

Aviation - USA

FAA challenges local airports' ability to limit aircraft size

Contributed by [Katten Muchin Rosenman LLP](#)

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On January 21 2011, in *City of Santa Monica v Federal Aviation Administration*,⁽¹⁾ the US Court of Appeals for the District of Columbia sided with the Federal Aviation Administration (FAA) in that federal agency's dispute with the city of Santa Monica, California. The city passed an ordinance prohibiting large business jets from landing at Santa Monica Municipal Airport. Under the ordinance, only small single-engine piston aircraft would be able to use the airport. The FAA rejected the city ordinance on federal preemption and contractual grounds. The court upheld the FAA's decision, but limited its holding exclusively to the contractual arguments, reserving judgment on the federal preemption arguments. Although the court's approach was correct from a jurisprudence standpoint, it left open the question of how a similar future dispute would be decided under different facts, and leaves unresolved the issue of whether the FAA has a federal power to preempt municipal ordinances and laws from limiting access to small, city-owned airports.

Facts

Santa Monica Municipal Airport is a single-runway, regional public airport located in, owned and operated by the city of Santa Monica. It has no scheduled passenger service, but serves general aviation aircraft and functions as a reliever airport for the Los Angeles International Airport. Historically, the airport primarily served Category A and B aircraft (those with approach speeds of less than 121 knots at maximum landing weight – usually single-engine piston aircraft). Only around 7% of operations consisted of Category C and D aircraft (those with approach speeds of 121 knots or greater at maximum landing weight – almost exclusively business and executive jets).

In 1981 the Santa Monica City Council attempted to close Santa Monica Municipal Airport. This action prompted litigation by the FAA and various concerned private users of the airport. The city and the FAA eventually settled their differences in 1984 with a contract that agreed to keep Santa Monica Municipal Airport "open and available to and for public use as an airport on fair and reasonable terms, without unjust discrimination, and without granting any exclusive rights prohibited by law". The 1984 agreement also acknowledged that the airport played an important role as a reliever airport for excess capacity at heavily used Los Angeles International Airport.

Between 1985 and 2003 the city applied for and received \$10.2 million in federal funds through grant agreements with the FAA through the FAA Airport Improvement Programme. The provisions of the 1984 agreement, including the text quoted above, were incorporated into the various grant agreements. In addition, one particular grant assurance from 1994 (Grant Assurance 22) ultimately proved important to the court's decision in *City of Santa Monica*. Grant Assurance 22 stated that the city would make Santa Monica Municipal Airport "available as an airport for public use on fair and reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical uses". With that broad consideration in mind, the city was otherwise allowed under Grant Assurance 22 to:

"prohibit or limit any given type, kind or class of aeronautical use of [Santa Monica Municipal Airport] if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public."

On March 25 2008 the city of Santa Monica adopted an ordinance prohibiting any person operating a Category C or D aircraft from landing at Santa Monica Municipal Airport, except in emergencies. The FAA immediately took actions to prevent the ordinance's enforcement. After various restraining orders and preliminary FAA

Authors

[Timothy J Lynes](#)



[Sean C Gordon](#)



decisions, the FAA issued a final agency decision on July 8 2009, which held that federal law preempts the city's ordinance and that the ordinance violated the city's contractual obligations under the grant agreements. The city sought review of the FAA decision with the US Court of Appeals for the District of Columbia.

Decision

Before deciding on the legality of the FAA's decision, the court cited constitutional case law that instructs a federal court, before reaching a constitutional question, to consider whether there is a non-constitutional ground for deciding the case. If there is, the federal court is to dispose of the case on the non-constitutional grounds. Under this methodology, the court looked first to the breach of contract arguments raised by the FAA as the basis for the FAA's decision, and considered this decision under the standard set forth in the Administrative Procedures Act. As the contractual arguments ultimately proved sufficient to uphold the FAA's decision, the court did not further explore or examine the federal preemption question.

The city argued that the FAA had acted arbitrarily and capriciously when it ruled that the ordinance violated the grant agreements between the city and the FAA, particularly Grant Assurance 22. Specifically, the city argued that the FAA ignored evidence on the record, acted inconsistently with its own policies and prior decisions and failed to state a rational connection between the evidence and its conclusion when the FAA ruled that the ordinance was "unjustly discriminatory" and that it was not "necessary for safety", as required under Grant Assurance 22.

Based on the evidence presented at the FAA hearing, the FAA made four findings:

- Category C and D aircraft can operate safely at Santa Monica Municipal Airport despite the lack of runway safety areas.
- Category C and D aircraft are less likely to be involved in an overrun than Category A and B aircraft.
- In the unlikely event of an overrun by a Category C or D aircraft, it was unlikely that such aircraft would reach the neighbourhoods beyond the Santa Monica Municipal Airport runway.
- The risks associated with overruns and undershoots at Santa Monica Municipal Airport by Category C and D aircraft can be mitigated without implementing a total ban and without reducing the utility of the runway.

The appeal court, applying a narrow scope of review as required under the arbitrary and capricious standard, and granting the required deference to the FAA, held that the FAA's conclusions were rationally based on facts for which there was substantial evidence in the record, and that such facts justified the FAA's final determination.

The court then held that the four factual conclusions above support the FAA's ruling that the city's ordinance violated Grant Assurance 22. The facts supported the conclusion that the ordinance was unjustly discriminatory and unnecessary for safety.

Comment

While *City of Santa Monica* may act as a cautionary warning to local municipalities that the FAA will fight any local efforts to restrict accessibility to airports, the facts of the case and the existence of various contractual agreements between the FAA and the city of Santa Monica may limit the broader applicability of the court's holding. Most US airports receive some kind of financial support from the FAA, under the FAA Airport Improvement Programme or similar programmes. Furthermore, when granting funds, the FAA requires airports to sign grant agreements similar to Grant Assurance 22, prohibiting "unjust discrimination" to different classes of aircraft and aeronautical use. In this respect, *City of Santa Monica* provides clear precedent for future municipal airport disputes against the FAA when an agreement like Grant Assurance 22 is involved. However, in cases where there is no contractual prohibition, the FAA and the US Court of Appeals for the District of Columbia left open the option to strike down a municipal ordinance on Congress's grant of exclusive authority to the FAA to regulate aviation safety.

Endnotes

(1) 09-1233, 2011 WL 192494 (DC Cir Jan 21 2011).

For further information on this topic please contact [Timothy Lynes](#) or [Sean Gordon](#) at Katten Muchin Rosenman LLP by telephone (+1 202 625 3500), fax (+1 202 298 7570) or email (timothy.lynes@kattenlaw.com or sean.gordon@kattenlaw.com).

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