Federal Aviation Administration

Subject Areas: C, Transportation Law; V, Aviation
Responsible Senior Program Officer: Gwen Clisholm Smith

Legal Research Digest 7

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AIRPORT GOVERNANCE AND OWNERSHIP

This report was prepared under ACRP Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. The report was prepared by Daniel S. Reimer, Esq., and John E. Putnam, Esq., Kaplan Kirsch & Rockwell, LLP. James B. McDaniel, TRB Counsel for Legal Research Projects, was the principal investigator and content editor.

Background

There are over 4,000 airports in the country and most of these airports are owned by governments. A 2003 survey conducted by Airports Council International-North America concluded that city ownership accounts for 38 percent, followed by regional airports at 25 percent, single county at 17 percent, and multi-jurisdictional at 9 percent. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal problems encountered during airport development and operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cutting-edge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRB's legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

Applications

Airports are often characterized by their ownership, but it is the governance structure that determines how an airport is managed, operated, and developed. For example, an airport can be owned by a municipality and operated by either a regional- or city-controlled airport authority. A 2003 survey conducted by the Airports Council International of North America revealed that city-owned airports are the most common form of ownership in the United States (38 percent) followed by regional/airport authority (25 percent), single county (17 percent), and multiple-jurisdictions at 9 percent. State ownership accounts for 5 percent of the total, including Baltimore Washington International Airport, Anchorage International (and most other airports in Alaska), and the Hawaiian airports. Unified port authorities account for another 3 percent—examples include the Ports of Seattle, Washington, and Port of Portland, Oregon. A 2006 Transportation Research Board study reached a similar ownership distribution though the classifications were slightly different.

Airport owners are looking at different governance structures in an effort to 1) access capital markets for development and reduce reliance on general tax levies, 2) create a more efficient and cost effective organization, 3) reduce political involvement in commercial and business decisions, and 4) create a mission-focused organization. Despite this focus, few studies have attempted to address the reason why different governance structures are selected to manage and operate an airport.

This digest a) addresses the issue of essential powers to operate an airport; b) defines what airport governance includes; c) describes the advantages and disadvantages of the various governance structures; d) identifies and analyzes a number of projects where airports were transferred from one form of governance to another; and e) determines the legal problems encountered during these transfers. The digest should be helpful to airport managers, board members, city or county administrators, legislators, attorneys, managers, and other airport officials.

TRANSPORTATION RESEARCH BOARD
 OF THE NATIONAL ACADEMIES

DEMONSTRATION — SAFETY MANAGEMENT SYSTEMS

THANK YOU!

Questions?

Mgreenberger@nas.edu

202/334-1371

nclabbers@kaplankirsch.com

303.825.7000