



U.S. Department
of Transportation
**Federal Aviation
Administration**

900 Independence Ave., S.W.
Washington, D.C. 20591

John S. Yodice
General Counsel
Aircraft Owners and Pilots Association
421 Aviation Way
Frederick, MD 21701-4798

October 15, 2002

Dear Mr. Yodice:

This responds to your letter of September 18, 2002, requesting an opinion on whether state legislatures may regulate the activities of flight schools and flight instructors, or otherwise impose qualifications on persons seeking to obtain either initial or advanced flight training. According to your letter, several state legislatures have done so, or are considering doing so, by imposing various aviation security requirements as a condition precedent to providing flight instruction.

As I am sure you appreciate, it is difficult to assess any legislative action absent the specific language of the enactment. Having said that, however, I think it is safe to say that state legislation that requires the collection of personal information from prospective students, including fingerprinting and background checks, or disqualifies prospective students based on specified past criminal conduct would likely intrude into an area that Congress has preempted. Congress has reserved to the Administrator the authority to regulate "... civilian schools giving instruction in flying"

Through analysis of the legislative history of the Federal Aviation Act and recognition of the comprehensive regulatory scheme governing aviation and aviation operations, courts throughout the country have recognized a Congressional intent to preclude supplementation by the States.² Especially pertinent is the fact that the U.S. Court of Appeals for the First Circuit has found state lawmaking in the area of pilot qualification to be preempted.³

¹ See 49 USC § 44707

² Among the decisions from the highest courts are *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 627 (1973); *Abdullah v. American Airlines, Inc.*, 181 F.3d 363, 367-68 (3d Cir. 1999); *British Airways Bd. v. Port Authority of New York*, 558 F.2d 75, 84 (2d Cir. 1977); *Kohr v. Allegheny Airlines, Inc.*, 504 F.2d 400, 403 (7th Cir. 1974); *Air Line Pilots Ass'n, Int'l v. Quesada*, 276 F.2d 892, 894 (2d Cir. 1960).

³ *French v. Pan Am Express, Inc.*, 869 F.2d 1, 6-7 (1st Cir. 1989) ("The intricate web of statutory provisions affords no room for the imposition of state law criteria vis-a-vis pilot suitability.").

More specifically, Congress has imposed the duty to regulate pilot qualifications⁴ and pilot training⁵ upon the Administrator, and the Administrator has carried out that authority by promulgating comprehensive regulations.⁶ Also, just last November, Congress passed legislation pertaining to flight training of aliens.⁷ Indeed, the application for a student pilot certificate requires the disclosure of an applicant's prior convictions, and any subsequent convictions must be disclosed every time a pilot renews his or her medical certificate. With respect to disqualification, Congress has acted to prohibit the issuance of a pilot certificate to any person convicted of a controlled substance violation involving the use of an aircraft⁸ and empowered the Administrator to restrict or prohibit issuing an airman certificate to an alien.⁹

The need for uniformity among the states in this area should be readily apparent. Aircraft navigate in federally regulated airspace, frequently traversing through and landing in a state other than the one from which the aircraft took off. The U.S. Supreme Court and numerous Circuit Courts of Appeal have found that a single, uniform system of regulation is essential to aviation safety.¹⁰ The qualifications of the persons operating aircraft are determined according to federal rules and should not be subject to standards varying from state to state.

Finally, with regard to the suggestion in your letter that state action in this area might also intrude on authority given to the recently created Transportation Security Administration, your attention is directed to the recently passed Aviation and Transportation Security Act, Section 113, Flight School Security.¹¹

⁴ See 49 USC § 44703(a).

⁵ See 49 USC § 44707.

⁶ 14 CFR Parts 61 and 141.

⁷ Pub. L. 107-71, codified at 49 USC § 44939.

⁸ 49 USC §§ 44703(f), 44710.

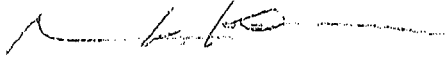
⁹ 49 USC § 44703(c)(1).

¹⁰ *City of Burbank*, 411 U.S. at 639; *Kohr*, 504 F.2d at 404; *United States v. Christensen*, 419 F.2d 1401, 1404 (9th Cir. 1969); see also *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944) (Justice Jackson, concurring).

¹¹ See 49 USC § 44939.

We appreciate the interest of state legislators in protecting against the potential harmful use of aircraft, and we share that concern. Nevertheless, it is our view that the adoption of such measures must be uniform throughout the country and, therefore, is appropriate only at the federal level.

Sincerely,



James W. Whitlow
Deputy Chief Counsel