
PRACTICALITIES OF WORKING IN AN AIRPORT LEGAL OFFICE

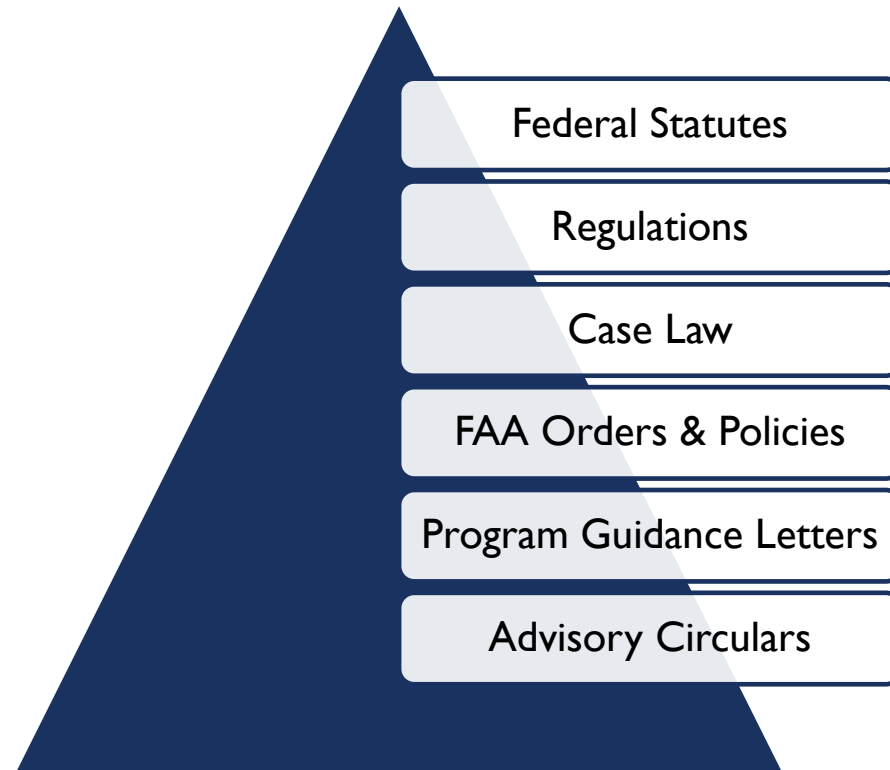
ACI-NA 2019 LEGAL AFFAIRS SPRING CONFERENCE – MAY 1-4, 2019 – LAKE TAHOE, NEVADA

Cameron Boyd, Metropolitan Airports Commission
Louisa Goldstein, Maryland Aviation Administration
Christina S. Marshall, Anderson & Kreiger
Steven L. Osit, Kaplan Kirsch & Rockwell

OVERVIEW

- Sources of Airport Law
- Resources and Practice Aids
- Effective Lawyering in the Airport Environment

SOURCES OF AIRPORT LAW



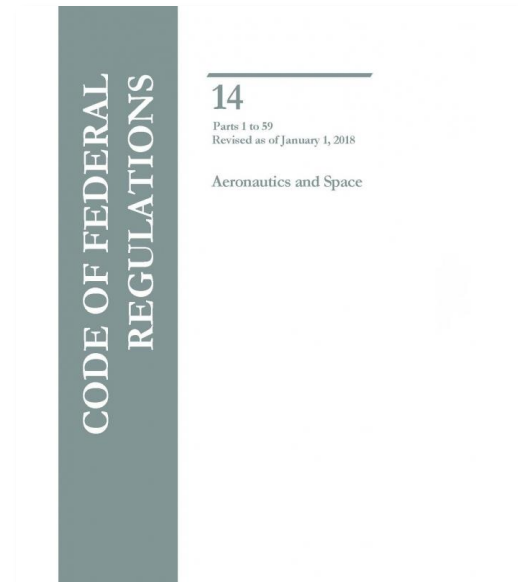
KEY STATUTES

- 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
- **Airport and Airway Improvement Act of 1982 (AAIA)**
- **Airport Noise and Capacity Act of 1990 (ANCA)**
- Aviation and Transportation Security Act of 2001 (ATSA)
- FAA Reauthorization Statutes
 - FAA Authorization Act of 1994 (recodification)
 - FAA Reauthorization Act of 2018

KEY REGULATIONS

Title 14 – Aeronautics and Space

- 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 158 – Passenger Facility Charges
- Part 161 – Notice and Approval of Airport Noise and Access Restrictions

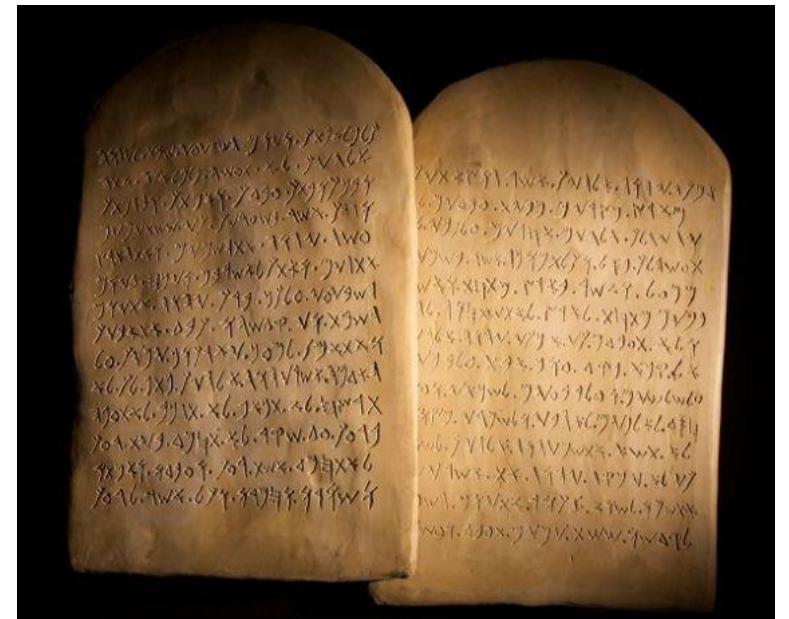


CASE LAW

- United States v. Causby, 328 U.S. 256 (1946)
- City of Phoenix v. Huerta, 15-1158 (D.C. Cir 2018)
- Building and Constr. Trades Council v. Associated Builders & Contractors of Mass./R.I., Inc., 507 U.S. 218 (1993)
- Green Elec. Systems. v. Metro. Airports Comm'n, 486, N.W.2d 819 (Minn. Ct. App. 1992)
- Enterprise Leasing Co. v. Metro. Airports Comm'n, 250 F.3d 1215 (8th Cir. 2001)

GRANT ASSURANCES

- 39 separate requirements, e.g. –
 - Assurance 5 – Rights and Powers
 - Assurance 22 – Economic Nondiscrimination
 - Assurance 23 – Exclusive Rights
 - Assurance 24 – Fee and Rental Structure
 - Assurance 25 – Airport Revenue
- Applies to most non-planning grants



https://www.faa.gov/airports/aip/grant_assurances

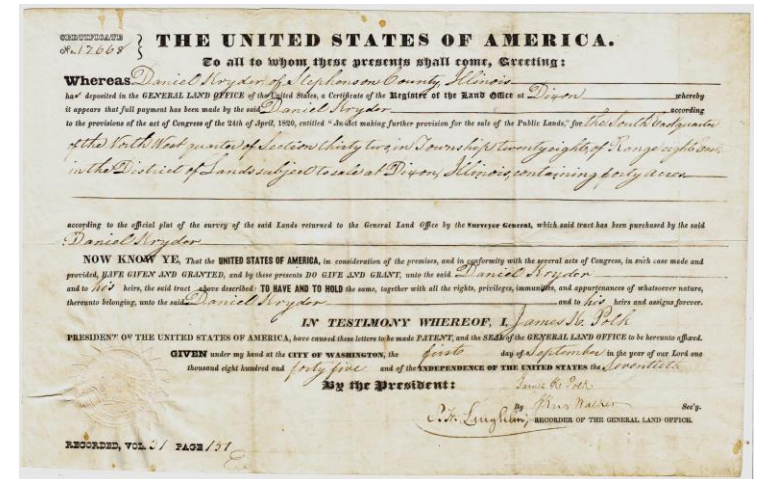
GRANT ASSURANCES (CONT'D)

- Contractual, but congressionally mandated and modifications are subject to notice/comment
- 20-year duration
- FAA enforcement (Part 13 and Part 16)
- No private right of action or third-party beneficiaries



SURPLUS PROPERTY DEEDS

- Surplus Property Act – Post-WWII conveyances
- Many of same restrictions as grant assurances
 - Operate as an airport
 - Reasonable access, no unjust discrimination
 - Prohibition on exclusive rights
- Perpetual (no 20-year limitation)



FAA POLICIES

- Policy Regarding Rates and Charges (June 21, 1996, amended July 14, 2008)
 - Airport rates and charges should be fair and reasonable and not unjustly discriminatory
 - Republished in 2013
- Policy and Procedures Concerning the Use of Airport Revenue (February 16, 1999)
 - Operating and capital costs of airport, airport system and other facilities owned or operated by airport and directly and substantially related to air transport of passengers or property.
 - Major concerns include air carrier incentive programs, use of airport property at less than fair market value, community uses and support programs and extent of grandfather exceptions.
 - Recent Case: *Air Transport Ass'n v. FAA*, USCA 18-1157 (DC Cir April 23, 2019) (payment of airport utility costs for offsite storm water, drainage and super fund remediation was not impermissible revenue diversion)

ADVISORY CIRCULARS

- Informational documents published by FAA – not regulatory; guidance only.
- Available at: https://www.faa.gov/regulations_policies/advisory_circulars/
- Notable Advisory Circulars
 - Exclusive Rights at Federally-Obligated Airports, A/C 150/5190-6
 - Minimum Standards for Commercial Aeronautical Activities, A/C 150/5190-7
 - Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects, A/C 150/5100-17

COMPLIANCE/PROGRAM GUIDANCE LETTERS

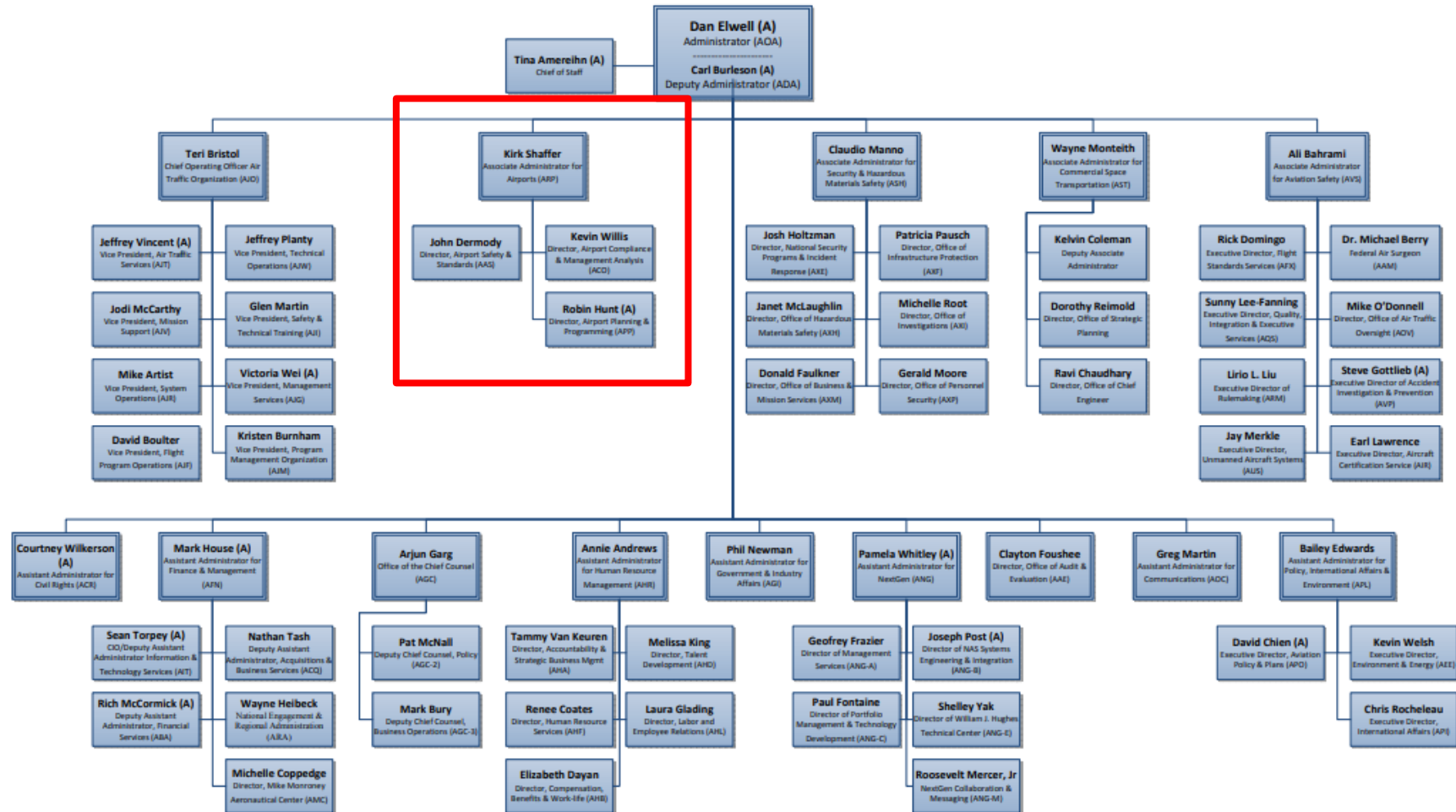
- Compliance Guidance Letters
 - Procedures for Accepting and Investigating 14 CFR Part 13 Informal Complaints Alleging Violations of Grant Assurance Obligations and Surplus Property Deed Restrictions, CGL 2014-01
- Program Guidance Letters
 - Add to or revise guidance about the administration of the AIP.
 - Available at: https://www.faa.gov/airports/aip/guidance_letters/
 - Current PGL
 - Aircraft Rescue and Firefighting (ARFF) Equipment Above Minimum Part 139 Index Requirements, PGL 17-01

STATE AND LOCAL LAW



- Enabling Act
- **Airport Safety Zoning**
- Sunshine Laws
- Data Breach
- Open Meeting Laws
- Ethics
- Procurement
- Disadvantaged Business Programs
- **Environmental Laws**
- Employment/Investigations
- Quarantine/Isolation
- Ground Transportation
- Governmental Immunity

THE FAA



FAA OFFICE OF AIRPORTS

- **Associate Administrator for Airports (ARP)**
 - **Office of Airport Planning and Programming (APP)**
 - Airports Financial Assistance Division
 - Airport Planning and Environmental Division
 - **Office of Airport Safety and Standards (AAS)**
 - Airport Engineering Division
 - Airport Safety and Standards Division
 - **Office of Airport Compliance and Management Analysis (ACO)**
 - Financial Management Analysis
 - Airport Compliance Program



THE “OTHER” FAA



THE “OTHER” AGENCIES



Office of Aviation Enforcement and Proceedings
Office of International Aviation
Office of Aviation Analysis



Transportation Security Administration
Customs and Border Protection

AIRPORT COOPERATIVE RESEARCH PROGRAM

- National Academy of Sciences, Engineering and Medicine, Transportation Research Board
- Sponsored by the FAA
- Variety of products available at no charge:
 - Guidebooks and Reports
 - Legal Research Digests
 - Databases, Indices, and Tools

<http://www.trb.org/ACRP/ACRP.aspx>

RECENT LEGAL RESEARCH DIGESTS

- Legal Issues Related to Implementation and Operation of SMS for Airports
- Legal Considerations in the Funding and Development of Intermodal Facilities
- Airport Public Health Preparedness and Response: Legal Rights, Powers, and Duties
- Overview of Airport Duties and Standards of Care in Airfield Accident Cases
- Evolving Law on Airport Implications by Unmanned Aerial Systems
- Preemption of Worker-Retention and Labor-Peace Agreements at Airports

<http://www.trb.org/Publications/PubsACRPLegalResearchDigests.aspx>

ACRP: UNDERSTANDING FAA GRANT ASSURANCE OBLIGATIONS

- Principal Investigator – Barry Molar, Unisom Consulting, Inc.
- Volume 1: Guidebook
- Volume 2: Technical Appendices
- Volume 3: Research Report
- Volume 4: Summary of AIP Grant Assurance Requirements

<http://www.trb.org/Publications/Blurbs/177623.aspx>

ACRP: UNDERSTANDING FAA GRANT ASSURANCE OBLIGATIONS

Table S-3, Airport Sponsor Grant Assurance Summary Matrix

Assurance No.	Assurance Title	Applicability	Project Type	Duration	Related Assurances	Guidebook Section No.
1.	General Federal Requirements Statutes					
a.	Title 49, USC, subtitle VIF	PR, GEN	ALL	Varies		1.6.1
b.	Davis-Bacon Act	PR	CO, EQ, LA, NO ³	GC	GA1, Regulations # h.	2.1.5
c.	Federal Fair Labor Standards Act	PR	ALL	GC	GA1, Regulations # i, # j.	2.1.5
d.	Hatch Act	GEN	ALL	UL ¹		1.6.1
e.	Uniform Relocation and Relocation Assistance Policies Act of 1970	PR	LA ⁴	GC	GA1, Regulations # p.	2.1.3
f.	National Historic Preservation Act of 1966	PR	CO, LA, NO	GC	GA1, Statutes # g, # h.	2.1.2
g.	Archeological and Historic Preservation Act of 1974	PR	CO, LA, NO	GC	GA1, Statutes # f, # h	2.1.2
h.	Native American Graves Repatriation Act	PR	CO, LA, NO	GC	GA1, Statutes # f, and # g.	2.1.2
i.	Clean Air Act	PR	CO, LA, NO	GC	GA 1, Statutes # v.	2.1.1
j.	Coastal Zone Management Act	PR	CO, LA, NO	GC	GA 1, Statutes # v.	2.1.3
k.	Flood Disaster Protection Act	PR	CO, LA, NO	GC	GA 1, Statutes # v.	2.1.3
l.	Title 49 USC §303 (formerly	PR	CO, LA, NO	GC	GA 1, Statutes	2.1.1

What Must the Sponsor Do? (Subject to Exceptions and Permitted Practices, Below)

Obtain FAA approval of its current ALP.

Obtain FAA approval of any amendments to the ALP.

Develop the airport in a manner that is generally consistent with the approved ALP.

Defer any construction until an ALP or amended ALP showing that construction has been approved by the FAA. The requirement applies to both non-aeronautical and aeronautical construction.

Maintain an up-to-date airport property map or Exhibit A.

If construction that was not shown on an approved ALP adversely affects any federally owned, leased or funded facility (including AIP-funded projects), eliminate the adverse effect or pay the cost of correcting the situation.

What May the Sponsor Do?

For ALP changes made between major master planning efforts, a Sponsor may submit proposed ALP amendments as pen-and-ink changes.

What Sponsor Actions Are Prohibited?

Implementing or permitting construction that is not shown on an approved ALP that adversely affects the airport's safety or utility. The prohibition applies to non-aeronautical as well as aeronautical construction.

Failing to update the Exhibit A when parcels are added or deleted.

What Are the Exceptions to the Requirements/Prohibitions?

Even when unapproved construction adversely affects federally owned leased or financed facilities, the FAA may choose not to require the Sponsor to eliminate the adverse effect or bear the cost of corrective action.

ACRP: UNDERSTANDING FAA GRANT ASSURANCE OBLIGATIONS

ACRP Project 03-38 (FY 2015)
Understanding FAA Grant Assurance Obligations

Task 8 Final Technical Appendices
Appendix E, Expanded List of
Questions and Answers

Section E-2 General

1. Are past violations a basis for FAA to withhold grant funding?

A. The FAA is interested in current compliance. If the Sponsor is aware that its past practices did not comply; it is taking corrective action; and it keeps the FAA informed of the status of its corrective action, the FAA will not withhold grant funding. *Clarke v. City of Alamogordo, N.M.* — No. 16-05-19. — No. FAA-2006-25212. Director's Determination (September 20, 2006). LRD 21 Determination 164. *See also, Sun Valley Aviation, Inc. v. Valley Int'l Airport* — No. 16-10-02. — No. FAA-2011-0598. FAA-2011-0598-0045. Director's Determination (December 11, 2012). LRD 21 Decision No. 240 with respect to Grant Assurances 22, 23 and 24. *See also, Steere v. Cnty. of S.D., Cal.* — No. 16-99-15. Director's Determination (July 21, 2004). LRD 21 Determination No. 125. Affirmed by Final Decision and Order of December 7, 2004. LRD 21 Determination No. 131, where FAA found that various allegations of non-compliance were moot because the airport had taken corrective action and executed a lease with the complainant.

ACRP: LEGAL RESEARCH DIGEST 21

- Principal Investigator: Pablo Nüesch, Spiegel & McDiarmid LLP

DOT/FAA Determinations

- [DOT/FAA Determination Digests \(in chronological order\)](#)
- [Index by Subject and Issue](#)
- [Index by Case Name](#)
- [Index by Party Name](#)
- [Index by Docket Number](#)
- [Index by Airport](#)

Holding:

Dismissing complaint in part.

Abstract:

Complainants, Kenneth Paskar and the Friends of LaGuardia Airport, Inc., filed a complaint against the Port Authority of New York and New Jersey for actions taken at the LaGuardia Airport. The City of New York could be considered a “respondent” within the meaning of 14 C.F.R. § 119.11, but a proceeding could be maintained against it, but did not otherwise address the merits of the complaint. The Director concluded that the City is not responsible for any non-compliance by the Airport, as long as the City complies with the Grant Assurances. The fact that the City owns the land at the Airport does not make the City responsible for the issue if it has, as here, ceded jurisdiction to the Port Authority. The Director issued an order dismissing the proceeding. (p. 13).

Index Terms:

Preserving Rights and Powers (Grant Assurance 5) | Procedure | Proprietorship | Stand

<https://crp.trb.org/acrplrd21/>

FAA PART 16 DATABASE



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Administration

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14 CFR Part 16 Rules &
Administrative Decisions

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→ Complainant-Initiated
Proceedings

→ FAA-Initiated Proceedings

→ Frequently Asked Questions

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→ Delegation of Authority

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Airport Compliance Division

Airports and Environmental

14 CFR PART 16 -- RULES AND ADMINISTRATIVE DECISIONS

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Search for Director's Determinations and Final Agency Decisions by entering information in one or more of the fields below and then pressing the "Search for Cases" button:

Complainant:	<input type="text"/>
Respondent:	<input type="text"/>
Docket Number:	16- <input type="text"/> - <input type="text"/>
<input type="button" value="Search for Cases"/>	

FAA Part 16 cases filed since January 2002 can also be searched on [Regulations.gov](#).

Page Last Modified: 09/22/2016

<https://part16.airports.faa.gov/index.cfm?page=CaseFileSearch>

FAA COMPLIANCE MANUAL – ORDER 5190.6B

Seven Parts:

- I. Background
 - II. Types of Federal Agreements
 - III. Complaint Resolution
 - IV. Airports and Aeronautical Users
 - V. Financial Responsibilities
 - VI. Land Use
 - VII. Releases and Property Reversions
- Appendices, References, and Index

(679 pages)



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

**ORDER
5190.6B**

Effective Date:
September 30,
2009

SUBJ: FAA Airport Compliance Manual

The Airport Compliance Program ensures airport sponsors' compliance with their federal obligations in the form of grant assurances, surplus and nonsurplus obligations, or other applicable federal law. The Airport Compliance Program is administered by the FAA headquarters Airport Compliance Division (ACO-100) based in Washington, DC.

This handbook provides guidance to FAA personnel on interpreting and administering the various continuing commitments airport sponsors make to the U.S. Government when they accept grants of federal funds or federal property for airport purposes. The handbook (i) analyzes the various federal obligations set forth in legislatively mandated airport sponsor assurances, (ii) addresses the nature of the assurances and the application of the assurances in the operation of public use airports, and (iii) facilitates interpretation of the assurances by FAA personnel. This manual was designed to provide guidance to FAA personnel pertaining to the Federal Aviation Administration (FAA) Airport Compliance Program.

A handwritten signature in black ink that reads "Randall S. Fiertz".

Randall S. Fiertz
Director
Airport Compliance and Field Operations Division (ACO-1)

AIR CARRIER INCENTIVE PROGRAM GUIDEBOOK

- The Air Carrier Incentive Program provides guidance to airport sponsors interested in offering promotional incentives to attract air carrier service at federally obligated facilities.

Steps for Creating an Air Carrier Incentive Program

- **Step 1:** Review and understand Airport Sponsor Assurances and applicable laws and policies.
- **Step 2:** Identify the goals of the program and the types of service that may be covered under incentive programs.
- **Step 3:** Define incentive program timelines.
- **Step 4:** Design a properly structured incentive program.



Air Carrier Incentive Program Guidebook:

A Reference for Airport Sponsors

TC10-0034

REGULATIONS.GOV

- Federal Regulatory Docket – Not the same as the Federal Register!
- Useful for tracking comments on rulemakings of interest
- Electronic filing system for commenting on rulemakings
- Only way of obtaining pleadings in Part 16 cases (~45-60 days)

<https://part16.airports.faa.gov/index.cfm?page=CaseFileSearch>

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[U.S. DOT/FAA - Notice of Extension of Time Dated September 5, 2018 \(16-17-13\)](#)

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Docket ID: FAA-2017-0854 **Agency:** Federal Aviation Administration (FAA) **Parent Agency:** Department of Transportation (DOT)

Summary:
Captain Errol Forman v. Palm Beach County, Florida and The County Commissioners, Including Paulette Burdick, Melissa McKinlay, Hal R. Valeche, Dave Kerner, Steven Abrams, Mary Lou Berger, and Mack Bernard (16-17-13)

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Boeing 737 MAX

from nine civil will participate in the hcnical Review.

Look Up N-Numbers

N-number format

 **Drones/Unmanned Aircraft Systems (UAS)**

Check Airport Status and Delays

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Regul

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[Santa Monica Settlement Agreement](#)

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Airport Compliance Airports



Airport sponsors agree to certain obligations when they accept Federal grant funds or Federal property transfers for airport purposes. The FAA enforces these obligations through its **Airport Compliance Program**.

Airport Compliance Program

- [Overview: Airport Compliance Program](#)
- [Air Carrier Incentive Program](#)
- [Airport Financial Reporting Program](#)
- [Airport Privatization Pilot Program](#)
- [Aviation Fuel Tax Action Plans and Status](#)
- [Complaints \(Parts 13 and 16\)](#)
- [Mineral Rights Revenue Exemption Toolkit](#)
- [Residential Through-the-Fence Access Toolkit](#)
- [Santa Monica Settlement Agreement \(added 6/5/2017\)](#)

Policy on Airport Rates & Charges

- [Feedback from Industry on Rates and Charges Policy \(PDF\)](#)
- [Policy Regarding Airport Rates and Charges \(PDF\) \(9/10/2013\)](#)
- [U.S. Court of Appeals Decision \(PDF\) \(7/13/2010\)](#)
- [Notice of Amendment to Policy Regarding Airport Rates and Charges \(1/17/2008\)](#)

Data, Tools, & Resources

- [Part 16 Decision Database](#)
- [Airport Financial Reporting Program \(CATS\) Website](#)

Guidance & Policy

- [Order 5190.6B, FAA Airport Compliance Manual](#)
- [Grant Assurances \(current and historical\)](#)
- [Airport Statutes & Regulations - Compliance Program](#)
- [Appraisal Standards for the Sale and Disposal of Federally Obligated Airport Property \(Compliance Guidance Letter 2018-3\) \(PDF\) \(added 11/27/2018\)](#)
 - [Appraisal Standards Presentation \(PDF\)](#)
- [Airport Sponsor and Airport User Rights and Responsibilities \(PDF\)](#)
- [FBO Industry Consolidation and Pricing Practices - Q & As \(PDF\) \(added 12/7/2017\)](#)
- [Hangar Use Policy FAQs](#)
- [Interim Guidance on Mineral Extraction and Request for Data Update \(PDF, 1.77 MB\)](#)

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Instrument Flight Procedures Information Gateway

The **IFP Information Gateway** is your centralized instrument flight procedures data portal, providing a single-source for:

- **Charts** — All Published Charts, Volume, and Type.
- **IFP Production Plan** — Current IFPs under Development or Amendments with Tentative Publication Date and Status.
- **IFP Coordination** — All coordinated developed/amended procedure forms forwarded to Flight Check or Charting for publication.
- **IFP Documents - Navigation Database Review (NDBR)** — Repository and Source Documents used for Data Validation of Coded IFPs.

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IFP Information Gateway Instructional Video

ACI-NA LEGAL AFFAIRS COMMITTEE

- Questions and Requests for Information on airport legal issues can be submitted to General Counsel of ACI-NA - Thomas R. Devine
tdevine@airportscouncil.org
- The questions and requests will be distributed to Legal Committee members and information and documents can be sent directly to person making the inquiry
- Attendees and Speakers at the Legal Affairs Conference

ADVISORY OPINIONS – ATTORNEY GENERAL

The screenshot displays the website for the Office of the Minnesota Attorney General, Keith Ellison. The header includes navigation links for 'FILE A COMPLAINT', 'ORDER PUBLICATIONS', and 'CONTACT US', along with a search bar. The main title reads 'The Office of MINNESOTA ATTORNEY GENERAL KEITH ELLISON'. A secondary navigation bar contains 'Home', 'How Can We Help?', 'Topics', 'Charities', and 'About Our Office'. The page content is divided into a left sidebar and a main content area. The sidebar lists 'Attorney General Opinions' with sub-links for 'Opinions by Date', 'Opinions by Subject', and 'Opinions by Entity Requesting Opinion'. The main content area features a heading 'Attorney General Opinions' followed by a paragraph explaining the office's authority to issue written legal opinions to constitutional executive officers, state agencies, bodies of the state legislature, and attorneys for local governments or pension funds. It notes that these opinions are not generally legally binding but can be helpful. Below this is a section titled 'Locating opinions:' with a bulleted list of links for current (1993–) and historical (1968–1993) opinions.

FILE A COMPLAINT | ORDER PUBLICATIONS | CONTACT US

Search

The Office of
MINNESOTA ATTORNEY GENERAL
KEITH ELLISON

Home | How Can We Help? | Topics | Charities | About Our Office

Attorney General Opinions

Opinions by Date
Opinions by Subject
Opinions by Entity Requesting Opinion

Attorney General Opinions

The Attorney General's Office is authorized by statute to issue written legal opinions **only to constitutional executive officers, state agencies, bodies of the state legislature, and attorneys for local governments or pension funds**. These opinions do not generally have legally binding effect as a court decision, but they can be helpful to inform the actions of local public officials. Some opinions are formally "published", while others are not. People may access formal published opinions in the ways set forth below.

Locating opinions:

- **1993 – current:** opinions are available online, using the links below:
 - [Opinions by Date](#)
 - [Opinions by Subject](#)
 - [Opinions by Entity Requesting Opinion](#)
- **1968 –1993:** the Minnesota Legal Register has published AG opinions after 1968, and contains annual subject indexes

ADVISORY OPINIONS - ETHICS

[HOME](#)[FILER RESOURCES](#)[CITIZEN RESOURCES](#)[REPORTS & DATA](#)[PUBLICATIONS](#)[CONTACT US](#)

Advisory opinions

To search, enter an opinion number or keywords or phrases in the box below.

Opinion number	Program	Subject	Date issued	Requestor
<input type="text" value="Filter"/>	<input type="text" value="Select One"/>			
450 (PDF)	Campaign Finance	A principal campaign committee may pay for certain expenses related to the operation of a legislative caucus that qualify as non-campaign disbursements under Chapter 10A."	2/6/2019	Steve Drazkowski, New House Republican Caucus
449 (PDF)	Campaign Finance	Association's advertising policies for accepting political advertisements are not governed by Chapter 10A	8/16/2018	Non public
448 (PDF)	Campaign Finance	Principal campaign committee is the vehicle for depositing and reporting a loan made to benefit a candidate's campaign	9/12/2018	Non public
447 (PDF)	Campaign Finance	Contributions from unregistered associations	6/6/2018	Non public
446 (PDF)	Campaign Finance	Use of principal campaign committee funds to pay for the cost of home security systems and protection against identity theft.	5/2/2018	
445 (PDF)	Gift Ban	Gift to officials - publications - Exception for gifts of informational materials	1/9/2018	Inst For Justice
444 (PDF)	Lobbying	Lobbyist registration for proceedings before the Public Utilities Commission. - Public Utilities Commission	10/4/2017	Non public
443 (PDF)	Campaign Finance	Registration of committee in Hennepin County - Registration	1/31/2017	Nancy

QUICK LINKS

[How to request an advisory opinion](#)

ADVISORY OPINIONS – SUNSHINE LAWS

The screenshot displays the website for the Minnesota Department of Administration's Data Practices section. At the top, there is a search bar and navigation links for 'Department of Administration' and 'State of Minnesota'. The main navigation menu includes 'Data Practices', 'Open Meetings', 'Advisory Opinions', 'Resources', and 'News and Events'. The breadcrumb trail shows 'Home > Advisory Opinions > Opinion Library'. On the left, a sidebar menu highlights 'Advisory Opinions' with sub-links for 'Our Role', 'Opinion Library', and 'Request an Opinion'. The main content area features the 'Opinion Library' title and a brief instruction on how to browse by topic. Two advisory opinions are listed: 'Advisory Opinion 19-006' (dated April 9, 2019, regarding Rockville City Council) and 'Advisory Opinion 19-005' (dated April 4, 2019, regarding the Department of Public Safety). On the right side, there is a 'Search List' search bar and an 'Archives' section with a list of years from 2009 to 2019, with the months April, March, and January of 2019 highlighted.

Department of Administration State of Minnesota

Search

mn DEPARTMENT OF ADMINISTRATION
DATA PRACTICES

Data Practices Open Meetings Advisory Opinions Resources News and Events

Home > Advisory Opinions > Opinion Library

Advisory Opinions

- Our Role
- Opinion Library
- Request an Opinion

Opinion Library

To browse advisory opinions by topic, click on a Category or Tag link under the Archives. The "Search List" field on the right side of the screen will search only advisory opinions.

Advisory Opinion 19-006

April 9, 2019; Rockville City Council

April 9, 2019 | [Open Meeting Law](#)

1. Did the Rockville City Council comply with Minnesota Statutes, section 13D.04, subdivision 2, at the February 11, 2019, special meeting? 2. Did the Rockville City Council comply with Minnesota Statutes, section 13D.01, subdivision 6, at the February 13, 2019, regular meeting?

Advisory Opinion 19-005

April 4, 2019; Department of Public Safety

April 4, 2019 | [Law enforcement data](#), [Peace officer records of children](#)

1. Pursuant to Minnesota Statutes, Chapter 13 (Data Practices Act) what is the classification of inactive criminal investigative data maintained by the Bureau of Criminal Apprehension that are "peace officer records of children"? 2. Pursuant to Minnesota Statutes, section 13.825, which data are classified as public: data that document the "discharge of a firearm by a peace officer in the course of duty," or all data that document the entire "incident" (before, during, and after the discharge of a firearm)?


Search List

Archives

- 2019
 - [April](#)
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ADVISORY OPINIONS – SUNSHINE LAWS

4/25/2018 Advisory Opinion Library / Data Practices Office



Opinion Library

To browse advisory opinions by topic, click on a Category or Tag link under the Archives. The "Search List" field on the right side of the screen will search only advisory opinions.

[View entire list](#)

Advisory Opinion 05-017

May 11, 2005; City of Saint Paul

May 11, 2005 | [Personal data/devices](#)

This is an opinion of the Commissioner of Administration issued pursuant to section 13.072 of Minnesota Statutes, Chapter 13 - the Minnesota Government Data Practices Act. It is based on the facts and information available to the Commissioner as described below.

4/25/2018 Advisory Opinion Library / Data Practices Office

Mr. Nelson provided the Commissioner with a copy of the City of Saint Paul Internet Access and E-mail Policy, Revised Effective May 1, 2002. In relevant part, it states:

Personal Use of E-Mail and Internet Access
Incidental and occasional personal use of e-mail and Internet access is tolerated subject to the same policies, procedures and legal considerations that apply to business-related e-mail and Internet use. Incidental and occasional personal use must be done on employee time such as during lunch or breaks. Such personal use is permissible so long as the incremental cost is negligible, no city's business activity is preempted by the personal use, and no city policies or laws are violated. Excessive personal use and personal use in violation of this Policy, can be grounds for discipline up to and including termination. Personal use of the city's Internet access and e-mail constitutes the user's consent to the city to monitor, read, and use in any way any message, record, or other information created by the personal use.

The Commissioner has the following comments. First, the City's policy clearly allows for some personal use of its email and Internet connection. Second, the City apparently is in possession of personal emails that Mr. Lo created. Third, as the Commissioner consistently has discussed, such data are not subject to the provisions of Chapter 13.

It should be noted that if the City is maintaining any of the data in the personal emails to document any past or future disciplinary action it may take against Mr. Lo, it appears those data become government data and are subject to Chapter 13. (See [Advisory Opinion 02-049](http://mn.gov/admin/data-practices/opinions/library/?id=36-267866#detail/appld/1/id/267850) (<http://mn.gov/admin/data-practices/opinions/library/?id=36-267866#detail/appld/1/id/267850>).

Opinion:

Based on the facts and information provided, my opinion on the issues that Mr. Nelson raised is as follows:

...

2. Assuming the data in the emails withheld by the City were not created by Mr. Lo in his capacity as a government employee, are not related to the operation of government, and are not being maintained to document past or future disciplinary action, the data are not subject to the requirements of Chapter 13.

Kurt Schmitz, any email detailing allegations against Lo brought by city employees or non-city employees...

5. I would like a copy of Sia Lo's city personnel file, including any allegations of wrongdoing lodged against him... and the accuser, any disciplinary records, training or counseling documents and job descriptions.

<https://mn.gov/admin/data-practices/opinions/library/#detail/appld/1/id/267417> 1/5

Categories

<https://mn.gov/admin/data-practices/opinions/library/#detail/appld/1/id/267417> 4/5

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