

MINUTES OF MEETING - ENVIRONMENT AND PUBLIC RESOURCES COMMITTEE-
56TH ASSEMBLY SESSION - FEBRUARY 11, 1971

Present: Homer, Getto, Dini, Bryan, Olsen, Lowman, Ronzone

Absent: Fry, Swackhamer

Others: Robert E. Lusk, Director of Area Civic Affairs,
Trans World Airlines, Inc.; Roger G. Flynn,
Manager, Domestic Operations, Air Transport
Association of America; Mr. Ray Knisley; Mrs.
Fola Forst, League of Women Voters.

Chairman Homer called the meeting to order at 8:35 a.m. for the purpose of hearing comments and testimony of Mr. Roger G. Flynn, in connection with air noise and air pollution as associated with airlines and air transportation. Mr. Homer stated that Mr. Flynn would testify before a committee of the Senate this afternoon, but since several of them would not be able to attend that session they had called this meeting to hear Mr. Flynn.

Dr. Homer stated that this hearing would be pertinent to SB 39 and that there were several other bills as well on this general subject, and since Mr. Flynn was here from Washington D.C. he felt it was well to hear his comments in this area.

Mr. Flynn stated that in his opinion this subject was high in the minds of everybody at this time, and that legislation was being considered by several of the states. He stated that he understood that the thrust of this bill is to put noise under the control of the health people which is probably the proper way to do. Mr. Flynn stated that in other states there have been attempts made to set a noise limitation on airlines and air transportation, but this had caused a great deal of problems because they are finding that other industries as well, such as utility companies, are also contributing to noise problems with uses of jackhammers and other construction mechanics. He stated that he had recently attended a discussion in Washington D. C. on all of these problems as they relate to the Federal Government. He stated that Dr. Train, one of the speakers, pointed out that the Federal Government did intend to get into the noise business and that the Federal Government has preempted the field, as it would be an impossible situation if every state had their own regulations on noise and pollution standards where airlines, for instance, fly into as many as 10 states in one day.

Mr. Flynn spent some time in describing some of the technical aspects of noise and pollution as pertinent to airplanes and jet mechanics.

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Mr. Bryan ask for reference to Federal Legislation on this subject.

Mr. Flynn referred him to: Federal Bill 90-411, the Federal Aviation Act; Public Law 91-604, the clean air amendment; regulation FAR 36, certification of aircraft noise - which is a regulation on new planes.

Dr. Homer made mention of an advertisement on TV where new developments had eliminated the smoke stream from jet planes and asked if there were still pollutants emitted from the plane even though the smoke stream was reduced.

Mr. Flynn stated yes, there were still pollutants put into the air and explained how there was constant work and experimentation being done to reduce this.

Dr. Homer mentioned that they were hearing a lot about how plane manufacturers were working on problems of noise and pollution and wondered if results were being obtained.

Mr. Flynn explained in detail some of the problems of aircraft and pollution.

Mr. Ronzone asked the question whether Military planes used a different type of fuel than commercial planes.

Mr. Flynn stated yes, they did. He explained the difference in the types of fuel and that Military fuel had a higher cut of gasoline, probably because of sources of fuel intake all over the world. He said they had determined that the type of fuel the Military used was more dangerous and had a higher combustion capacity. He cited the loss of a military plane to make his point.

Mr. Ronzone asked if the Military fuel was cheaper to use.

Mr. Flynn stated he did not know this and would have to check that out.

Mr. Bryan asked his opinion of the passage of SB 39.

Mr. Flynn stated that he felt aircraft should be exempted from this bill because he felt the industry was working on the problems and that the public would be protected under Federal laws in this area.

Dr. Homer remarked that if the airlines are governed by Federal regulations can our statutes parallel them?

Mr. Flynn remarked that any State can enforce the Federal standards but can not exceed their limitations.

Dr. Homer stated that they had about one more minute, and asked for further questions.

Mr. Ronzone asked if the new proposed SST would be able to come under Federal regulations.

Mr. Flynn stated that a lot had been said pro and con about this subject and he made explanation that General Electric corporation had already done work in reducing the amount of pollution that would be emitted from the plane and he felt that if the plane is scheduled to be built it would be further reduced.

Dr. Homer thanked Mr. Flynn and Mr. Lusk for their time and asked that the "Analysis of Nevada's Senate Bills 20 and 39 and Senate Joint Resolution No. 4", that were to be presented at the afternoon hearing in the Senate committee, be made a part of these minutes.

Meeting was adjourned at 9:00 a.m.

The Analysis is as follows:

Our Analysis of Nevada's Senate Bills 20 and 39 and Senate Joint Resolution No. 4 is as follows:

Senate Bill 20 would establish Nevada policy in regard to environment by adopting the Environmental Quality Act of 1971. It does not appear to conflict in any way with the Federal policy contained in the National Environmental Policy Act of 1969 as adopted by Congress as Public Law 91-190. Also it does not appear to conflict with the Environmental Requirements in Section 16 of the Airport and Airway Development Act of 1970 adopted as Public Law 91-258. In fact by complying with section 16 the sponsors under ADAP in Nevada would be in effect complying with the Nevada Environmental Policy Act if adopted. The enabling constitutional amendment set forth in Senate Joint Resolution 4 does not appear to be objectionable.

We would oppose Senate Bill 39 or in the alternative ask that an exception be written into the bill to exempt aircraft operations. Senate Bill 39 as presently proposed would give the Nevada Department of Health, Welfare and Rehabilitation authority to adopt rules and regulations in regard to excessive noise regardless of the source. Federal court decisions such as Cedarhurst, Hempstead, City of Burbank and City of Audobon Park clearly hold that states, counties, or local governments cannot regulate aircraft noise when such regulation involves the control or flight of aircraft. There are three basic legal concepts which are as follows

1. Pre-emption of the field by Federal Law.
2. Conflict with Federal Law thereby violating the supremacy clause of the Constitution of the United States and
3. Impeding the free flow of commerce thereby violating the commerce clause of the Constitution.

Sections 307 and 311 of the Federal Aviation Act, as amended by Congress clearly give the administrator, the Federal Aviation Administration, authority to regulate the safe and efficient use of the airspace and to prescribe rules and regulations for the control and abatement of aircraft noise and sonic boom. The legislative history of Public Law 90-411 adopted by Congress in 1968, indicates that airport proprietors might refuse noisier aircraft. In doing so, however, the legal concepts of re-emption, conflict, and free flow of commerce still apply and the authority of the airport proprietor in exercising police power cannot be violative of these basic legal concepts. However, there have been no authoritative judicial rulings to date.

While none of the aforementioned Nevada bills appear to cover aircraft smoke emissions there might be such a bill under consideration by the legislature. If so please advise the committee that Public Law 91-604, known as the Clean Air Amendments of 1970, signed by President Nixon on 31 December, 1970, clearly pre-empts the field of aircraft air pollution emissions standards. In fact section 233 of that law provides that no state, city, or public subdivision may adopt or attempt to enforce any standards respecting emissions of any air pollutants from any aircraft or engine unless such standard is identical to the Federal standard. It is suggested that you call this to the attention of the committee. You are at Liberty to provide the committee with a copy of this telegram.

Ned K. Zartman
Regional Counsel
Western Region
Federal Aviation Administration.