

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 19, 1983

The meeting was called to order by Chairman, Senator Pete Story, on January 19, 1983 in room 331 at 10:30 a.m. in the Capitol Building in Helena, Montana.

ROLL CALL: Roll was called and all members were present
SENATOR TVEIT came in late from another meeting.

SENATE BILL NO. 119, "AN ACT REESTABLISHING THE BOARD OF AERONAUTICS UNDER EXISTING STATUTORY AUTHORITY AND RULES: REMOVING THE BOARD'S QUASI-JUDICIAL DESIGNATION AND ITS AUTHORITY OVER INDUSTRIAL REVENUE BONDS AND INTRASTATE CARRIERS;...".

SENATOR MATT HIMSEL introduced SENATE BILL 119. He stated that he is the sponsor of this bill and the chairman of the Legislative Audit Committee. This bill deals with a sunset review. Senator Himself's written statement is introduced as EXHIBIT 1.

PROPOSERS were called for.

EX-SENATOR BROWN stated that the big question when he was on the committee came down to whether or not the board had any authority over intrastate scheduled carriers and they looked at that and decided if they did it would not be exercised in the nature of the activities that go on in the state of Montana. He asked for support of S.B. 119.

There were no other proposers. OPPOSERS were called

RICHARD O'BRIEN of Conrad, Montana, a former member of the aeronautics board, having served for many years and terminated the first of 1983. He stated that they would like a change in this bill now because they have a bill introduced in the House by Representative Ramariz. He asked that the repealer section be stricken. They would like them all considered in one committee hearing until the other bill could be considered in the House. He said that he believes that the board's authority to regulate intrastate carriers should be left intact. Attached as EXHIBIT 2 is a letter expressing the amendment request.

ROBERT HOLLISTER of the Montana Pilots Association, testified as an opponent and expressed the same objections to the bill as Mr. O'Brien. He stated that he believes the fact that is

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Representative Ramirez's bill and that is the authority of the board of aeronautics to approve or disapprove all loans or grants made by the aeronautics division.

LEE BAKER of Lewistown, Montana and representing the Antique Airplane Association. He stated he would like to see those four items amended or this bill held up until the House bill can catch up.

No further opponents, the Chairman called for neutrals.

SENATOR PAT GOODOVER spoke as a neutral and indicated that there are people that would recommend that there are those on the board that really have no interest in aeronautics, such as the chamber of commerce. He also said they question an amendment change in item "e", 2-15-1812 (2), and take out item "b".

SENATOR HIMSEL distributed copies of the attorney general's opinion. EXHIBIT 3. He stated that the CAB is a regulatory body, except for taxi service. (CAB is Civic Aeronautics Board)

QUESTIONS were called for from the committee.

SENATOR TOWE asked Mr. O'Brien to explain the CAB.

MR. O'BRIEN said that the CAB does not recognize any authority over intrastate carriers. He said that those operating on a schedule basis and not going out of the state and without any other connections.

SENATOR HIMSEL said that he knows of no operation not certified by CAB.

RICHARD O'BRIEN stated that Capital Aero, Inc. was not certified. He said the CAB is the regulatory body for the aircraft, airways, etc. and between the FFA and CBA they are regulated all the way except for taxi service.

SCOTT SEACOTT, legislative auditors office, said that he has a letter that states the Civil Aeronautics Board does not recognize their authority over operator operating on these basis. He stated that Capital Aero was not certified by CAB. They carried cancelled checks and have applied for a 298 exemption.

AL CARLSON of CAPITAL AERO asked to speak as a proponent.

He stated that the FAA requires all safety maintenance inspection on all aircraft, no one can be exempted from that and the CAB handles the route regulations for intra-state carriers between the states. The only people they would not handle would be scheduled air carriers operating only in Montana with no intralane connections and the only thing they would not cover is the routes. They have nothing to do with the safety of the aircraft, training of the crew or anything like that, that is always covered by the FAA and there is no exemption from that. The only thing we are talking about is the route, schedule and the fare. They could ask for release of waiver of the exist specific exemption which the attorney general speaks of only from regulation of their routes, rates and schedules.

SENATOR HEMSEL closed on SB 199 saying that he felt the people on the board, such as chamber of commerce members, did indeed have an interest in the aviation as it is a business, and just that the board be retained as it was.

SENATE BILL NO. 134, "AN ACT CLARIFYING THE EFFECTIVE DATE OF APPOINTMENTS TO QUASI-JUDICIAL BOARDS; AMENDING SECTION 2-15-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

SENATE BILL NO. 134 was introduced by SENATOR JACOBSON by saying that this bill is request of the legislative audit committee. This is a clarification bill as to when the appointments begin serving. It is inconsistency between dates of appointments and confirmation of the board members.

PROPONENTS were called.

SENATOR MATT HIMSEL testified in favor of this bill.

MONA JAMISON of the Governor's office stated that the governor has submitted a bill which is Senator Baylock's bill and has asked if we would hold this bill up until the Governor's bill comes in. She stated that in their bill, the incumbent would be held over until the new appointment is made.

The meeting was closed on S.B. 134. See EXHIBITS 4, 5 and 6.

The HEARING on the BOARD OF HOUSING appointments by Governor Schwinden opened to the committee.

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WILLIAM A. GROFF was presented by name to the committee by Senator Story. Senator Story stated that this man is a reappointment and offered his history to the committee. EXHIBIT 7.

SENATOR TOWE MOVED to ACCEPT WILLIAM A. GROFF as a re-
appointment to the Board of Housing. MOTION PASSED UNANIMOUS-
LY.

JOHN D. BUCHANAN's name was presented to the committee with a brief history. Mr. Buchanan is a new appointee. SENATOR MANNING had been assigned to further study on this appointee and reported very favorable reports. It was mentioned that Mr. Buchanan owns a housing project but he has signed a conflict of interest statement, 215-18-14 of Montana Codes. See EXHIBIT 7.

SENATOR MANNING MOVED that the appointment of JOHN D. BUCHANAN
BE ACCEPTED. MOTION PASSED UNANIMOUSLY.

HOWARD ROSENLEAF, an Anaconda native, was presented to the committee as a new appointee. SENATOR MARBUT, who had been assigned to investigate this appointee testified that he has had mixed opinion, though the labor people seem to be in his support. SENATOR MARBUT expressed his concern over the loss of a seat to Missoula. EXHIBIT 7.

SENATOR STIMATZ stated that he had checked with Senator Jack Haffey who stated that Mr. Rosenleaf was a fine person, but did not allow anyone to push him around.

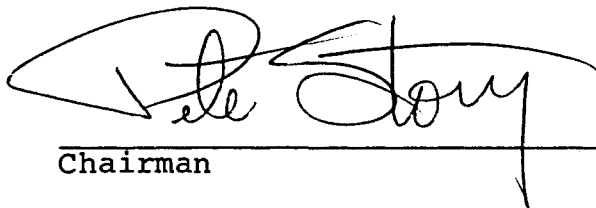
SENATOR STORY reported that some of the information received was that he did not work well with Anaconda to help see what they could do when they were in so much trouble and Mr. Bison and said that he did not work well with the board and would not attend meetings regularly. Mr. Bison did speak to the governor and the governor stated that he would like to look at that aspect of the man. Senator Story stated that he has received alot of mail from all over the state but it seems all postmarks are Helena.

SENATOR MARBUT remarked that this position is replacing a woman with a man. Mr. BISON of the governor's office stated that the two people being replaced are Virginia Jellison and James Leary. SENATOR STORY stated that he would not want to see someone on the Board that would be of negative value

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It was the unanimous decision to continue this hearing.

MOTION was made to adjourn the meeting at 12:45 a.m.



Chairman

ROLL CALL

STATE ADMINISTRATION

COMMITTEE

~~16~~th LEGISLATIVE SESSION -- 1983

Date 1/19/83

----- SENATE				SEAT #
NAME	PRESENT	ABSENT	EXCUSED	
SENATOR PETE STORY, Chairman	X			45
SENATOR H. W. HAMMOND, Vice Ch			X	34
SENATOR REED MARBUT	X			44
SENATOR LARRY TVEIT			X	33
SENATOR R. MANNING	X			48
SENATOR LAWRENCE STIMATZ	X			7
SENATOR THOMAS TOWE	X			26

Each day attach to minutes.

SENATE BILL 119

SENATOR HIMSL

Senate Bill No. 119 is a Legislative Audit Committee bill which would reestablish the Board of Aeronautics for another 6 years, the seven members to be appointed by the Governor (page 6) and be representatives of the industry, city, county and state related interests.

The Board of Aeronautics would be advisory and attached to the Department of Commerce. Under Executive Reorganization the Board had statutory authority to regulate air carriers, issue industrial revenue bonds and to advise the department.

In December of 1981 the Attorney General (29 opinions No. 41) invalidated the Board's authority to regulate scheduled air carriers.

The Federal Aviation Administration (FAA) regulates airports, aircraft, aircraft personnel and airways. The Civil Aeronautics Board (CAB) regulates all interstate air transportation. All carriers in interstate commerce must have CAB approval to operate. Federal airport development funds (ADAP) if available do not require a Board of Aeronautics to administer, the agency reported the Department of Commerce would satisfy. (Memo June 8, 1982)

The ^{Division}~~Board~~ is financed by a ^{1¢}~~14¢~~ per gallon on aviation fuel. In 1980-81 ^{Board}~~It~~ spent \$17,643. In 1981-82 ^{Board}~~It~~ spent \$14,679. The aeronautics division in 1981-82 had an income of \$661,426 and expenditures of \$810,706.

The Board never issued any industrial revenue bonds, and probably never will -- it could have difficulty f^unding a bond buyer.

So these voided or unused statutory powers were removed and it is suggested to re-establish the Board as an advisory body for the purpose of promoting air transportation services within the Department of Commerce.

Your support of the Committee action is respectfully solicited.

Box 1152
Conrad, MT 59425
January 19, 1983

Senator Peter Story, Chairman
Senate Committee on State Administration
Montana State Senate
Helena, MT 59620

Dear Senator Story:

In response to your request for clarification on questions of Aeronautics Board authority over intrastate carriers, I would like to forward the following information.

I am enclosing a copy of a letter from Hoyt B. Decker, Jr., Assistant Director for Operations, Civil Aeronautics Board, and an excerpt from minutes of the May 20, 1982, meeting of the Aeronautics Board quoting Mr. John Smith, Western Region Director, Civil Aeronautics Board. These should be self-explanatory.

I would also like to address Senator Goodover's recommendations relative to changes in structure of the Board.

1. Aviation Trades Association is a group of fixed base operators and they are and always have been represented on the Board by statute. Ref. 2-15-1812 (g)
2. Senator Hims1 stated and I concur that the state chamber position be retained on the Board. Testimony before the Legislative Audit Committee has substantiated the need for the chamber's input.
3. I personally feel a strong need for the aviation education position. Montana is and has always been a leader in aviation education programs in the nation. The input and support of the Board member representing this position is essential.
4. I feel that airport operators are now and always have been represented through League of Cities and Towns and the county commissioner representative on the Board. Ref. 2-15-1812 (c) and (d)

In addressing Senator Stimatz's comments, the Montana Airport Managers Association is an association of primarily the seven major airline-served airports in the state. To specifically restrict this Board position to their small group would not be, in my opinion, an unfair representation of the other 115 airports in the state.

Senator Peter Story
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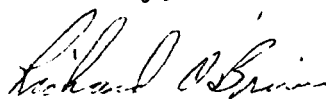
I am also enclosing a letter from Alec Hanson, Executive Director of the League of Cities and Towns, indicating their willingness to assure that airport operators are represented through their League.

In conclusion, I would like to ask that the bill be amended as follows:
Deleting the reference to repealing Sections 67-1-302 and 67-3-422 through 67-3-429. I would like to have a new section added as 67-1-304 - Airport grants and loans. All airport grants and loans issued by the department shall first be reviewed and receive approval by the board of aeronautics.

These amendments would address the issues important to the Aeronautics Board, the Montana Pilots Association, Montana Aviation Trades Association, Antique Airplane Association, and other members of the aviation community in Montana.

Thank you for your consideration of these matters.

Sincerely,


Richard O'Brien

HG OPINION

RECEIVED

DEC 9 1981

STATE
OF
MONTANAATTORNEY GENERAL
MIKE GREELY

MONTANA LEGISLATIVE AUDITOR

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 443-2922

BOARD OF AERONAUTICS - Regulation of certain air carriers preempted by federal law;

CONSTITUTIONAL LAW - Commerce Clause -- United States Constitution;

CONSTITUTIONAL LAW - Tenth Amendment -- United States Constitution;

FEDERAL PREEMPTION - Regulation of air carriers authorized for interstate transportation under federal law;

UNITED STATES CODE - Sections 1305, 1371 to 87;

MONTANA CODE ANNOTATED - Section 67-3-421.

HELD: Federal law preempts the Board of Aeronautics' authority to regulate the intrastate rates, routes or services of air carriers that are either specifically exempted or certified by the Civil Aeronautics Board.

8 December 1981

Mr. James Gillett
Acting Legislative Auditor
State Capitol Station
Helena, Montana 59620

Dear Mr. Gillett:

You requested an opinion concerning whether federal law preempts the Board of Aeronautics' authority to regulate the intrastate rates, routes or services of air carriers that are either specifically exempted or certified by the Civil Aeronautics Board.

8 December 1981

The applicable federal preemption statute is Title 49 U.S.C. § 1305, which states in pertinent part:

(a)(1) Except as provided in paragraph (2) of this subsection, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under subchapter IV of this chapter to provide interstate air transportation.

(2) Except with respect to air transportation (other than charter air transportation) provided pursuant to a certificate issued by the Board, under section 1371 of this title, the provisions of paragraph (1) of this subsection shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska.

Subchapter IV to which the above statute refers, is Title 49 U.S.C. §§ 1371 to 87. Section 1371 of that title requires all air carriers to be certified by the Civil Aeronautics Board. Section 1386 authorizes exemptions of certain carriers from certification.

Section 1305 has been construed by the federal courts, most recently in the ninth circuit. In Hughes Air Corp. v. Public Utilities Commission, 644 F.2d 1334 (9th Cir. 1981), the court held that the preemption provision in 49 U.S.C. § 1305 precludes states from regulating intrastate activities of any air carrier having authority under subchapter IV to provide interstate transportation. The court also held that carriers exempted from Civil Aeronautics Board certification under subchapter IV are still within the scope of the preemption provision and are thus precluded from state regulation. The court went on to consider the constitutionality of this broad application of federal preemption and concluded that such preemption is a valid exercise of Congress' power under the Commerce Clause and does not violate the Tenth Amendment of the United States Constitution. See also San Diego Unified Port District v. Gianturco, 651 F.2d 1306, 1310, 1313 (9th Cir. 1981).

It is significant to note that the Montana statute that prescribes the regulatory powers of the Board of Aeronautics, section 67-3-421, MCA, was enacted in 1967 and last amended in 1974; the federal preemption statute, 49 U.S.C. § 1305 was enacted in 1978. Thus the Montana statute

Mr. James Gillett
Page 3
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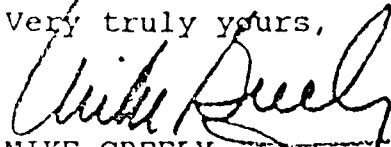
as it presently stands does not reflect contemplation by the Montana legislature of this broad federal preemption.

The holding of the court in Hughes Air Corp. clearly applies to the question at hand.

THEREFORE, IT IS MY OPINION:

Federal law preempts the Board of Aeronautics' authority to regulate the intrastate rates, routes or services of air carriers that are either specifically exempted or certified by the Civil Aeronautics Board.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Mike Greely", written over a horizontal line.

MIKE GREELY
Attorney General



CIVIL AERONAUTICS BOARD

WASHINGTON, D.C. 20428

APR 29 1982

STATE ADMINISTRATION
EXHIBIT 4

IN REPLY REFER TO: B-93

RECEIVED

MAY -3 1982

MONTANA AERONAUTICS DIVISION
HELENA, MONTANA

Mr. Herb Sammons
Chairman
State of Montana
Aeronautics Board
P. O. Box 5178
Helena, Montana 59604-5178

Dear Mr. Sammons:

John Smith of our California office has advised me of the Montana Aeronautics Board's concern that Capitol Aero, Inc. may be operating scheduled commuter airline service without C.A.B. authority and that their service may be harmful to Big Sky Airlines' operation in Montana.

As you are aware, Capitol Aero is registered as an "air taxi operator" pursuant to Part 298 of the Board's regulations. However, if Capitol Aero intended to operate as a commuter air carrier in interstate air transportation it would first require a finding of fitness by the Board. Based on the information you submitted and our contact with the carrier, it does not appear that Capitol Aero is engaging in interstate air transportation. Therefore, any requirement to regulate their current commuter status would fall under your state's jurisdiction.

Furthermore, the Board is interested in promoting competition. If a carrier elects to operate at the same points as a subsidized carrier, this agency would not take steps to inhibit this competition.

Thank you for your interest in this matter.

Sincerely,

Hoyte B. Decker, Jr.
Assistant Director For
Operations
Office of Congressional,
Community and Consumer
Affairs

CAPITAL AERO

Mr. Smith stated that he had been contacted regarding unauthorized commuter activity within the state by a firm in Helena named Capital Aero. He explained the Civil Aeronautics Board's regulations as they pertained to commuters. According to Mr. Smith, Capital Aero does hold CAB authority under part 298 of the regulations, which allows them to provide on-demand air taxi service for passengers and cargo. Mr. Smith stated that two investigators were assigned to research precisely whether or not Capital Aero was indeed providing those services which would classify them as on-demand or as an interstate commuter. The two investigators spoke with the principals of the firm and it was established that they were not currently nor did they plan on going into interstate commerce. According to Mr. Smith this created a situation where there is an intrastate carrier subject only to the jurisdiction of the Montana Aeronautics Board and their regulations.

Mr. Smith stated that the basic criteria the Civil Aeronautics Board uses in establishing whether or not a carrier is intra or interstate is whether they publish a schedule which is available outside the boundaries of the state, and also if they have any interline agreements on joint fares, baggage fares, etc. Capital Aero does not appear to have either.

Mr. Smith reiterated that the Civil Aeronautics Board's view is that the activities of the firm in question and its established route system fall only within the jurisdiction of the Montana Aeronautics Board. The CAP will not get involved until such time that Capital Aero enters another state or enters into any interline agreement with an interstate carrier.



montana league of cities and towns

HELENA, MONTANA 59601

PHONE (406) 524-1111

May 3, 1982

RECEIVED

MAY -7 1982

MONTANA AERONAUTICS DIVISION
HELENA, MONTANA

Senator Matt Himsel, Chairman
Legislative Audit Committee
State Capitol
Helena, MT 59620

Dear Senator Himsel:

A representative of the Montana League of Cities and Towns has served on the State Aeronautics Board since it was organized in 1945. The League is committed to maintaining this seat on the board as a method of assuring that municipal airports are represented in the development and implementation of policies that affect their interests.

Our representatives on the board have always been airport operators. The current League member is Maurice Sandmeyer, Chairman of the Sidney Airport Authority. The representative for the previous eight years was Bill Merrick, Chairman of the Bozeman Airport Authority.

We are willing, however, to accept a qualification that the League's representative be an airport operator. This has been the case in the past, but we are willing to accept this requirement to assure that our representative is actively involved in the operation of a municipal airport.

The services provided by our city airports to consumers, airlines and general aviation are vitally important in Montana, and the League believes that the representation provided for these interests under the present law should be maintained.

Sincerely,



Alec Hansen
Executive Director, Designate

All/dw

cc: Ferguson

AS MEMBERS OF THE BOARD OF HOUSING

John D. Buchanan - Buchanan graduated from Sunburst High School in 1954, and later passed his equivalency test from the University of Montana. He completed studies in Business Law from the University of Oklahoma in 1968, Real Estate Appraisal in 1969 from the University of Vancouver, and commercial Real Estate Investment from the National Association Real Estate Board in 1971. Buchanan was honorably discharged from the U.S. Army for service from 1955 to 1957.

He is the past president and director of the Great Falls Board of Realtors, past director of the Montana Association of Realtors, a member of the National, state, and local realtors, member of the Montana Savings and Loan League legislative committee, and a member of the Benevolent Protective Order of the Elks. Buchanan is currently the president and chairman of the Board of Buchanan Enterprises, Inc., Buchanan Construction Inc., and president and chairman of the Board of Fidelity Savings and Loan Association of Great Falls.

William A. Groff - Groff, a native of Victor, graduated from the University of Montana with a bachelor of arts in business. He is a veteran of World War II, a former director of the Montana Department of Revenue, a former member and chairman of the Western States Water Council, and former member and negotiating commissioner for the Columbia River Compact. Groff served in the Montana State Senate from 1955 to 1974. He has served as chairman of the Montana Board of Housing since 1975 and has been appointed to serve a third term.

He is re-appointed to serve a term ending January 1, 1987.

Howard Rosenleaf - Rosenleaf, an Anaconda native, attended Anaconda schools and has been a member of Carpenters Local #88 for twenty-eight years. He is currently serving as the Financial Secretary and Business Agent for Carpenters Local #88 and is also the past president of the local. Rosenleaf is a member of the Executive Board of the Montana State Council of Carpenters, president of Area 10 Heavy Highway Unions, a member of the Anaconda Advisory Council for Vocational Education, and a member of the Anaconda Helping Agencies Committee which was formed to respond to the problems created by the shutdown of Anaconda's smelter operation.

He is appointed to serve a term ending January 1, 1987.