



AIRCRAFT OWNERS AND PILOTS ASSOCIATION

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Andy Cebula

August 9, 2006

Gerald Connolly, Esq.
Senior Assistant Counsel to the Governor
Office of the Governor
State Capitol, Room 214
Albany, NY 12224

Dear Mr. Connolly:


I understand that the legislation that was recently passed by the New York legislature that seeks to amend the general business law and the executive law in relation to background checks for people attending flight training schools is still awaiting the Governor's review. Last week, on behalf of the Aircraft Owners and Pilots Association, I shared with you the information that we had received from the FAA regarding their view of state legislation that seeks to regulate pilot qualifications and flight school operations. That is, their view is that Federal law preempts such state action.

As you know, the Transportation Security Administration also regulates aviation activities. We recently received correspondence from the TSA that expresses the TSA's similar view of such legislation. That is, the TSA also maintains that Federal law preempts such state action. In particular, TSA pervasively regulates security in all flight activities, including security at flight schools and security threat assessments on certain flight school candidates. I am enclosing a copy of the letter for your reference.

We hope that this additional correspondence will be considered by the Governor and will further help to persuade him to veto the legislation.

If I can be of any further assistance to you in this matter, please do not hesitate to contact me at 202-737-3030.

Sincerely,


John S. Yodice
General Counsel

Enclosure

cc: Francine Kerner, TSA Chief Counsel



Transportation
Security
Administration

AUG 8 2006

Ms. Kathleen Yodice
Counsel
Aircraft Owners and Pilots Association
421 Aviation Way
Frederick, Maryland 21701

Dear Ms. Yodice:

Thank you for your inquiry requesting the Transportation Security Administration's (TSA) opinion on the authority of states to enact and enforce their own requirements on aviation security. In particular, you are concerned that state laws requiring flight school applicants to undergo state and/or Federal Bureau of Investigation (FBI) criminal background checks are preempted by Federal law.

It is TSA's position that Federal law would preempt state-imposed aviation security requirements for threat assessments for flight school applicants. By statute, Congress has specifically reserved the authority to regulate "civilian schools giving instruction in flying" to the Federal government¹ and established the Federal responsibility to promote the safe flight of civil aircraft in air commerce through regulations and standards necessary for safety and national security.² These statutes, including the Federal Aviation Act, the Aviation and Transportation Security Act, and others, establish an extensive system of regulation over most facets of the aviation sector.³ The comprehensive nature of Federal regulation of aviation safety and security evinces a clear intention by the Congress to occupy the field in the aviation sector to the exclusion of state law.⁴

The Aviation and Transportation Security Act (ATSA), which created TSA, also grants the agency broad authority in the area of transportation security.⁵ In the area of aviation security, TSA is specially charged with providing for civil aviation security and may exercise any security function originally invested in the Department of Transportation.⁶ Under the system of aviation security established by ATSA, a "uniform, consistent security system" is being constructed nationwide.

¹ See 49 U.S.C. § 44707(a)

² 49 U.S.C. § 44701(a)(5).

³ See generally 49 U.S.C. chs. 401-491.

⁴ *French v. Pan Am Express, Inc.*, 869 F.2d 1, 4 (1st Cir. 1989) ("We therefore conclude, without serious question, that preemption is implied by the comprehensive legal scheme which imposes on the [Federal government] the duty of qualifying pilots for service.").

⁵ See 49 U.S.C. § 114.

⁶ See 49 U.S.C. § 114(d)(1) & (2).

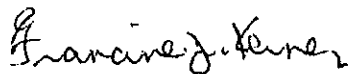
(Under which everyone “will be treated the same” for security purposes.⁷) Under its authority, TSA has set security standards for aircraft, airports, airport personnel and passengers, including standards for security threat assessments conducted on workers in aviation and several other modes of transportation.

As you may know, TSA already conducts security threat assessments on certain flight school candidates.⁸ Under this requirement, foreign nationals wishing to obtain any type of flight training in the United States must seek authorization from TSA by filing an application, confirmed by the flight school, and undergoing a security threat assessment. Once received, TSA will conduct a review of the application, search relevant national security and immigration related databases, and issue either an authorization for training or a determination of threat. TSA requires flight school operators to maintain certain records required by the regulations for a period of five years. TSA and the Federal Aviation Administration (FAA) inspect these records and pursue civil enforcement penalty actions in the event of any discovered violations. Similar state-imposed requirements would be preempted.

TSA’s security regulations complement the substantial body of regulations governing the safety of flight implemented by the FAA. In light of the comprehensive regulatory scheme governing aviation and aviation operations, courts have routinely recognized the congressional intent to preclude supplementation of Federal aviation safety and security requirements by the States.⁹

Thank you for requesting our views on this important homeland security issue. If we can be of further assistance, please do not hesitate to call upon us.

Sincerely,



Francine J. Kerner
Chief Counsel

⁷ 147 Cong. Rec. 8308 (2001).

⁸ 49 U.S.C. § 44939; 49 C.F.R. §§ 1552.1 to 1552.5.

⁹ E.g., *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 (1977); *Kohr v. Allegheny Airlines, Inc.*, 504 F.2d 400, 403 (7th Cir. 1974); *Air Line Pilots Ass’n v. Quetada*, 276 F.2d 892, 894 (2d Cir. 1960).