

Federal and State Role in Regulation of Airports and Pre-emption of Local Control

Federal Role

The United States Government has exclusive sovereignty of airspace of the United States. *United States Code Section 49 U.S.C. § 40103(a)(1).*

The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and **assign by regulation or order the use of the airspace** necessary to ensure the safety of aircraft and the efficient use of airspace. *United States Code Section 49 U.S.C. § 40103(b)(1).*

It is settled law that non-proprietor municipalities are preempted from regulating airports in any manner that directly interferes with aircraft operations. *Burbank-Glendale-Pasadena Airport Authority v. City of Los Angeles, U. S. Ninth Circuit Court of Appeals (979 F. 2d. 1338, 1340 (1992)).*

[T]he record shows that FAA has consistently opposed curfews [on flights], unless managed by it, in the interests of its management of the 'navigable airspace.' *City of Burbank et al. v. Lockheed Air Terminal Inc. et al., United States Supreme Court (411 U.S. 624, 628 (1973)).*

[T]he pervasive control vested in EPA and in FAA under the 1972 [Noise Control] Act seems to us to leave no room for local curfews or other local controls. *City of Burbank et al. v. Lockheed Air Terminal Inc. et al., United States Supreme Court (411 U.S. 624, 638 (1973)).*

[T]he Federal Aviation Act, the attendant regulations, the legislative history of the Act, the Noise Control Act, and the EPA clearly identified noise regulation as a field fully regulated by the federal government. The combination of these factors made it obvious that in regard to noise control, Congress intended to occupy the field of regulation. Based on this evidence of pervasiveness, **the Court in Burbank determined that aircraft noise was so comprehensively and strictly regulated by the federal government that it precluded enforcement of state or local laws on the same subject.** *Gustafson v. City of Lake Angelus, U.S. Sixth Circuit Court of Appeals (76 F. 3d. 778, 784 (1996)).*

The aircraft and its noise are indivisible... to exclude the aircraft noise from the town is to exclude the aircraft; to set a ground decibel limit for the aircraft is directly to exclude it from the lower air that it cannot use without exceeding the decibel limit." *American Airlines v. Hempstead, U.S. District Court for the Eastern District of New York (272 F. Supp. 226, 230, (1967)).*

[T]o the extent that [the local Ordinance in question] **limits the frequency of flights of certain airplanes, it is preempted by the Federal Aviation Act and violates the Supremacy Clause of the Constitution.** *Price v. Charter Township of Fenton, U.S. District Court for the Eastern District of Michigan (909 F. Supp. 498, 505 (1995)).*

The Court of Appeals for the Eleventh Circuit followed suit in Pirola v. City of Clearwater, 711 F.2d 1006 (11th Cir.1983), finding that **local ordinances prohibiting night operations and proscribing air traffic patterns were preempted. The Court of Appeals for the Ninth Circuit found that curfews on aircraft flights were preempted...** Hoagland v. Town of Clear Lake, Indiana, U.S. Seventh Circuit Court of Appeals (415 F.3d 693, 697 (2005)).

[F]ederal law in the area of aviation is so pervasive that it preempts a municipal ordinance which attempts to govern the flight paths of aircraft using an airport which has no control tower, is not served by a certified carrier and has no regularly scheduled flights. Blue Sky Entertainment, Inc. v. Town of Gardiner, U.S. District Court for the Northern District of New York (711 F. Supp. 678, 692 (1989)).

Many courts have followed the lead of the Burbank Court and held that states or municipalities may not pursuant to their police

powers attempt to regulate noise by altering flight patterns. Blue Sky Entertainment, Inc. v. Town of Gardiner, U.S. District Court for the Northern District of New York (711 F. Supp. 678, 694 (1989)).

[C]ourts have uniformly struck down attempts by local governments to regulate the noise of aircraft. Blue Sky Entertainment, Inc. v. Town of Gardiner, U.S. District Court for the Northern District of New York (711 F. Supp. 678, 695(1989)).

[W]e believe the United States' sovereign regulation of the airspace over the United States and the regulation of aircraft in flight is distinguishable from the regulation of the designation of plane landing sites, which involves local control of land ... use.

Gustafson v. City of Lake Angelus, U.S. Sixth Circuit Court of Appeals (76 F.3d. 778, 783 (1996)).

State Role

Although the State, acting through **the Commissioner of Transportation, maintains "the ultimate power and responsibility of determining where aeronautical facilities may be located,"** Id. at 450 (internal quotations omitted), **"the Legislature desired to leave to the municipalities certain responsibilities over the area of land use, development and location of aeronautical facilities."** From Richard Jump and RRL Group Inc. v. Township of Andover, et al., Superior Court of New Jersey Appellate Division, decided March 9, 2006 (quoting from Garden State Farms, Inc. v. Mayor Bay, II, New Jersey Supreme Court (77 N.J. 439, 450 and 452 (1978))).

The Commissioner has sufficient statutory authority to "override local zoning decisions," id. at 600, and retains "supervision over aeronautics within this State, including, but not by way of limitation, the aviation, flight and operation of aircraft, the establishment, location, maintenance, operation, size, design, repair, management and use of airports..." From Richard Jump and RRL Group Inc. v. Township of Andover, et al., Superior Court of New Jersey Appellate Division, decided March 9, 2006 (quoting from: Tanis v. Twp. Of Hampton, Superior Court of New Jersey Appellate Division (306 N.J. Super. 588, 599-600 (1997); N.J.A.C. 16:54-1.1(b) and N.J.S.A. 6:1-29).