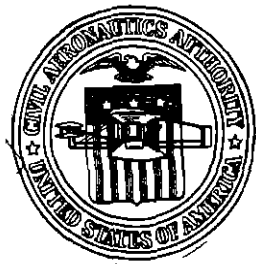


CIVIL AERONAUTICS AUTHORITY
Technical Development Division
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SURVEY OF STATE AIRPORT ZONING LEGISLATION



By

John M. Hunter

Airport Section

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SURVEY OF STATE AIRPORT ZONING LEGISLATION

By

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SUMMARY

According to a survey recently completed, there were, as of December 31, 1938, eleven states having statutes expressly providing for exercise of the state police power either to prevent the erection of structures and other objects in the vicinity of airports, that would be hazards to the landing and taking-off of airplanes, or to compel the removal or lowering of existing obstructions of this nature.

Of these states, it appears that in only two cases, Nebraska and Pennsylvania, is the statute clearly designed to accomplish the latter purpose, and that, so far as method is concerned, nine states may be said to have acts providing for use of the method popularly known as "airport zoning", these being Alabama, Connecticut, Florida, Indiana, Louisiana, Maine, Maryland, Michigan, and Pennsylvania, while the statutes of Iowa and Nebraska apparently contemplate use of the so-called court action method. In addition, it appears that these twelve statutes, Pennsylvania having two, differ widely in the regulatory agency designated, the particularity with which the zone and building height limits are stated, the requirements themselves, and certain other respects.

INTRODUCTION

Of the problems confronting civil aeronautics today, there are few, if any, more important or difficult than that of clearing airport approaches of existing obstructions and that of keeping them clear. And, of the solutions of these problems that have been suggested, there is none as satisfactory, in many respects, as police power "airport zoning."

This being the case, it is not surprising that there has been, in recent months, a nation-wide awakening of interest in such zoning, together with a growing appreciation of its possibilities, the only occasion for surprise being that this realization has been so long delayed. On this subject, conferences have been held, resolutions adopted, and studies made or authorized, ordinances have been adopted by municipalities; and bills have been introduced in state legislatures. And, in most of these cases, the persons interested have contacted the Airport Section of the Civil Aeronautics Authority, requesting information and assistance.

Naturally enough, many of these inquiries have been with regard to what has already been done in this field, this being particularly true of the many received from persons interested in framing state airport zoning enabling acts. Obviously, information of this nature would prove helpful to the advocates of such legislation in many ways, particularly by providing a

valuable guide in the drafting of the statute, permitting its framers to take advantage of the experience of others and thereby avoid their mistakes.

Accordingly, it appearing that comprehensive information on this subject was lacking, it was decided to take a survey of existing state legislation designed to prevent the obstruction of airport approaches or to eliminate existing obstructions, under the police power. The results of this study are presented in this report, the several statutes found being summarized and compared as to their principal features. No attempt has been made to criticize these acts or to recommend future legislation, the facts being simply stated as such.

SCOPE OF SURVEY

In information, it should be noted, is neither as complete nor as conclusive as might be desirable. For one thing, the source material used does not include all special laws applicable to one particular airport. In the second place, there are almost as many different systems of indexing and codification in use as there are states, making it impossible to be certain that every law on the subject has been located. Thirdly, there are many statutory provisions on the general subject of protection or clearing of airport approaches which are so uncertain and vague in their wording as to make a determination as to their meaning and effect a matter of interpretation, and therefore one of personal opinion. And finally, no attempt has been made to

ascertain what laws have been passed since the first of the year.

As a second preliminary consideration, it should be noted that this survey was confined to those statutes designed to prevent the erection of airport obstructions or compel their removal or lowering, by exercise of the police power, no effort having been made to cover the many statutes providing for the accomplishment of these objectives by use of the power of eminent domain or by any other method involving compensation to the private landowner. In other words, the survey was concerned with the protection and extension of airport approaches by regulation, as distinguished from methods involving acquisition of property rights.

So far as airport zoning is concerned, this means that information has not been developed as to all types of such zoning. As the term is generally used, zoning is a police power regulation of the use of private property, without compensation, but strictly speaking, it is zoning also where areas are designated for the purpose of indicating what property rights may be acquired by compensation to the landowner, as is done or provided for by several state statutes commonly referred to as airport zoning acts. Distinguishing then between airport zoning by regulation and airport zoning by purchase, it should be understood that this survey was concerned with only the former, and that statutes contemplating the latter only are therefore not included in the list of airport zoning laws given herein.

Finally, it should be noted that this survey was limited to determining which states have laws expressly permitting prevention or abatement of obstructions in the vicinity of airports, without compensation, and that information is therefore not given as to the states in which the police power may be exercised for these purposes in the absence of such a statute. Ordinarily, there must be some sort of an enactment by the state legislature, either itself imposing the regulations or delegating the power to a state commission or board or to municipalities or counties. However, it is believed to be possible that such a delegation may be effected in a more indirect way in the case of cities in home-rule states, by amendment of the city charter, while there is always the possibility of court action to compel the lowering or removal of a particular existing obstruction as a public nuisance, or to restrain the erection of a structure or other object that would be such a nuisance. And, while it is certainly desirable to have an express delegation of power to zone the area surrounding airports, and helpful to have a legislative declaration that airport obstructions are public nuisances, it is apparently sufficient basis for adoption of a municipal airport zoning ordinance that the state have a general zoning enabling act, not expressly mentioning airport zoning. At any rate, there are known to be at least six states, namely, California, Ohio, New Jersey, Pennsylvania, Washington, and Wisconsin, in which one or more cities or counties have promulgated airport zoning regulations without benefit of an express state authorization.

ANALYSIS OF STATUTES

Keeping these limitations and qualifications in mind, it may be stated that there are eleven states having statutes designed either to prevent the erection of structures or other objects in the vicinity of airports which would be hazardous to the landing and taking-off of airplanes, or to compel the removal or lowering of such obstructions already in existence, without compensation. These states, and the statutory provisions in question, are as follows:

- Alabama ——— ALA. CODE (Cum. Supp. 1936) c. 42A, § 1738(14)
- Connecticut — CONN. GEN. STAT. (Rev. 1935) c. 185, § 3096
- Florida ——— FLA. GEN. LAWS (1937) c. 17708, § 9 and § 10
- Indiana ——— IND. STAT. ANN. (Burns, 1933) vol.5, c.4, § 14-407
- Iowa ——— IOWA CODE (1935) c. 528, § 12395 - § 12401
- Louisiana ——— LA. GEN. STAT. (Cum. Annual Supp.1938) tit.1,§ 27.7a
- Maine ——— ME. LAWS (Supp. 1931) c. 213, § 4
- Maryland ——— MD. CODE (Supp. 1937) c. 383
- Michigan ——— MICH. COMP. LAWS (Supp. 1933) tit. 10, § 4835-2
- Nebraska ——— NEB. COMP. STAT. (Cum. Supp. 1935) c.3, art.2,§ 3-204
- Pennsylvania - Pa. Laws 1935, no. 51, p. 128
- PA. ADM. CODE (1935) § 1208, p. 64

Of these statutes, those of nine states may be said to provide for airport zoning of one sort or another (although the term "zoning" is not used in all cases), while those of two states, Iowa and Nebraska, are classifiable as acts authorizing use of the court action method. Considering these two statutes first, it is

seen that the Nebraska Act is designed only to permit the abatement of existing airport obstructions, while the Iowa Act provides for the abatement of only certain obstructions erected after its enactment, and therefore may be said to be, in effect, a measure for the protection of existing approaches.

So far as the ten zoning statutes are concerned (Pennsylvania having two), the objective in each case but one is to protect airport approaches against further encroachment, while in the case of the Pennsylvania code provision, Section 1208, the purpose is to extend and improve approaches by regulations compelling the removal or lowering of existing hazards. In addition, it is possible, though not clear, that the statutes cited for the states of Alabama, Florida, Louisiana and Maine provide for retro-active zoning as well as for the prospective type.

In addition to this classification by general method and purpose, the acts of all eleven states may be grouped according to the way in which the regulations are or may be promulgated, and further according to whether the standards or requirements are stated with particularity or in general terms.

Thus, two of these statutes, namely, those of Maryland and Pennsylvania (Pa. Laws 1935, no. 51, p. 128), themselves prescribe the regulations to be complied with, while, in all other cases, the power is delegated to some agency of the state. In four cases, these being the statutes of Connecticut, Michigan, Nebraska, and Pennsylvania (PA ADM. CODE (1935)§ 1208, p. 64), this agency

is the State Aviation Commission, and in the remaining cases, the delegation is to certain classes of municipal corporations.

As for the degree of particularity with which the standards or requirements are set forth, the twelve statutes in question may be classified as: (1) acts in which both the zone and building height limits are specified; (2) acts giving the agency charged with administration a large degree of discretion in determining what is an obstruction or hazard, and (3) acts specifying zone limits but not height limitations, and therefore falling between the first two categories. In the first group are the statutes of Indiana, Maryland, and Pennsylvania (Pa. Laws 1935, no. 51, p. 128); in the second, those of Connecticut, Florida, Louisiana, Maine, Nebraska, and Pennsylvania (PA. ADM. CODE (1935) § 1208, p. 64), and, in the third, the statutes of Alabama, Iowa, and Michigan.

For convenient reference, these statutes are summarized and compared as to general method, purpose, regulatory agency, and particularity, as well as in certain other respects, in the following table.

SUMMARY AND COMPARISON OF STATE STATUTES PERMITTING EXTENSION
OR PROTECTION OF AIRPORT APPROACHES BY MEANS OF POLICE POWER
(Through December 31, 1938)

Statute	Method		Purpose		Agency			Particularity			Standards		Do Cities have Power to Regulate Obstructions Outside City Limits?	Remarks
	Zoning	Court Action	Approach Protection	Approach Extension	State	Commission	Municipal Corporations	Zone and Height Limits	General	Zone Limits Only	Zone Limit	Height Limit		
ALA. CODE (Cum. Supp. 1936) c. 42A, § 1738(14)	x		x	?			x			x	1/4 mile	—	Yes	*
CONN. GEN. STAT. (Rev. 1935) c. 185, § 3096	x		x			x			x		—	—	—	
FLA. GEN. LAWS (1937) c. 17708, § 9 and § 10	x		x	?			x		x		—	—	—	Delegation to counties only.
IND. STAT. ANN. (Burns, 1933) vol. 5, c. 4, § 14-407	x		x				x	x			1500 ft.	7 to 1	Yes	
IOWA CODE (1935) c. 528, § 12395 - § 12401		x	x				x			x	1000 ft.	—	Not Express	Abatement only if object not a "proper use or enjoyment of the land."
LA. GEN. STAT. (Cum. Annual Supp. 1938) tit. 1, § 27.7a	x		x	?			x		x		—	—	Not Express	
ME. LAWS (Supp. 1931) c. 213, § 4	x		x	?			x		x		—	—	No	
MD. CODE (Supp. 1937) c. 383	x		x		x			x			5000 ft.	15 to 1	—	
MICH. COMP. LAWS (Supp. 1933) tit. 10, § 4835-2	x		x			x				x	1000 ft.	—	—	Applicable only to transmission lines
NEB. COMP. STAT. (Cum. Supp. 1935) c. 3, art. 2, § 3-204		x		x		x			x		—	—	—	
Pa. Laws 1935, no. 51, p. 128	x		x		x			x			500 ft.	35 ft.	—	
PA. ADM. CODE (1935) § 1208, p. 64	x			x		x			x		—	—	—	Not clearly police power.

* Apparently the only one of these statutes making adequate provision for procedure as to notice, hearing and appeal.

APPENDIX

STATUTORY PROVISIONS

STATE OF ALABAMA

ALA. CODE (Cum. Supp. 1936) c. 42A

Sec. 1738 (14) Zoning. — Each municipality in this state which owns any land in fee simple devoted to municipal airport uses, or upon which the development of a municipal airport has been commenced, shall have such power and authority, over all extra corporate territory within one-quarter of a mile of such land as is conferred upon it, with respect to territory within its corporate limits by sections 1878 and 1879 of the code of Alabama of 1928 and/or an act of the legislature of Alabama approved September 26, 1923, conferring zoning powers upon municipalities having a population of one hundred thousand inhabitants, or more; provided, however, that the power and authority conferred by this section shall cease upon the abandonment of the use, or projected use, of such land for airport purposes. (1931, pp. 201, 202.)

ALA. CODE (1928) art. 2

Sec. 1878. Business, industrial, or residential zones authorized. —

Each municipal corporation in the State of Alabama may divide the territory within its corporate limits into business, industrial, and residential zones or districts and may provide the kind, character and use of structures and improvements that may be erected or made within the several zones or districts established and may, from time to time, rearrange or alter the boundaries of such zones or districts and may also adopt such ordinances as necessary to carry into effect and make effective the provisions of this article. (1923, p. 590, Sec. 1.)

Sec. 1879. Advertisement of ordinance providing for zones. —

No ordinance shall be passed by any municipal corporation under the authority of this article unless and until the proposed ordinance has been published for at least fifteen days in advance of its passage in a newspaper of general circulation within the municipality, or, if there is no newspaper, by posting the same in four conspicuous places within the municipality, together with a notice stating the time and place that the ordinance is to be considered by the municipal legislative authorities, and stating further that at such time and place

all persons who desire shall have an opportunity of being heard in opposition to such ordinance. (Id., Sec. 2 $\frac{1}{2}$)

Ala. Stat. 1923, no. 435, p. 581

To empower municipal corporations having a population of 100,000 inhabitants, or more, according to the last or any subsequent Federal census, to provide for, regulate, and restrict the segregation of business, industrial and residential sections, the height, number of stories, size of buildings and other structures, the percentage of lot that may be occupied, the distance of buildings from streets, alleys or other public ways, the distance between building, the density of population and the location and use of buildings, structures and land; to divide the municipality into zones or districts; to regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or lands within such zones or districts, and the housing or residence therein of the different classes of inhabitants; to provide for the creation of a Zoning Commission, and the power, jurisdiction and authority thereof; to provide for a board of Zoning Adjustment and define the authority, powers and functions of such Board of Zoning Adjustment, its procedure and an appeal from its decisions; and to provide remedies for the enforcement of ordinances, resolutions or regulations made by such municipalities under the authority of this Act.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. GRANT OF POWER. For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of cities and incorporated villages having a population of one hundred thousand or more, according to the last or any subsequent Federal census, is hereby empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes.

Section 1 $\frac{1}{2}$. For the promotion of the public peace, order, safety or general welfare, such municipal corporations may, within residence districts established pursuant to this Act, further regulate as to the housing or residence therein of the different classes of inhabitants, but such regulations are not hereby authorized as will discriminate in favor of or against any class of inhabitants.

Section 2. DISTRICTS For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this Act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

Section 3. PURPOSES IN VIEW Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Section 4. METHOD OR PROCEDURE. The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality.

Section 5. CHANGES. Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed exchange, or of those immediately adjacent in the rear thereof extending 500 feet therefrom, or of those directly opposite thereto, extending 500 feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

Section 6. ZONING COMMISSION. In order to avail itself of the powers conferred by this Act, such legislative body shall appoint a commission to be known as the Zoning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such Commission. Where a city plan commission already exists, it may be appointed as the Zoning Commission.

Section 7. BOARD OF ADJUSTMENT. In the event any municipality avails itself of the powers conferred by this Act, its legislative body shall provide for the appointment of a Board of Adjustment, and in the regulations and restrictions adopted pursuant to the authority of this Act shall provide that the said Board of Adjustment shall in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent, and in accordance with general or specific rules therein contained. The Board of Adjustment shall consist of five members, each to be appointed for a term of three years and removable for cause by the appointing authority, upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Act. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him that by

reason of facts stated in the certificate a stay would in his opinion cause ~~imminent~~ peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. The Board of Adjustment shall have the following powers: (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this Act or of any ordinance adopted pursuant thereto. (2) To hear and decide special exceptions to the terms of the ordinance upon which such Board is required to pass under such ordinance. (3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. In exercising the above mentioned power such Board may, in conformity with the provisions of this Act, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance. The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

Section 8 REMEDIES. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used in violation of this Act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such

violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

Section 9. Any party aggrieved by any final judgment or decision of such Board of Zoning Adjustment, may within fifteen days thereafter appeal therefrom to the circuit court or court of like jurisdiction, by filing with such Board a written notice of appeal specifying the judgment or decision from which appeal is taken. In case of such appeal such Board shall cause a transcript of the proceedings in the cause to be certified to the Court to which the appeal is taken and the cause shall in such Court be tried de novo.

Section 10. CONFLICT WITH OTHER LAWS. Wherever the regulations made under authority of this Act require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this Act shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Act, the provisions of such statute, or local ordinance, or regulation shall govern.

Section 11. If any section, clause, provision or portion of this Act shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause or provision or portion of this Act which is not in and of itself invalid or unconstitutional.

Section 12. All laws or parts of laws in conflict with this Act be and the same are hereby repealed.

Approved September 26, 1923.

STATE OF CONNECTICUT

CONN. GEN. STAT. (Rev. 1935) c. 185

SEC. 3096. Safety zoning regulations. The commissioner may establish safety zoning regulations governing the area adjacent to any airport. Any person aggrieved by the action of the

commissioner in establishing such regulations may appeal therefrom as provided in section 429.

CONN. GEN. STAT. (1930) tit. 5, c. 29

SEC. 429. Appeals from Board to Court. Any person or persons severally or jointly aggrieved by any decision of said board, or any officer, department, board or bureau of any municipality, charged with the enforcement of any order, requirement or decision of said board, may, within fifteen days from the date when such decision shall have been rendered, take an appeal to the court of common pleas or the superior court of the county in which such municipality shall be located, which appeal shall be made returnable to such court in the same manner as that prescribed for civil actions brought to such courts. Notice of such appeal shall be given by leaving a true and attested copy thereof with said board within twelve days before the return day to which such appeal shall have been taken. The appeal shall state the reasons upon which it shall have been predicated and shall not stay proceedings upon the decision appealed from, but the court to which such appeal shall be returnable may, on application, on notice to the board and on cause shown, grant a restraining order. The authority issuing the citation in such appeal shall take from the appellant, unless such appellant be an official of the municipality, a bond or recognizance to said board, with surety, to prosecute such appeal to effect and comply with the orders and decrees of the court. Said board shall be required to return either the original papers acted upon by it, and constituting the record of the case appealed from, or certified copies thereof. The court, upon such appeal, shall review the proceedings of said board and, if, upon the hearing upon such appeal, it shall appear to the court that testimony is necessary for the equitable disposition of the appeal, it may take evidence or appoint a referee or committee to take such evidence as it may direct and report the same to the court, with his or its findings of facts and conclusions of law, which report shall constitute a part of the proceedings upon which the determination of the court shall be made. The court, upon such appeal, and after a hearing thereon, may reverse or affirm, wholly or partly, or may modify or revise the decision appealed from. Costs shall not be allowed against said board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. Appeals from decisions of said board shall be privileged cases to be heard by the court, unless cause shall be shown to the contrary, as soon after the return day as shall be practicable.

STATE OF FLORIDA

FLA. GEN. LAWS (1937) c. 17708

Section 9. Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this Act, the several counties in Florida are hereby granted power and authority to promulgate, adopt and enforce zoning regulations involving areas adjacent to, surrounding or near airports and landing fields, or elsewhere as may be required, wherein and whereby the height of buildings, or any other structure or obstruction, in such areas, shall be regulated and limited.

Section 10. Such counties of this State are hereby authorized to acquire the right and easement for a term of years, or perpetually, to place and maintain suitable markers for the daytime marking, and to place, operate and maintain suitable lights for the night time marking of lands, buildings, or other structures or obstructions, for the safe operation of aircraft utilizing airports and landing fields acquired, operated or maintained under the provisions of this Act. Such rights and easements may be acquired in any manner heretofore or hereafter provided in this or any other Act, the same as if the airport or expansion thereof were being accomplished, and by the same means.

STATE OF INDIANA

IND. STAT. ANN. (Burns, 1933) vol. 5, c. 4

Sec. 14-407. Restricted zones - Condemnation of obstructions — Subdivisions adjoining airports.— In order to provide free air space for the safe descent, landing and ascent of aircraft and for the proper and safe use of any airport or landing field acquired or maintained under this act, and in the exercise of all police powers, such board* is hereby given the right, power and authority to establish and fix a restricted zone or zones for a distance of not more than fifteen hundred (1,500) feet in any and all directions from the boundaries of such airport or aviation field, within which (zone) or zones so established, as in the opinion of said board is necessary and practicable, no building

* The Board of Public Works of any city of first class.

or other structure shall be erected high enough to interfere with the descent of an aircraft at a gliding angle of one (1) foot in height to every seven (7) feet of horizontal distance from the nearest point of said airport or field; and said board may, in the name of such city, acquire by condemnation, upon the payment of due compensation, the right to prevent the erection of, and to require the removal of, in whole or in part, all buildings, towers, poles, wires, cables and other structures, and all trees, within such zone or zones, which interfere with such gliding angle; and when so condemned, no permit issued by any department or officer of any such city or by any state or other authority for the erection of any structure inside any such zone or zones shall be effective and valid, unless approved by said board. The establishment of any such restricted zone or zones outside of any such port or field as is herein provided, in connection with the condemnation of such rights in the land for the same, shall be understood to be condemnation and the perpetual extinguishment of all rights of the owners of such property within such zone or zones to erect or maintain any building or structure whatever or any part thereof within such zone which will interfere with such gliding angle; or such result may be accomplished by absolute condemnation of the land, with perpetual and irrevocable free license to use and occupy such land within such zone for all purposes except the erection and buildings or other structures above the height so prescribed.

No subdivision into lots or (of) any lands lying within fifteen hundred (1,500) feet of any aviation field, airport or landing field which is acquired and maintained by virtue of this act, or any use of such lots or lands, shall be valid without the approval of such board of public works and city plan commission, which shall be exercised pursuant to any law now or hereafter in effect relating thereto. (Acts 1931, ch. 33, Sec. 7, p. 73.)

STATE OF IOWA

IOWA CODE (1935) c. 528

Section 12395. Nuisance—what constitutes—action to abate.

Whatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof. (C51, Secs. 2131-2133; R60, Secs. 3713-3715; C73, Sec. 3331; C97, Sec. 4302; C24, 27, 31, Sec. 12395.)

Section 12396. What deemed nuisances.

The following are nuisances:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

2. The causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.

3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

5. The obstructing or incumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, or houses resorted to for the use of opium or hasheesh, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others.

7. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.

8. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees in cities acting under special charter of more than fifty thousand population.

9. Any object or structure hereafter erected within one thousand feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

(C51, Secs. 2759, 2761; R60, Secs. 4409, 4411; C73, Secs. 4089, 4091; C97, Secs. 5078, 5080; C24, 27, 31, Sec. 12396; 45GA, ch 183, Sec. 1; 46GA, ch 92, Sec. 3.)

Section 12397. Penalty --abatement.

Whoever is convicted of erecting, causing, or continuing a public or common nuisance as provided in this chapter, or at

common law when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated, and issue a warrant as hereinafter provided. (C51, Sec. 2762; R60, Sec. 4412; C73, Sec. 4092; C97, Sec. 5081; S13, Sec. 5081; C24, 27, 31, Sec. 12397.)

Section 12398. Process

When upon indictment, complaint, or civil action any person is found guilty of erecting, causing, or continuing a nuisance, the court before whom such finding is had may, in addition to the fine imposed, if any, or to the judgment for damages or cost for which a separate execution may issue, order that such nuisance be abated or removed at the expense of the defendant, and, after inquiry into and estimating as nearly as may be the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor. (C51, Sec. 2763; R60, Sec. 4413; C73, Sec. 4093; C97, Sec. 5082; C24, 27, 31, Sec. 12398)

Section 12399. Warrant by justice of the peace.

When the conviction is had upon an action before a justice of the peace and no appeal is taken, the justice, after estimating as aforesaid the sum necessary to defray the expenses of removing or abating the nuisance, may issue a like warrant. (C51, Sec. 2764; R60, Sec. 4414; C73, Sec. 4094; C97, Sec. 5083; C24, 27, 31, Sec. 12399.)

Section 12400. Stay of execution.

Instead of issuing such warrant, the court or justice may order the same to be stayed upon motion of the defendant, and upon his entering into an undertaking to the state, in such sum and with such surety as the court or justice may direct, conditioned either that the defendant will discontinue said nuisance, or that, within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court; and, upon his failure to perform the condition of his undertaking, the same shall be forfeited, and the court in term time or vacation, or justice of the peace, as the case may be, upon being satisfied of such default, may order such warrant forthwith to issue, and action may be brought on such undertaking. (C51, Sec. 2765; R60, Sec. 4415; C73, Sec. 4095; C97, Sec. 5084; C24, 27, 31, Sec. 12400.)

'Section 12401. Expenses — how collected.

The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on executions, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant, or to the owner of the property levied upon; and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. (C51, Sec. 2766; R60, Sec. 4416; C73, Sec. 4096; C97, Sec. 5085; C24, 27, 31, Sec. 12401.)

STATE OF LOUISIANA

LA. GEN. STAT. (Cum. Annual Supp. 1938) tit. 1

Sec. 27.7a. Authority to zone airports.—Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this Act, the parishes, municipalities, and other subdivisions of this state are hereby granted power and authority to promulgate, adopt and enforce zoning regulations involving areas adjacent to, surrounding or near airports and landing fields, or elsewhere as may be required, wherein and whereby the height of buildings, or any other structure or obstruction, in such areas, shall be regulated and limited. (Acts 1936, No. 222, Sec. 7-A, as added by Acts 1938, No. 313, Sec. 2.)

STATE OF MAINE

ME. LAWS (Supp. 1931) c. 213

Sec. 4. Air rights, easements and zoning. The provisions of section three of this act shall apply to the acquisition of air rights and easements over private property adjoining such airports and landing fields in order to provide unobstructed air space and safe approaches for the landing and taking off of aircraft using such airports and landing fields, to place and maintain suitable marks and lights for the safe operation thereof and to prevent any use of such adjoining land as would hinder the

proper development or use of such airports and landing fields. Cities and towns may enact zoning ordinances applicable to such airports, landing fields and adjoining lands situated within the limits of such cities and towns.

STATE OF MARYLAND

MD. CODE (Supp. 1937) c. 383

AN ACT to add nine new sections to Article 1A of the Annotated Code of Maryland (1935 Supplement), title "Aeronautics," to form a new sub-title "Airport Zoning," said new sections to be numbered Section 51 to Section 59, each inclusive, and to follow immediately after Section 50 of said Article, to provide a comprehensive plan designed to secure safety from death or bodily injury for "Aeronauts" and "Passengers," as these terms are defined in Article 1A of the Annotated Code of Maryland, from dangerous obstruction of air space in the vicinity of public Airports or Landing Fields used for public purposes; to promote the public order, health and safety by providing unobstructed air space for the safe descent, landing, ascent and operation of aircraft while using public Airports or Landing Fields used for public purposes; and, in accordance with such plan, to regulate and restrict the height of buildings and other structures in the vicinity of public Airports and Landing Fields used for public purposes within the limits and area herein prescribed; to provide for placing and maintaining obstruction markers and/or lights upon buildings and other structures within said area for the purpose of rendering aerial navigation to and from such Airports and Landing Fields safe; to provide for the administration and enforcement of said regulations and restrictions; to impose certain duties and confer certain powers upon the State Aviation Commission, including powers of condemnation in certain cases.

SECTION 1. Be it enacted by the General Assembly of Maryland, That nine new sections be and the same are hereby added to Article 1A of the Annotated Code of Maryland (1935 Supplement), title "Aeronautics," to form a new sub-title "Airport Zoning," said new sections to be numbered Section 51 to Section 59, inclusive, and to follow immediately after Section 50 of said Article, and to read as follows:

AIRPORT ZONING.

51. That for the purpose of securing safety from death or bodily injury for "Aeronauts" and "Passengers," as defined in

Article 1A of the Annotated Code of Maryland, from dangerous obstruction of air space in the vicinity of public Airports or Landing Fields, as authorized and provided for in said Article 1A; and to promote the public order, health and safety by providing unobstructed air space for the safe descent, landing, ascent and operation of aircraft while using such public Airports or Landing Fields, the height of buildings and other structures in the vicinity of such public Airports and Landing Fields is regulated and restricted as hereinafter provided.

52. SAFETY ZONE. For the purposes set forth in Section 51, and considering, among other things —

(a) Requirements and facilities necessary to secure the safe descent, landing, ascent and operation of aircraft using public Airports and Landing Fields within this State, as authorized and provided for in Article 1A of the Annotated Code of Maryland;

(b) Hazards from the obstruction of air space in the vicinity of such Airports or Landing Fields;

(c) The relation of the height of buildings and other structures in the vicinity of such Airports or Landing Fields to such hazards;

(d) The area within which height of buildings and other structures may dangerously obstruct air space in the vicinity of such public Airports or Landing Fields;

(e) The height of buildings or other structures within such area which is consistent with the safe use of such Airports and Landing Fields; and

(f) The maintenance and use of obstruction markers and/or lights upon buildings and other structures within said areas as safety devices;

the height of buildings and/or other structures is hereby regulated and restricted within a distance of five thousand feet from any such public Airport or land Field measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof in any and all directions as follows:

No building or structure may be erected whose height exceeds one-fifteenth the shortest distance from the nearest side of said building or structure to the nearest established perimeter as distinguished from boundary line of such public Airport or Landing Field.

53. ENFORCEMENT. It shall be the duty of the State Aviation Commission to enforce the provisions of this sub-title. The Commission may, on its own motion, and must, upon written demand of any county or municipal authority thereunto duly authorized, proceed to enforce the provisions of this sub-title and the regulations and restrictions therein prescribed in a court of law or equity of this State having appropriate jurisdiction, and in such cases the Commission is authorized to institute in the name of "The State of Maryland" any appropriate action or proceeding to prevent the erection, construction or maintenance of any building, structure, or part of building or structure, exceeding in height the limits hereinabove prescribed, to restrain, correct or abate any such violation, and to prevent the occupancy or use of any part of a building or structure erected in violation of the provisions of this sub-title.

No permit shall be issued by any county, municipality or other public authority for the erection or construction of any building or structure, or part thereof, in the vicinity of any such public Airport or Landing Field and within the areas herein described in Section 52, unless the plans and specifications for such building or structure, or part thereof, conform in respect to height to the provisions of this sub-title; and any such permit issued in violation of this provision shall be deemed to be wholly ineffective to authorize any erection, construction or maintenance prohibited by this sub-title.

54. INVESTIGATION, INQUIRIES AND HEARINGS. The Commission, or any Commissioner or Officer of the Commission designated by the Commission, shall have power to hold and make investigations, inquiries and hearings concerning matters covered by the provisions of this sub-title, and, for the purposes of such investigations, inquiries or hearings, the Commission shall have, and may exercise, all the powers and authority conferred upon them by Section 15C of Article 1A of the Annotated Code of Maryland (1935 Supplement).

55. ACQUISITION BY PURCHASE OR CONDEMNATION With respect to any building or structure existing at the time of the passage of this sub-title, and which does not conform to the regulations of this sub-title in the matter of height, the Commission may acquire by purchase or condemnation such estate or interest in any such building or structure and/or the land upon which the same is erected or constructed as is necessary to vest full and absolute ownership and control in perpetuity of the space above such land to the extent necessary to correct or abate the height of any such non-conforming building or structure to meet the requirements and regulations of this sub-title. Any and all such condemnation proceedings shall be instituted by the Commission in the name of

"The State of Maryland," and any and all such purchases shall be made by the Commission in the name of "The State of Maryland" and all estate and interest so acquired by condemnation or by purchase shall be forthwith transferred and conveyed by the Commission to the county, municipality or other public authority owning, controlling or operating the airport or landing field affected, and said estate or interest shall thereupon and thereafter attach to the ownership of said Airport or Landing Field as an interest running with the land. Provided, however, that the Commission shall not exercise any of the powers conferred upon it by this section unless requested so to do in writing by the county, municipality or other public authority immediately concerned and until such county, municipality or other public authority shall have agreed with the Commission to satisfy and pay the purchase price or condemnation award as the same may be finally determined.

56. COSTS, CHARGES AND EXPENSES. Before instituting or conducting any such investigation, inquiry or hearing, and before instituting any action at law or in equity, as hereinbefore provided and authorized, the Commission must effect an agreement with the county, municipality or other public authority owning, operating or controlling the public Airport or Landing Field affected by any violation of this sub-title, whereby such county, municipality or other public authority shall undertake to assume and pay all costs, charges and expenses which may be incurred or accrue in connection with any such investigation, inquiry, hearing or legal proceeding.

57. The Commission is further authorized and empowered to acquire by agreement, purchase or condemnation the right —

To place and maintain obstruction markers and/or lights upon any building, tower, tree, stack, pole, wharf, pier, structure, land or premises located within five thousand (5,000) feet of an Airport or Landing Field owned, controlled, maintained or operated by any county, municipality or other public authority of this State, including the right to lay and maintain conduits and wire to such obstruction markers and/or lights, whenever requested so to do by such county, municipality or other public authority, and when in the judgment of the Commission the installation and maintenance of such obstruction markers and/or lights is necessary for the purpose of rendering aerial navigation to and from such Airport or Airports safe. Before exercising the authority hereby conferred upon it, the Commission shall require the county, municipality, or other public authority owning, operating or controlling the public Airport or Landing Field immediately concerned, to assume and pay all costs, charges and expenses which may be incurred in the installation and maintenance of such obstruction markers and/or lights, and all such rights

acquired by the Commission, whether by agreement, purchase or condemnation, shall be assigned, transferred and conveyed to the county, municipality or other public authority so immediately concerned.

58. Certain words in this sub-title are defined for the purposes of this sub-title as follows, unless the contrary clearly appears from the context:

(a) Airport and Landing Field. These terms apply to those Airports and Landing Fields described and included within the purview of Article 1A of the Annotated Code of Maryland (1935 Supplement).

(b) Height of buildings and structures. The height of a building or structure for the purposes of this sub-title is the vertical distance measured from the ground or surface level of the Airport on the side adjacent to said building or structure to the level of the highest point of the building or structure.

(c) Buildings and structures. Any edifice, structure or construction of any kind, character or description, erected, located, or proposed to be erected or located, within the area described in Section 52 as the Safety Zone, including any edifice, structure or construction within said Safety Zone erected, constructed or located on or over land or water.

(d) The established perimeter of an Airport or Landing Field for the purpose of computing all distances and elevations as contemplated in this sub-title shall be the metes, bounds and elevations along the respective sides thereof as determined by the county, municipality or other public authority owning, controlling or operating such Airport or Landing Field. Such determination and definition shall be evidenced by a plat showing such metes, bounds and elevations to be filed with the Commission and kept among the public records of the Commission as an official document. Provided, however, that the established perimeter of the Baltimore Municipal Airport, anything to the contrary herein notwithstanding, shall be the line outlined in red on the four plats which are attached hereto and made a part hereof, which said four plats, upon the passage of this Act, as evidence of the authenticity of the same, shall be signed by the Speaker of the House of Delegates and the President of the State Senate of the General Assembly of Maryland, and upon approval of the Act shall be signed by the Governor of the State of Maryland, who shall transmit one of the plats to the State Aviation Commission and one of the plats to the Mayor and City Council of Baltimore and one of the plats to the Department of Legislative Reference.

58A. The provisions of this sub-title shall not apply to the existing temporary Baltimore Municipal Airport known as Logan Field.

59. VALIDITY. In case it be judicially determined that any word, phrase, clause, item, sentence, paragraph, or section of this sub-title, or the application thereof to any person or circumstance, is invalid, the remaining provisions and the application of such provisions to other persons or circumstances shall not be affected thereby.

Sec. 2. And be it further enacted, That this Act shall take effect on the first day of June, 1937.

Approved May 18, 1937.

STATE OF MICHIGAN

MICH. COMP. LAWS (Supp. 1933) tit. 10

Sec. 4835-2. Telephone, etc., lines, when unlawful to erect.
Sec. 2. It shall hereafter be unlawful for any person, firm or corporation to erect any telephone, telegraph or transmission lines, wires, cables, poles or towers within a distance of one thousand feet of any licensed airport, landing field or seaplane harbor which in the opinion of the board of aeronautics will be hazardous to the safe use of such airport, landing field or seaplane harbor.

STATE OF NEBRASKA

NEB. COMP. STAT. (Cum. Supp. 1935) c. 3, art. 2

Sec. 3-204. Same, Powers, Abatement of Obstructions Near Flying Fields. The Commission shall have the right, and it is hereby empowered, to proceed by appropriate legal or equitable action to cause any obstruction to flight in and about any airport or landing field to be abated and such obstructions are hereby declared to be a hazard to human life and property, and the Commission may cause the same to be removed by such orders and decrees as the court may issue in any legal or equitable proceedings instituted by the Commission for that purpose. (1935 p. 60)

STATE OF PENNSYLVANIA

Pa. Laws 1935, no. 51, p. 128

Section 1. Be it enacted, etc., That in order to promote public health, safety, and the general welfare, and to insure the protection and development of established lanes of commerce and navigation by air, it is hereby declared to be unlawful for any person, firm or corporation to hereafter erect and maintain any smoke stack, flag pole, elevated tank, radio station tower, building or other structure or obstruction to the operation of aircraft, of a height in excess of thirty-five (35) feet, within five hundred (500) feet of the exterior boundaries of any airport, landing field, or intermediate landing field, within and licensed by this Commonwealth.

Section 2. Any person violating the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof in a court of quarter sessions, shall be sentenced to pay a fine of one hundred (\$100) dollars and costs of prosecution, or undergo imprisonment for not more than one (1) year, or suffer both such fine and imprisonment. Each day's continuation of a violation of the provisions of this act shall be deemed a separate and distinct offense.

STATE OF PENNSYLVANIA

PA. ADM. CODE (1935) p. 64

Section 1208. State Aeronautics Commission.— The State Aeronautics Commission shall exercise the powers and perform the duties vested in and imposed upon it by the Aeronautics Act and other applicable laws, and, in connection with the designation and establishment of civil airways within, over, and above the lands or waters of this Commonwealth, it shall have the power, to the extent to which the General Assembly shall have appropriated funds to it for the purpose:

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(d) To make additions and improvements in or to intermediate landing fields and facilities under its control, and, either alone or in cooperation with others, to provide personnel, heat, light, water, fuel, telephone service, drainage, runways, fueling facilities, and lighting facilities, and to remove or otherwise eliminate such obstructions as shall menace air travel;

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