



34th Annual Basics of Airport Law Workshop and 2018 Legal Update

Session #2

RESEARCH TOOLS IN AIRPORT LAW

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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.”
3. “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*, 700 F.2d 1186 (9th Cir. 1982) (1982)
 - “Schmit asked the respondent to research the limitations problem, and it was at this point, two years and one month after Schmit's injury, that the respondent took his first look at the [redacted]”
- *In re Fisher*, 202 P.3d 1186 (Colo. 2000) (2000)
 - Attorney “did not research the client's OPM benefits or take any steps to ensure [client's] rights in [husband's] rights.”
 - “Fisher never contacted the OPM, did not consult the OPM website, and did not consult with experts in the field of federal benefits.”

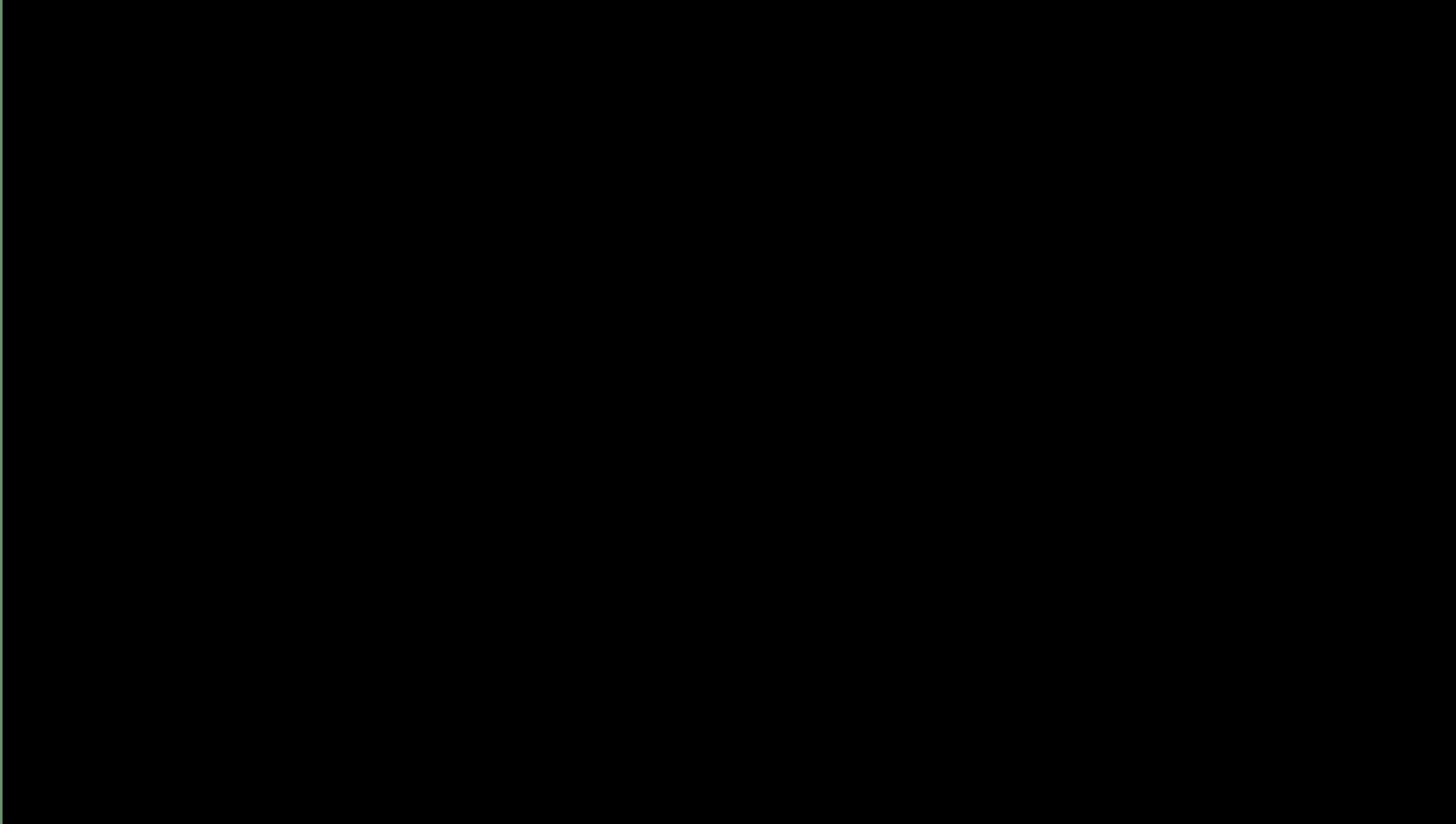


BUT I DID THE RESEARCH!

- *People v. Maynard*, 238 P.3d 672 (Colo. 2009)
 - “Although Respondent filed a RICO suit in 2007, she never filed a research folder that contained relevant cases before she had already not update these review the cases.”
 - “Notwithstanding 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



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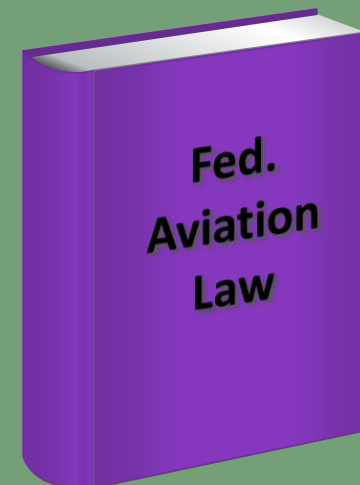
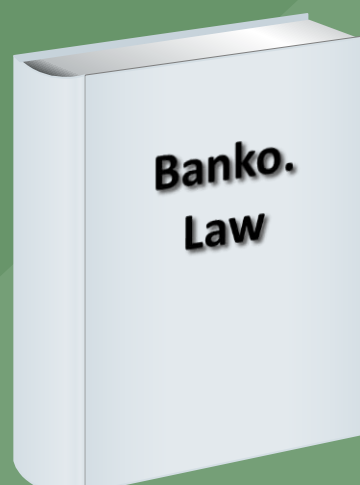
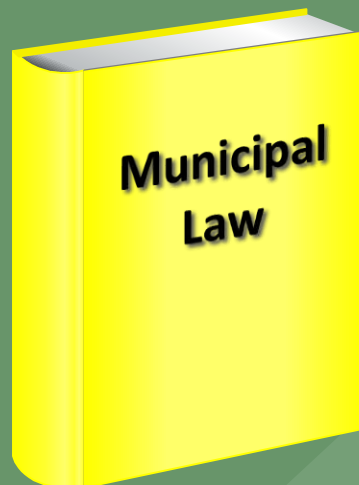
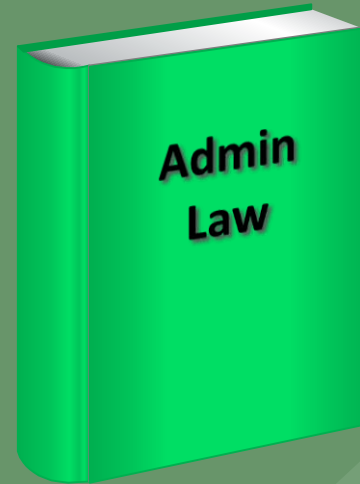
AIRPORT LEGAL RESEARCH & RULE 1.1

- Non-traditional sources
- Highly technical
- Constantly changing

AIRPORT LAW RESEARCH METHODS AND SOURCES



WHAT KIND OF LAW DO YOU PRACTICE?



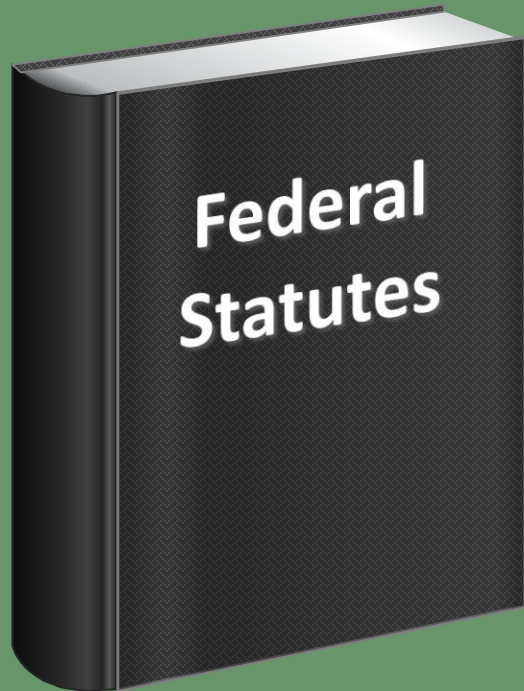
START WITH THE STATUTE, RIGHT?

- Well, maybe...

...BUT ALSO CONSIDER OTHER SOURCES

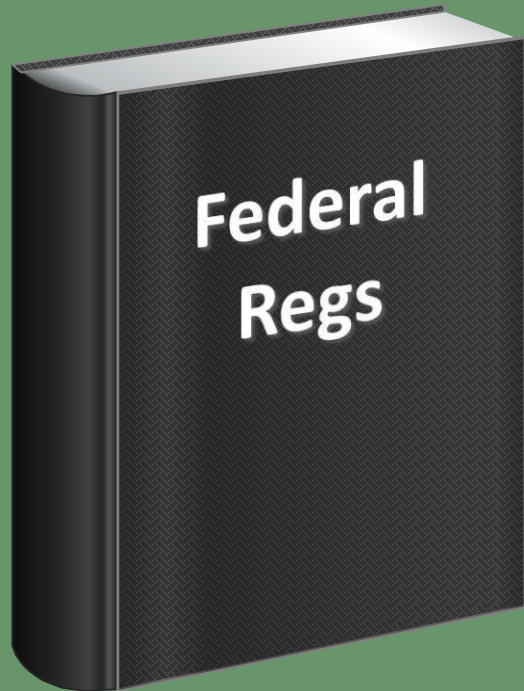
- Regulations
- FAA Orders
- FAA Guidance (“Advisory” Circulars)
- Agency Decisions (Formal and Informal)
- Agency Opinions
- Case Law
- Secondary Sources

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)**

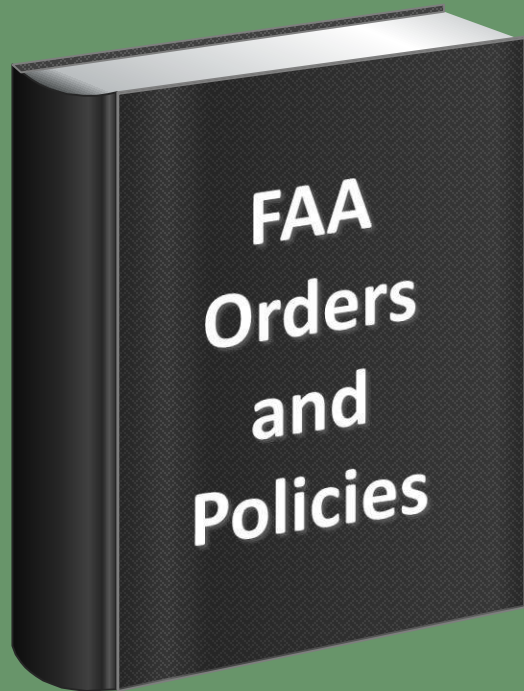
SOURCES OF LAW



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



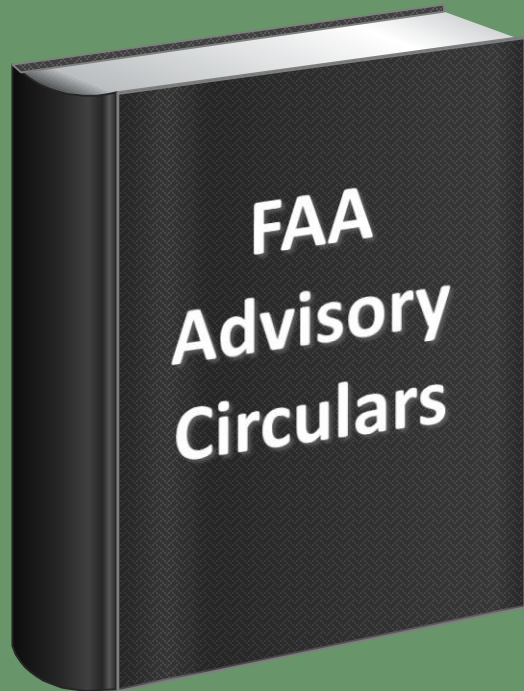
EXAMPLE ORDERS

- 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

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 Alerts / 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 Dan Reimer | Denver International Airport
- Rod Borden | Columbus Regional Airport Authority
- Debra Braga | Jacksonville Aviation Authority
- Jay Hinkel | City of Wichita, Kansas
- Clive Otis | Post, Polak, Goodsell, & Strauchler
- Elizabeth Smithers | Charlotte Douglas International Airport

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

RECENT LEGAL RESEARCH DIGESTS

- LRD 32: Evolving Law on Airport Implications by Unmanned Aerial Systems
- LRD 33: Overview of Airport Duties and Standards of Care in Airfield Accident Cases
- LRD 34: Airport Public Health Preparedness and Response: Legal Rights, Powers, and Duties
- LRD 35: Legal Considerations in the Funding and Development of Intermodal Facilities at Airports

RECENT PUBLICATION

Research Report 184: Executive Summary for the Guidebook on Understanding FAA Grant Assurance Obligation

- Web-Only Document 44 Vol 1 – Understanding FAA Grant Assurance Obligations – Guidebook
- Web-Only Document 44 Vol 2 – Technical Appendices
- Web-Only Document 44 Vol 3 – Research Report
- Web-Only Document 44 Vol 4 – Summary of AIP Grant Assurance Requirements

UPCOMING PUBLICATIONS

11-01/8-01 Legal Issues Related to Implementation and Operation of SMS for Airports

- Peter Kirsch and Nicholas Clabbers
- LRD focuses on the legal issues arising from the operation of SMS from airports who have voluntarily implemented a SMS program. There is a review of potential legal issues and an in-depth analysis of those identified issues.
- Expected publication 2018

UPCOMING PUBLICATIONS

11-01/10-01 Update of Compilation of FAA/DOT Airport Legal Determinations

aka LRD 21 – WebResource: <https://crp.trb.org/acrp/lrd21/>

- Tim Ravich
- The research is updating Part 16 and Part 302 decisions from 2012 through 2018, and then again each for three more years

CURRENT TOPICS

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

- Eric Smith
- LRD will be guidance on the legally permissible means and methods of encouraging and accommodating competition at U.S. airports.
- Expected completion January 2019

CURRENT TOPICS

11-01/10-03 Legal Issues Relating to Airport Commercial Contracts

- Scott Burrell, Leftwich, LLC
- LRD will be guidelines to assist with writing commercial contracts for airport proprietors and legal counsel.
- Expected completion June 2019

CURRENT TOPICS

11-01/11-01 Permissible Uses of Airport Revenue and Property

- Peter Kirsch
- Research will evaluate the scope of permissible uses of airport revenue and property.
- Expected completion September 2019

UPCOMING TOPICS – TENTATIVELY SELECTED

- Developing Lease Terms for New General Aviation Development
- Legal Implications of Data Collection at Airports

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 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
- 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: IC Transportation Law; V Aviation Responsible Senior Program Officer: Gwen Chabolin Smith

Legal Research Digest 7

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 Islands. 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 through 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

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HOW DO I FIND WHAT I NEED?

- The lawyerly answer is, as always:

IT DEPENDS.

SINGLE TOPIC EXAMPLE

- Airport Revenue Use
- Let's assume you receive a notice of investigation or request for documentation from FAA...



GOOGLE IS YOUR FRIEND*

A screenshot of a Google search page. The search bar contains the text "airport revenue diversion". Below the search bar, there are navigation tabs for "All", "News", "Images", "Maps", "Shopping", "More", "Settings", and "Tools". The "All" tab is selected. Below the tabs, it says "About 1,680,000 results (0.53 seconds)". The first search result is a PDF document titled "Permitted and Prohibited Uses of Airport Revenue - Federal Aviation ...". The URL is "https://www.faa.gov/airports/resources/publications/orders/.../5190_6b_chap15.pdf". The snippet below the URL reads: "Sep 30, 2009 - This chapter discusses the sponsor's use of airport revenue. diversion violates federal law and AIP grant assurances unless: (1) it is ...". The second search result is titled "Airport Compliance – Airports - Federal Aviation Administration". The URL is "https://www.faa.gov/airports/airport_compliance/". The snippet below the URL reads: "Aug 3, 2018 - Policy and Procedures Concerning the Use of Airport Revenue: ... Legal Research Digest 2, Theory and Law of Airport Revenue Diversion." An orange arrow points from the first search result to the document preview below.

09/30/2009

5190.6B

Chapter 15. Permitted and Prohibited Uses of Airport Revenue

15.1. Introduction. This chapter discusses the sponsor's use of airport revenue. It supplements, but does not supersede, the guidance issued in FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696, February 16, 1999, (*Revenue Use Policy*).

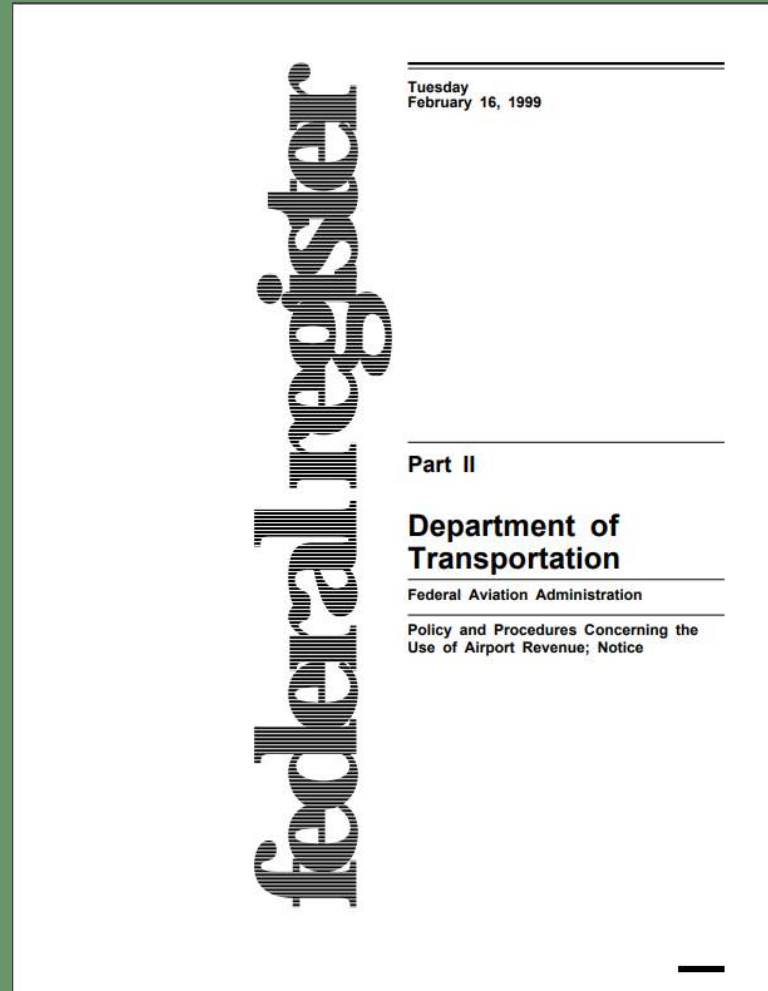
THE AIRPORT COMPLIANCE MANUAL (FAA ORDER 5190.6B)

- The Bible for all things airport compliance (Grant Assurances and other obligations)
https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/
- Table of Contents lists specific obligations

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)

“POLICY STATEMENT”



7696

Federal Register /

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA) DoT

ACTION: Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy ("Final Policy") was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of

49 U.S.C. § 47107 (GRANT ASSURANCES)

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—

(1) The [Secretary](#) of Transportation may approve a [project grant](#) application under this subchapter for an [airport development](#) project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the [airport](#);

(B) the local [airport](#) system; or

(C) other local facilities owned or operated by the [airport](#) owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a [State](#) tax on aviation fuel to support a [State](#) aviation program or the use of [airport](#) revenue on or off the [airport](#) for a noise mitigation purpose.

GRANT ASSURANCE 25

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before

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

DEMO: SOME USEFUL TOOLS FOR LOCATING FAA MATERIALS

- FAA Website:
https://www.faa.gov/airports/airport_compliance/
- LEXIS Advance – searching for (and finding) FAA decisions
- ACRP Legal Research Digest 21 – sortable FAA decisions
 - Update coming soon!
- ACRP Website Search
 - New ACRP publications on Grant Assurances

THANK YOU!

Questions?

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