International Municipal Lawyers Association
2022 Annual Conference
Portland, Oregon

October 21, 2022

Concurrent Session:

That's a Nice Airport and Water/Sewer System You Have... Would Be a Pity If Something Happened to It

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"They are the sovereign and you are not"

"The only way we'll win this is by dissipating the political will"

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A

Senate Bill 81 – Charlotte Douglas International Airport Authority

- Motion to Concur 3rd Reading 7/18/2013 2:26 p.m.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SENATE BILL 81
RATIFIED BILL

AN ACT TO CREATE THE CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Charlotte Douglas International Airport Authority Act."

SECTION 2. There is hereby created the Charlotte Douglas International Airport Authority, which shall be a body corporate and politic, having the powers, authority, and jurisdiction hereinafter enumerated and such other and additional powers and authority as shall be conferred upon it by future acts of the General Assembly.

SECTION 3. Unless the context requires otherwise, the following definitions apply throughout this act to the defined words and phrases and their cognates:

(1) "Airport" means Charlotte Douglas International Airport in Mecklenburg County.

(2) "Airport Facilities" means airport facilities of all kinds, including, but not limited to, landing fields, hangars, fixed base operations, shops, restaurants and catering facilities, terminals, buildings, automobile parking facilities, and all other facilities necessary, beneficial, and/or helpful for the landing, taking off, operating, servicing, repairing, and parking of aircraft, the loading, unloading, and handling of cargo and mail, express and freight, and the accommodation, convenience, and comfort of crews and passengers, together with related transportation facilities, all necessary, beneficial, and/or helpful appurtenances, machinery, and equipment, and all lands, properties, rights, easements, and franchises relating thereto and considered necessary, beneficial, and/or helpful by the Authority in connection therewith.

(3) "Airport Property" means all the real property and improvements thereto designated as airport property on the Airport Layout Plan or Airport Development Plan of the Airport conditionally approved by the FAA on February 13, 2013.

(4) "Appointing Authorities" means the entities described in Section 4(a) of this act who are empowered to appoint Members of the Authority and referred to collectively as "Appointing Authorities" and individually as "Appointing Authority."

(5) "Authority" means the Charlotte Douglas International Airport Authority created by this act or, if such Authority is abolished or otherwise ceases to exist, the authority, board, body, commission, or other entity succeeding to the principal functions thereof.

(6) "FAA" means the Federal Aviation Administration or any successor agency.

(7) "Member" means an individual who is appointed to the Authority, as provided by this act.

(8) "Servants" means accountants, auditors, agents, contractors, design professionals, attorneys, and other persons and entities whose services may from time to time be deemed by the Authority to be necessary, beneficial, or helpful.

SECTION 4.(a) The Authority shall consist of 11 members appointed as follows:

(1) Two registered voters of the City of Charlotte appointed by the Mayor, at least one of whom shall be a resident of the west side of the City of Charlotte.
(2) Two registered voters of the City of Charlotte appointed by the City Council, at least one of whom shall be a resident of the west side of the City of Charlotte.
(3) One registered voter of Mecklenburg County appointed by the Mecklenburg County Board of Commissioners.
(4) One registered voter of Cabarrus County appointed by the Cabarrus County Board of Commissioners.
(5) One registered voter of Gaston County appointed by the Gaston County Board of Commissioners.
(6) One registered voter of Iredell County appointed by the Iredell County Board of Commissioners.
(7) One registered voter of Lincoln County appointed by the Lincoln County Board of Commissioners.
(8) One registered voter of Union County appointed by the Union County Board of Commissioners.
(9) One member appointed by the other 10 members.

In order to effectuate a seamless transfer of the Airport from the ownership and operation of the City of Charlotte to the ownership and operation by the Authority, and to give the Appointing Authorities time to consider candidates for and to appoint members as provided herein, the initial Members of the Authority from the time this act becomes law shall be the members of the Airport Advisory Committee of the City of Charlotte who shall serve only until six Members shall have been appointed by the Appointing Authorities and qualified by taking their oath of office. The powers of the Airport Advisory Committee serving as initial members shall be limited to ministerial acts, and no employment or management contracts shall be awarded or entered into by the initial Members, and any such contracts as the initial Members shall award or enter into shall not be effective or binding on the Members selected by the Appointing Authorities; provided, however, the initial Members may take such actions as are appropriate in accordance with Section 11 of this act. The Appointing Authorities shall appoint initial members no later than October 1, 2013. The Authority shall appoint the 11th member no later than December 1, 2013. Members, when practical, shall have experience in aviation, logistics, construction and/or facilities management, law, accounting, and/or finance.

SECTION 4.(a1) No person may be appointed as a member who:
(1) Is employed by a Servant of the Authority as defined in Section 3 of this act;
(2) Is a tenant or employee of a tenant of an airport owned, operated, or controlled by the Authority, or other commercial user or employee of a commercial user of any airport operated by the Authority; or
(3) Has been convicted of a felony or a crime of moral turpitude.

SECTION 4.(b) Members shall serve four-year terms and may serve up to a total of two successive four-year terms. A member who has reached this limit may not be reappointed to the Authority except after a lapse of four years following the most recent term served. In the event a member is appointed to fill an unexpired term, and at least two years of the unexpired term remain to be served, such appointment shall be counted in applying the two-term limit; otherwise, it shall not be counted. In order to ensure that the terms of all members of the Authority do not expire at the same time, the initial terms of the members of the Authority, appointed by the Counties of Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, and Union, shall be for two years. All initial four-year terms expire December 31, 2017, and all initial two-year terms expire December 31, 2015.

SECTION 4.(c) Any vacancy occurring among the membership of the Authority shall be filled within 60 days after notice thereof by the appointment of a successor by the Appointing Authority of the previous member. Such successor member shall serve for the remainder of the unexpired term.

SECTION 4.(d) Members and their successors shall take and subscribe to an oath of office before an officer authorized to administer oaths, which oath shall be filed with the Authority.

SECTION 4.(e) Any member may be suspended or removed from office by that member's Appointing Authority or a majority vote of the other members for cause affecting

that member's duties and responsibilities as a member; for misfeasance, malfeasance, or nonfeasance in office; or for conduct tending to undermine any decisions of the Authority, or for conduct exposing the Authority to liability for damages.

SECTION 4.(f) Except for malfeasance, members shall not be personally liable, in any manner, for their acts or omissions as members.

SECTION 4.(g) Each member may continue to serve until a successor has been duly appointed and qualified, but not for more than 60 days beyond the end of the term.

SECTION 5.(a) The organization and business of the Authority shall be conducted as provided in this act.

SECTION 5.(b) Members shall constitute the governing board of the Authority and may, among other things and from time to time, adopt suitable bylaws not inconsistent with the provisions of this act.

SECTION 5.(c) The Authority shall appoint from its members a chair, vice-chair, and such other officers as it may from time to time deem necessary, beneficial, and/or helpful for the orderly conduct of its business. The term of office of the chair and vice-chair is one year.

SECTION 5.(d) Each member, including the chair, shall have one vote. A majority of the members in office shall constitute a quorum, and, unless otherwise provided in this act, all actions of the Authority shall be determined by a majority vote of the members present and voting in a duly called meeting at which a quorum is present.

SECTION 5.(e) The Authority shall hold meetings at least monthly at such times and places as it from time to time may designate and at such other times on the call of the chair or by seven members of the Authority; provided a monthly meeting need not be held if it is determined by the chair or seven members that such meeting is not required. Notice of meetings shall be provided as required by Article 33C of Chapter 143 of the General Statutes.

SECTION 5.(f) Members may receive payment or reimbursement for travel, lodging, and meal expenses incurred in transacting business on behalf of the Authority. Members may also receive free parking at any airport owned, leased, subleased, or controlled by the Authority, which members may use for official purposes during the respective member's term of office.

SECTION 5.(g) The fiscal year of the Authority shall begin on July 1 and end on June 30. On or before May 15 of each year, the Authority shall prepare and adopt a proposed budget for the next ensuing fiscal year and deliver copies of such proposed budget to the Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, and Union County Boards of Commissioners and the Charlotte City Council. In order to effectuate a seamless transfer of the Airport from the ownership and operation by the City of Charlotte to the ownership and operation by the Authority, the initial budget of the Authority shall be the budget established by the City Council of the City of Charlotte for the Airport for the period July 1, 2013, through June 30, 2014, until the initial budget shall be revised by the Authority. The financial affairs of the Authority shall be governed by the Local Government Finance Act.

SECTION 5.(h) All meetings and closed sessions of the Authority shall be conducted in accordance with Article 33C of Chapter 143 of the General Statutes as it may be amended or in accordance with any successor statute.

SECTION 6.(a) The Authority shall constitute a body, both corporate and politic, and shall have the power and authority to do the following:

(1) Adopt and from time to time revise an official seal.

(2) Maintain an office or offices at such place or places as it may designate within Mecklenburg County only.

(3) Purchase, acquire, develop, establish, construct, own, control, lease, equip, improve, administer, maintain, operate, and/or regulate airports and/or landing fields for the use of airplanes and other aircraft and all facilities incidental thereto, within the limits of Mecklenburg County; and for any of such purposes, purchase, acquire, own, develop, hold, lease, sublease, and operate real and/or personal property comprising such airports.

(4) Purchase real and personal property.

(5) Sue and be sued in the name of the Authority.

(6) In addition to the powers granted by subdivision (3) of this subsection, (i) upon the consent of the governing bodies of such airports, to acquire by purchase or otherwise and to hold lands for the purpose of constructing,

maintaining, and/or operating existing airports in Cabarrus, Gaston, Iredell, Lincoln, and Union Counties and (ii) upon the consent and agreement of the Board of county commissioners of Cabarrus, Gaston, Iredell, Lincoln, and Union Counties, to acquire land and construct, make improvement, extension, enlargement, or equipping of future airport facilities in such counties.

(7) Charge and collect fees, royalties, rents, and/or other charges, including fuel flowage fees, for the use and/or occupancy by persons of the airports and other property owned, leased, subleased or controlled by the Authority or for services rendered in the operation thereof.

(8) Make all reasonable rules and regulations, and policies as it may from time to time deem to be necessary, beneficial or helpful for the proper maintenance, use, occupancy, operation and/or control of any airport or airport facility owned, leased, subleased, or controlled by the Authority and provide and enforce civil and criminal penalties for the violation of such rules, regulations and/or policies; provided that such rules, regulations, policies, and penalties are not in conflict with any applicable law, rules or regulation of the State of North Carolina, the United States, or any agency, department, or subdivision of either of them, including the rules and regulations of the FAA or the Transportation Security Administration.

(9) Sell, exchange, lease, sublease, or otherwise dispose of any property, real or personal, belonging to the Authority and not needed by the Authority to operate any airport owned or operated by it or to generate revenues to pay debt obligations of the Authority, or grant easements over, through, under, or across any real property belonging to the Authority, or donate to another governmental entity within North Carolina or to the United States any surplus, obsolete, or unused personal property; provided Article 12 of Chapter 160A of the General Statutes does not apply and is not applicable to any such sale, exchange, lease, sublease, grant, donation, or other disposition.

(10) Purchase such insurance and insurance coverages as the Authority may from time to time deem to be necessary, beneficial, or helpful.

(11) Deposit, invest, and/or reinvest any of its funds as provided by the Local Government Finance Act for the deposit or investment of unit funds.

(12) Issue revenue bonds and/or refunding revenue bonds pursuant to the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes.

(13) Purchase any of its outstanding bonds or notes.

(14) Operate, own, lease, sublease, control, regulate, and/or grant to others the right to operate on any airport premises owned, operated, or controlled by the Authority, general aviation terminal and fixed base operations, aircraft deicing equipments and systems, restaurants, snack bars and vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops insurance sales, advertising media, merchandise outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service stations, garage service facilities, motion picture shows, personal service establishments, and/or all other types of facilities, activities, and enterprises as may be directly or indirectly related to the maintenance and/or furnishing of public commercial service and/or general aviation airport facilities.

(15) Accept grants of money and/or materials or property of any kind for any existing or future airport facilities from the State of North Carolina, the United States, or any agency, department or subdivision of either of them, including the FAA or from any private agency, entity, or individual, upon such terms and conditions as may be imposed, and enter into contracts and grant agreements with the FAA and/or with the State of North Carolina or any of its agencies, departments or subdivisions, in the capacity of sponsor or cosponsor of any airport development project involving the acquisition,

construction, development, reconstruction, improvement, extension, enlargement, or equipping of any existing or future airport facilities.

(16) Employ and fix the compensation of an Executive Director, who shall serve at the pleasure of the Authority or pursuant to the terms of an employment contract awarded by the Authority and who shall manage the affairs of the Authority under the supervision of the Authority.

(17) Employ, or provide for the employment of such employees, including law enforcement officers, as the Authority may from time to time deem to be necessary, beneficial, or helpful. All such employees shall be employees at will, and no such employee shall have a defined or definite term of employment, an expectation of continued employment, or an expectation of continued indefinite employment.

(18) Employ, hire, retain, or contract with such Servants whose services may from time to time be deemed by the Authority to be necessary, beneficial, or helpful. In order to effectuate a seamless transfer of the Airport from the ownership and operation by the City of Charlotte to the ownership and operation by the Authority, the Authority will honor and be bound by all existing contracts between the City and such Servants as presently are engaged to assist the City with respect to the Airport.

(19) Make or cause to be made such surveys, investigations, studies, borings, maps, plans, drawings, and/or estimates of cost and revenues as the Authority may from time to time deem necessary, beneficial, or helpful and prepare and adopt a comprehensive plan or plans for the location, construction, improvement, and development of any project.

(20) Undertake and/or enter into leases, subleases, agreements, easements, and contracts, and/or grant concessions, with respect to alternative energy, energy conservation, energy reduction, and/or renewable energy activities, programs, projects, and/or ventures, and the administration, construction, development, enlargement, equipment, improvement, maintenance, management, operation, regulation, and/or repair thereof.

(21) Exercise the power of eminent domain, pursuant to Article 3 of Chapter 40A of the General Statutes to expand the boundaries of an airport already owned, operated, or controlled by the Authority or to comply with the requirements of the United States and the FAA with respect to such airport, but only for public use as a public airport purpose. For the purposes of Chapter 40A of the General Statutes, the Authority is a public condemnor under G.S. 40A-3(c). In the exercise of its authority of eminent domain for the acquisition of property to be used for public airports, the authority is authorized to use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes, as now written or hereafter amended. For the purposes of this paragraph, whenever a reference is made in Article 9 of Chapter 136 of the General statutes to an official of the State of North Carolina, the Executive Director of the Authority shall be deemed to be such an official. The exercise of the power of eminent domain of the authority shall be restricted as follows:

a. No such power of eminent domain shall exist except as to property that is contiguous to property of an airport already owned, operated, or controlled by the Authority; provided that the contiguity of such property to existing airport property shall not be deemed to be interrupted by a railroad or public roadway or waterway running with or adjacent to the boundary of such existing airport property;

b. No such power of eminent domain shall be used for a purpose that is not necessary for the operation or expansion or to comply with FAA regulations or requirements for or provide protection from or to ameliorate noncompatible land uses of property that is contiguous to property of an airport already owned, operated, or controlled by the Authority;

c. No such power of eminent domain shall exist to condemn property for such uses as hotels, motels, restaurants, or industrial parks; and

d. No such power of eminent domain shall exist with respect to property already publically owned and dedicated to public use.

(22) Exercise all of the powers conferred by Chapter 63 of the General Statutes or any successor Chapter or law.

SECTION 6.(b) The Authority has the same exemptions with respect to payment of taxes and license fees as provided for municipal corporations by the laws of the State of North Carolina.

SECTION 7.(a) The Authority may acquire from the County of Mecklenburg and the City of Charlotte, by agreement therewith, and such County and City may grant and convey, either by gift or for such consideration as allowed by federal law and as it may be deemed wise, any real and/or personal property which it now owns or may hereafter acquire, and which may be necessary, beneficial, or helpful for the construction, development, operation, and/or maintenance of any airport or facilities of same located in the County of Mecklenburg. If any such airport ceases to operate or if the Authority is dissolved or otherwise ceases to exist, any applicable real property of the County of Mecklenburg or the City of Charlotte conveyed or transferred to the Authority under this act shall revert to the grantor.

SECTION 7.(b1) All right, title, and interest of the City of Charlotte in and to the Airport Property, Airport Facilities, and Charlotte Douglas International Airport shall be deemed to have been transferred to the Authority as a matter of law when this act becomes law, and no action by the City shall be necessary to effect such transfer nor be effective to prevent such transfer. Thereafter, this act shall serve as evidence of chain of title of the Authority to such Airport Property and Airport Facilities. The transfer is deemed to include the Airport Property, Airport Facilities, and all other property held or owned by the City of Charlotte with respect to the Airport, real or personal, tangible or intangible, and includes all cash and cash equivalents and checking, investment, and demand deposit bank accounts held by the City pertaining to or generated from revenues of the Airport, including, without limiting the generality hereof, amounts on deposit in or with respect to the Discretionary Fund, the Cannon Fund, the Revenue Fund, the Operating Fund, the Bond Funds, the Debt Service Funds, the Construction Funds, the Capital Projects Funds, the Discretionary Fund, Passenger Facility Charges, Contract Facility Charges, and all other funds and accounts of the City with respect to the Airport. Upon such transfer from the City to the Authority, the Authority will be and is hereby deemed to have assumed and become successor to the City of Charlotte, and is hereby deemed to have assumed and become successor to the City with respect to the FAA Part 139 Certificate, the FAA Sponsor's Assurances entered into by the City with the FAA, and all liabilities of the City with respect to and arising out of its ownership and operation of the Airport, including the City's obligations to servants and employees of the Authority and bondholders of the City's General Airport Revenue Bonds, and including, without limiting the generality hereof, the obligations under the Revenue Bond Order adopted November 18, 1985, and all Series Resolutions issued under the Bond Order, the Special Facility Bond Order adopted May 11, 1987, and all Series Resolutions adopted under the Special Facility Bond Order, and the Taxable Special Facility Revenue Bonds (Consolidated Car Rental Facilities Project) Series 2011 General Trust Indenture and the Series Indenture, Number 1, both dated November 1, 2011, and all agreements and understandings with respect to trustee(s) or paying agent(s) of the City's airport revenue bonds, letters of credit or other credit facilities of the City with respect to airport revenue bonds, and all leases, licenses, options to purchase, and other encumbrances on the Airport Property and Airport Facilities, whether or not those encumbrances are recorded. Upon transfer of the Airport Property and Airport Facilities, the Authority assumes and becomes the successor to the City of Charlotte with respect to all rights, duties, and obligations of the City of Charlotte in any commercial or development agreements pertaining to or related to the Airport Property and Airport Facilities that are in effect at the time of the transfer, and any commercial agreements, development agreements, and other contracts of the City of Charlotte pertaining to or related to the Airport Property and Airport Facilities that are in effect at the time of the transfer, including without limitation any contracts of insurance, shall remain in full force and effect after the transfer.

SECTION 7.(b2) In order to effectuate a seamless transfer of the Airport from the ownership and operation by the City of Charlotte to the ownership and operation by the Authority, the Authority shall initially:

(1) Honor and be bound by all pending or executory land or real property purchase contracts by the City of Charlotte with respect to property and lands to be acquired for and in connection with the Airport.

(2) Honor and be bound by all existing rules and regulations of the Aviation Department of the City of Charlotte with respect to the Airport, including the Airport Security Plan, until such rules and regulations shall be amended by the Authority in accordance with the provisions of this act.

(3) Honor and be bound by all existing contracts of the City of Charlotte with third-party concessionaires and management contractors with respect to the Airport.

(4) Honor and be bound by all existing contracts and grant agreements of the City of Charlotte with respect to the Airport.

(5) Be deemed as a matter of law to have appointed as its initial Executive Director the Aviation Director of the City of Charlotte as of February 14, 2013, with initial compensation and benefits of the initial Executive Director, being the same compensation and benefits as were being received from the City of Charlotte on February 14, 2013, and the initial Executive Director shall be entitled as a matter of law to the continuation of the rights and benefits extended to him under the existing retirement system of the City of Charlotte.

(6) Be deemed as a matter of law to have adopted initially the employment and human resources policies of the Authority, such policies of the City of Charlotte as they apply to employees of the Airport, and the Authority shall be deemed to have adopted the current employee handbook of the City of Charlotte applicable to the Airport until the Authority adopt different policies or a different employee handbook.

(7) Honor and be bound by all existing contracts of the City with respect to the matters described in subdivision (20) of subsection (a) of Section 6 of this act.

SECTION 7.(b3) Upon the request of the Executive Director of the Authority, the City of Charlotte shall continue to provide such administrative services to the Authority as it currently provides and shall receive as compensation therefor from the Authority such amount as is appropriate for such services as provided by OMB Circular A-87 until the Authority shall direct the City to terminate such services.

SECTION 7.(b4) From the enactment of this act until December 31, 2013, unless earlier terminated by the agreement of the City and Authority (the "Employee Transition Period"), the City shall continue to employ, subject to the provisions of this subsection, the employees of the City's Aviation Department and under the direction of the Aviation Director as of the date of this act (the "Airport Employees"), and the Authority shall lease the Airport Employees from the City. The City shall provide the following services in support of the Authority's lease of the Airport Employees, upon the terms and compensation set forth in this section, and the following provisions of this section shall be applicable during the Employee Transition Period:

(1) During the Employee Transition Period, the Airport Employees shall be employees of the City and not of the Authority. The City shall be responsible for all matters related to the payment of federal, State, and local payroll taxes, workers' compensation insurance or self-insurance under Chapter 97 of the General Statutes, salaries, and benefits, including health care and retirement benefits, for Airport Employees. The Airport Employees shall be directed by the City to perform work in a manner that meets the standards established by the Authority and that conforms to the Authority's policies, procedures, practices, and rules with respect to the Airport's operation. The Airport Employees shall be subject to all of the City's employment-related policies, as in effect from time to time (such as policies relating to terms of employment and eligibility for employee benefits). The City, as the employer, shall have ultimate control over the Airport Employees during the Employee Transition Period, including, but not limited to, the right to terminate the employment of any Airport Employee. Notwithstanding the foregoing, the Authority may at any time request the removal of any specific

Airport Employee if, in the good-faith judgment of the Authority, removal would be in the best interests of the operation of the Airport. In such event, the City will remove any such person within a reasonable time, subject to compliance with applicable personnel policies and procedures, applicable law, and the City's ability to secure a replacement reasonably acceptable to the Authority.

(2) The City shall process the payroll for the Airport Employees during the Employee Transition Period. As consideration for such service and the lease of the Airport Employees, the Authority shall compensate the City by reimbursing the City the cost of all salaries, wages, bonuses, and benefits, including health care and retirement benefits, of the Airport Employees for their time worked during the Employee Transition Period and as required by law, as well as administrative costs incurred in processing such payroll. Upon the City's request, the Authority shall transfer to and deposit with the City sufficient funds to process payroll for Airport Employees in advance of each payroll date during the Employee Transition Period. At the conclusion of the Employee Transition Period, the City shall then refund the Authority any portion of such advance payments not used to process the payroll for the Airport Employees.

(3) During the Employee Transition Period, the City shall continue to provide all employment benefits currently available to the Airport Employees, including, but not limited to, health care benefits, retirement benefits, disability insurance, life insurance, and accrued time off or leave, and the Authority shall promptly reimburse the City the costs of providing such benefits.

(4) During the Employee Transition Period, the City shall keep in full force and effect workers' compensation insurance, self-insurance under Chapter 97 of the General Statutes, and any other insurance policy concerning the Airport Employees, and the Authority shall promptly reimburse the City the costs of maintaining such insurance.

(5) The Authority shall indemnify, defend, and hold harmless the City from and against any and all losses and expenses incurred as a result of or in connection with any action or inaction taken by the Authority with respect to the Airport Employees during the Employee Transition Period, unless caused by the gross negligent action or willful misconduct of the City.

(6) On January 1, 2014, or upon the earlier termination of the Employee Transition Period as provided in this subsection, the City shall terminate the employment of all Airport Employees, and the Authority shall be deemed to have hired the Airport Employees as of that date as the initial employees of the Authority. The initial terms of employment, compensation, and benefits of the Airport Employees under their employment with the Authority shall be the same as those provided or made available to them by the City of Charlotte as of December 31, 2013, or as of the earlier termination of the Employee Transition Period if terminated by agreement of the City and the Authority as provided in this subsection.

SECTION 7.(c) Property needed by the Authority for any airport, landing field, or facility may be acquired by the Authority by gift, devise, or purchase. Aviation easements needed by the Authority for any airport, landing field, or facility may likewise be acquired by gift, devise, or purchase.

SECTION 7.(d) Any lands acquired, owned, controlled, or occupied by the Authority shall and/or are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

SECTION 7.(e) The Authority is not authorized to levy any tax.

SECTION 7.(f) In consideration of the transfer of the Airport Property and Airport assets and liabilities to the Authority pursuant to Section 7(b1) of this act, and subject to the approval of the FAA, the Authority shall agree to pay to the City as compensation therefor, the amount equal to the unreimbursed or unrecovered cost to the City of acquiring the Airport Property that was not ultimately paid with Airport revenues or funds or the proceeds of federal, State, or private grants. Any amount to be paid by the Authority to the City pursuant to this

subsection shall be paid from future revenues from the operation of the Airport by the Authority remaining after payment by the Authority in the year of such payment all costs and expenses of the Airport including the payment of principal installments and interest on all bonds outstanding and other indebtedness of the Authority with respect to the Airport. Upon entering into such agreement by the Authority any claim by the City of Charlotte on account of transfer of property to the Authority pursuant to Section 7(b) of this act or otherwise, is hereby extinguished.

SECTION 8. The Authority shall make annual reports to the Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, and Union County Boards of Commissioners and the Charlotte City Council setting forth a summary of its general operations and transactions conducted by it pursuant to this act.

SECTION 9. All rights, powers, and authority given to the counties and/or municipalities by the statutes of North Carolina, which may now be in effect, or which may be enacted in the future, relating to the development, operation, maintenance, regulation, and/or control of municipal or other governmental airports and the regulations of aircraft are hereby vested in the Authority.

SECTION 10. The Authority is hereby expressly authorized to make and enter into contracts, leases, subleases, conveyances, and other agreements with any political subdivision, agency, department, or instrumentality of this State; any agency, department, or subdivision of the United States; or any other legal entity or person for the purpose of carrying out the provisions of this act.

SECTION 11. The powers of the Authority created by this act shall be construed liberally in favor of the Authority. No listing of powers included in this act is intended to be exclusive or restrictive, and the specific mention of, or failure to mention, particular powers in this act shall not be construed as limiting in any way the general powers of the Authority as stated in Section 6(a) of this act. It is the intent of this act to grant the Authority full power and right to exercise all authority necessary for the effective operation and conduct of the Authority. It is further intended that the Authority should have all implied powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which the Authority is created. The fact that this act specifically states that the Authority possesses a certain power does not mean that the Authority must exercise such power unless this act specifically so requires.

SECTION 12. G.S. 66-58(a) shall not apply to the Authority or a lessee or sublessee of it.

SECTION 13. In its initial decisions, the Authority shall consider the consultant recommendations made to the City of Charlotte in 2013 concerning governance of the Airport.

SECTION 14. The Authority may make recommendations to the 2013 General Assembly prior to its reconvening in 2014 concerning amendments to this act as it deems advisable, and such recommendations shall be eligible for consideration as if it were a committee or commission.

SECTION 15. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 16. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2013.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

B

Temporary Restraining Order

- 7/18/2013 3:50 p.m.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-12678

MECKLENBURG COUNTY
FILED #64
JUL 18 2013
AT 3:50 O'CLOCK P M
BY
CLERK OF SUPERIOR COURT

CITY OF CHARLOTTE,
A municipal corporation,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA AND CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT AUTHORITY,

Defendants.

TEMPORARY RESTRAINING ORDER

THIS MATTER is before the Court on the Motion for Temporary Restraining Order filed by Plaintiff City of Charlotte ("Charlotte").

Upon such application the Court considered the Verified Complaint and the arguments and submissions of counsel in attendance at the hearing. Counsel of record for Charlotte was present at the hearing. Counsel for Charlotte advised the Court that they had given notice of the commencement of this action and of the application for a temporary restraining order to counsel for the Defendants as required by Rule 65 of the North Carolina Rules of Civil Procedure.

IT APPEARS to the Court that good cause exists to grant the Motion.

Charlotte has shown a likelihood of success on the merits on each of its claims for relief. First, Charlotte has shown that it is likely to succeed on the merits of Count 1 because the Act is an unconstitutional local act concerning airports in violation of Article V, Section 13 and Article XIV, Section 3 of the North Carolina Constitution. ~~Second, Charlotte has shown that it is likely to succeed on the merits of Count 2 because the Act is an unconstitutional impairment to a~~

contractual obligation in violation of Article I, Section 10 of the United States Constitution and N.C. Gen. Stat. § 159-93. Third, Charlotte has shown that it is likely to succeed on the merits of Count 3 because the Act is an unconstitutional subversion of the authority of the Federal Aviation Authority in violation of Article I, Section 5 of the North Carolina Constitution. Finally, Charlotte has shown that it is likely to succeed on the merits of Count 4 because the Act is an unconstitutional taking in violation of Article I, Sections 19 and 35 of the North Carolina Constitution.

Charlotte has also demonstrated that it will suffer irreparable harm in the absence of immediate injunctive relief, as violations of the North Carolina and U.S. Constitution constitute *per se* irreparable harm. Furthermore, Charlotte has demonstrated that it will suffer immediate and irreparable harm if the Act is allowed to take effect. Enforcement of the Act threatens to cause imminent, irreparable harm to Charlotte including but not limited to the consequences of default on its obligations under the Airport Bonds, the disruption or loss entirely of Airport services upon the Act becoming effective, and the Airport's inability to function without violating state or federal law. Charlotte has no adequate remedy at law because monetary damages are incapable of protecting Charlotte and its citizens from the devastating and immediate loss of an operational airport.

The balance of equities also favors granting immediate injunctive relief. Charlotte has successfully and efficiently maintained the Airport since the mid-1930s. Thus, it does not appear that the State or its interests will be harmed by permitting Charlotte to continue maintaining the Airport until such time as the Court decides Charlotte's Motion for Preliminary Injunction, particularly when considered against the immediate and irreparable harm that Charlotte and its citizens would suffer if the Act were allowed to take effect.

WHEREFORE, Plaintiff's Motion for Temporary Restraining Order is **GRANTED.**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that during the pendency of Plaintiff's Motion for Preliminary Injunction, and pending a decision by the Court on the Motion for Preliminary Injunction:

1. The State is restrained and enjoined from taking any action to implement or enforce the Act;

2. The Charlotte Douglas Airport Authority, and all of its agents, servants, and employees are forbidden from assuming any authority or control over the Airport or any of the real or personal property owned by the City of Charlotte with respect to the Airport;

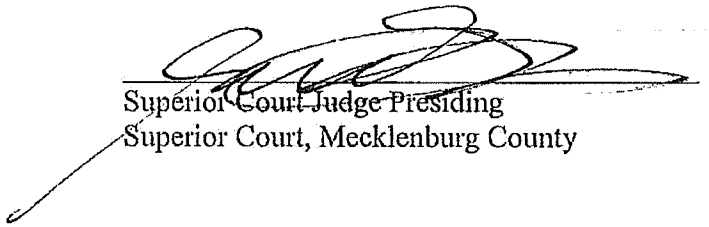
3. None of the property, licenses, debt, or contracts associated with or related to the Airport are to be transferred to the Charlotte Douglas Airport Authority;

4. Charlotte continues to own, manage, and operate the Airport and all of the property owned by the City of Charlotte with respect to the Airport pending further Order of this Court.

Counsel for Charlotte shall cause copies of this Order to be delivered to Defendants.

Unless the parties consent to an extension of this injunction, the Court will hear Charlotte's Motion for Preliminary Injunction on July 29, 2013 at 10:00 a.m. in Courtroom 6310 of the Mecklenburg County Courthouse, 832 East Fourth Street, Charlotte, North Carolina 28202. This injunction shall expire ten (10) days from the date and time of issuance in accordance with the North Carolina Rules of Civil Procedure, unless the parties otherwise agree to its extension.

Signed and Ordered on July 18, 2013 at 3:50 p.m.



Superior Court Judge Presiding
Superior Court, Mecklenburg County

C

7/18/2013 letter from Charlotte Douglas Airport Authority Executive Director to City Manager

Charlotte·Douglas®
INTERNATIONAL AIRPORT

July 18, 2013

Mr. Ron Carlee, City Manager
City of Charlotte
600 E 4th Street
Charlotte, NC 28202

RE: REQUEST FOR PROVISION OF CITY SERVICES
CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT AUTHORITY

Dear Mr. Carlee:

On July 18, 2013 the General Assembly of North Carolina enacted into law Senate Bill 81 (the "Act") which created the Charlotte Douglas International Airport Authority ("Airport Authority"). A copy of the Act is attached hereto for your information.

In summary the effect of the Act is that:

- That the Authority is created as a corporate instrumentality of the State of North Carolina with the charter to, among other things, own and operate Charlotte Douglas International Airport (the "Airport");
- All property, real personal , tangible and intangible heretofore owned by the City of Charlotte comprising Charlotte Douglas International Airport and all liabilities and obligations of the City of Charlotte with respect to the Airport have been transferred to and assumed by the Airport Authority;
- The Initial Board of Directors of the Airport Authority are the Members of the City of Charlotte Airport Advisory Committee sitting as of the date of enactment of the Act;
- The Initial Executive Director of the Airport Authority is the person employed by the City of Charlotte as Aviation Director on February 14, 2013;
- The Authority will pay to the City any amount of City investment in the Airport that was not paid from Airport Revenues in accordance with the provisions of the Act and subject to approval of the FAA;
- The City will "lease" to the Airport Authority, to serve under the supervision of the Executive director of the Airport Authority, all City employees presently assigned to the Aviation Department until the earlier of the date the Airport Authority can make appropriate provisions to employ such employees or December 31, 2013 and will continue to process the payroll and employee benefits of all such employees at the cost of the Authority; AND
- Upon request of the Executive Director of the Airport Authority the City will provide administrative support services to the Airport Authority at the cost of the Authority and subject to OMB-87 until the Airport Authority shall terminate such services.

Inasmuch as I was the Aviation director of the City as of February 14, 2013, my employment as Executive Director of the Airport Authority commenced and my employment by the City as Aviation Director terminated upon the enactment of the Act.

I am writing in my capacity as Executive Director of the Airport Authority to request that the City of Charlotte commence immediately to provide to the Airport Authority all of the services that were being provided to the Aviation Department immediately prior to the enactment of the Act ("City Services"), including, without limiting the generality hereof:

- Accounting services including accounts receivable and payables;
- Banking services including servicing of Airport Authority debt;
- Human resource functions including payroll;
- Legal;
- IT;
- Insurance;
- Purchasing;
- Police;
- Fire;

It is my intention to commence work immediately to put all necessary procedures, processes and systems into place to enable the authority to function without the city services as soon as possible. I contemplate that the progress towards this goal will be graduated and that we will terminate or modify some services before we are prepared to terminate all City Services. You can therefore expect that I will give you notice at various time of the reduction or elimination of the scope of services as the Airport Authority attains the ability to provide them itself.

To initiate this process I request that you assign relevant department heads to meet with me and my senior staff to identify and discuss the nature of such services and what measures need to be put into place to arrange for their continuation without interruption until the Authority has put necessary processes and systems into place that will enable the Airport Authority to terminate the need for the City Services.

I look forward to working with you and your staff in the coming weeks to coordinate an orderly transition from City Services to a fully functioning Airport Authority.

Sincerely,

T. J. Orr
Executive Director

Enclosure

D

Senate Bill 380 – Charlotte Douglas International Airport Commission Under the City of Charlotte

- 7/26/2013

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-358
SENATE BILL 380

AN ACT TO CREATE THE CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT COMMISSION UNDER THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Charlotte Douglas International Airport Commission Act."

SECTION 2. S.L. 2013-272 is repealed.

SECTION 3. Chapter 5 of the Charter of the City of Charlotte, being S.L. 2000-26, is amended by adding a new Article to read:

"ARTICLE III. CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT COMMISSION.

"Section 5.51. **Charlotte Douglas International Airport Commission.**

There is created the Charlotte Douglas International Airport Commission, which shall be an agency of the City, having the powers, authority, and jurisdiction set out in this Article and such other and additional powers and authority as shall be conferred upon it by future acts of the General Assembly.

"Section 5.52. **Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Article to the defined words and phrases and their cognates:

(1) "Airport" means Charlotte Douglas International Airport in Mecklenburg County.

(2) "Airport Facilities" means airport facilities of all kinds, including, but not limited to, landing fields, hangars, fixed-base operations, shops, restaurants and catering facilities, terminals, buildings, automobile parking facilities, and all other facilities necessary, beneficial, and/or helpful for the landing, taking off, operating, servicing, repairing, and parking of aircraft, the loading, unloading, and handling of cargo and mail, express and freight, and the accommodation, convenience, and comfort of crews and passengers, together with related transportation facilities, all necessary, beneficial, and/or helpful appurtenances, machinery, and equipment, and all lands, properties, rights, easements, and franchises relating thereto and considered necessary, beneficial, and/or helpful by the Commission in connection therewith.

(3) "Airport Property" means all the real property and improvements thereto designated as airport property on the Airport Layout Plan or Airport Development Plan of the Airport conditionally approved by the FAA on February 13, 2013.

(4) "Appointing Authorities" means the entities described in Section 5.24 of this Charter who are empowered to appoint members of the Commission and referred to collectively as "Appointing Authorities" and individually as "Appointing Authority."

(5) "Commission" means the Charlotte Douglas International Airport Commission created by this Article or, if such Commission is abolished or otherwise ceases to exist, the authority, board, body, commission, or other entity succeeding to the principal functions thereof.

(6) "FAA" means the Federal Aviation Administration or any successor agency.

(7) "Member" means an individual who is appointed to the Commission, as provided by this Article.



(8) "Servants" means accountants, auditors, agents, contractors, design professionals, attorneys, and other persons and entities whose services may from time to time be deemed by the Commission to be necessary, beneficial, or helpful.

"Section 5.53. **Membership; Terms.**

(a) The Commission shall consist of 13 members appointed as follows:

(1) Three registered voters of the City of Charlotte appointed by the Mayor, at least one of whom shall be a resident of the west side of the City of Charlotte.

(2) Four registered voters of the City of Charlotte appointed by the Council, at least one of whom shall be a resident of the west side of the City of Charlotte.

(3) One registered voter of Mecklenburg County appointed by the Mecklenburg County Board of Commissioners.

(4) One registered voter of Cabarrus County appointed by the Cabarrus County Board of Commissioners.

(5) One registered voter of Gaston County appointed by the Gaston County Board of Commissioners.

(6) One registered voter of Iredell County appointed by the Iredell County Board of Commissioners.

(7) One registered voter of Lincoln County appointed by the Lincoln County Board of Commissioners.

(8) One registered voter of Union County appointed by the Union County Board of Commissioners.

(b) In order to effectuate a seamless start-up of the Commission, and to give the Appointing Authorities time to consider candidates for and to appoint members as provided herein, the initial members of the Commission from the time this act becomes law shall be the members of the Airport Advisory Committee of the City of Charlotte who shall serve only until seven members shall have been appointed by the Appointing Authorities and qualified by taking their oath of office. The powers of the Airport Advisory Committee serving as initial members shall be limited to ministerial acts, and no employment or management contracts shall be awarded or entered into by the initial members, and any such contracts as the initial members shall award or enter into shall not be effective or binding on the members selected by the Appointing Authorities; provided, however, the initial members may take such actions as are appropriate in accordance with Sections 5.59(c)(5) and 5.62 of this Charter. The Appointing Authorities shall appoint initial members no later than October 1, 2013. Members, when practical, shall have experience in aviation, logistics, construction and/or facilities management, law, accounting, and/or finance.

(c) No person may be appointed as a member or serve during continuance in office on the Commission who:

(1) Is employed by a servant of the Commission as defined in Section 5.52 of this Charter;

(2) Is a tenant or employee of a tenant of an airport owned, operated, or controlled by the Commission, or other commercial user or employee of a commercial user of any airport operated by the Commission; or

(3) Has been convicted of a felony or a crime of moral turpitude.

(d) Members shall serve four-year terms and may serve up to a total of two successive four-year terms. A member who has reached this limit may not be reappointed to the Commission except after a lapse of four years following the most recent term served. In the event a member is appointed to fill an unexpired term, and at least two years of the unexpired term remain to be served, such appointment shall be counted in applying the two-term limit; otherwise, it shall not be counted. In order to ensure that the terms of all members of the Commission do not expire at the same time, the initial terms of the members of the Commission, appointed by the Counties of Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, and Union, shall be for two years. All initial four-year terms expire December 31, 2017, and all initial two-year terms expire December 31, 2015.

(e) Any vacancy occurring among the membership of the Commission shall be filled within 60 days after notice thereof by the appointment of a successor by the Appointing

Authority of the previous member. Such successor member shall serve for the remainder of the unexpired term.

(f) Members and their successors shall take and subscribe to an oath of office before an officer authorized to administer oaths, which oath shall be filed with the Commission.

(g) Any member may be suspended or removed from office by that member's Appointing Authority or a majority vote of the other members for cause affecting that member's duties and responsibilities as a member; for misfeasance, malfeasance, or nonfeasance in office; or for conduct tending to undermine any decisions of the Commission, or for conduct exposing the Commission to liability for damages.

(h) Except for malfeasance, members shall not be personally liable, in any manner, for their acts or omissions as members.

(i) Each member may continue to serve until a successor has been duly appointed and qualified, but not for more than 60 days beyond the end of the term.

"Section 5.54. **Meetings; Reimbursement; Procedures.**

(a) The organization and business of the Commission shall be conducted as provided in this Article.

(b) Members shall constitute the governing board of the Commission and may, among other things and from time to time, adopt suitable bylaws not inconsistent with the provisions of this act.

(c) Each member, including the chair, shall have one vote. A majority of the members in office shall constitute a quorum, and, unless otherwise provided in this act, all actions of the Commission shall be determined by a majority vote of the members present and voting in a duly called meeting at which a quorum is present.

(d) The Commission shall hold meetings at least monthly at such times and places as it from time to time may designate and at such other times on the call of the chair or by six members of the Commission; provided, a monthly meeting need not be held if it is determined by the chair or seven members that such meeting is not required.

(e) Members may receive payment or reimbursement for travel, lodging, and meal expenses incurred in transacting business on behalf of the Commission. Members may also receive free parking at any airport owned, leased, subleased, or controlled by the Commission, which members may use for official purposes during the respective member's term of office.

(f) All meetings and closed sessions of the Commission shall be conducted in accordance with Article 33C of Chapter 143 of the General Statutes as it may be amended or in accordance with any successor statute.

"Section 5.55. **Officers and Funds.**

(a) The members of the Commission shall elect annually from their membership a chair, vice-chair, and shall elect a secretary and such other officers as they deem appropriate and otherwise provide for the efficient administration of the Commission's affairs; provided, however, the Commission may provide by resolution that the finance officer of the City shall by virtue of that office be also the finance officer of the Commission, and in such case shall serve as such finance officer without additional compensation. All funds of the Commission shall be kept by its treasurer in a separate bank account or accounts from other funds of the City and shall be paid out only in accordance with procedures established by such Commission. Quarterly operating statements of the Commission and an annual audited statement shall be presented to the Council. The Commission shall be deemed a "special district," as defined in G.S. 159-7, for purposes of the Local Government Budget and Fiscal Control Act and shall budget and administer its fiscal affairs according to the provisions of that act applicable to special districts.

(b) The fiscal year of the Commission shall begin on July 1 and end on June 30. On or before May 15 of each year, the Commission shall prepare and adopt a proposed budget for the next ensuing fiscal year and deliver copies of such proposed budget to the Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, and Union County Boards of Commissioners and the Charlotte City Council. In order to effectuate a seamless start-up of operation of the airport by the Commission, the initial budget of the Commission shall be the budget established by the Council for the Airport for the period July 1, 2013, through June 30, 2014, until the initial budget shall be revised by the Commission. The financial affairs of the Commission shall be governed by the Local Government Finance Act. The Commission shall have full control of the budget of the Airport.

"Section 5.56. **Powers and Duties.**

(a) The Commission shall operate the airport in a proper, efficient, economical, and business-like manner, to the end that it may effectively serve the public needs for which it was established at the least cost and expense to the City. To that end, the Commission shall have the power and authority to do the following:

(1) Adopt and from time to time revise an official seal.

(2) Maintain an office or offices at such place or places as it may designate within Mecklenburg County only.

(3) Exercise on behalf of the City within Mecklenburg County all the powers that the City has concerning airports under Chapter 63 of the General Statutes and any other provision of general law, this charter, or other provision of local act applicable to the City, except as limited by this Article.

(4) Operate the airport.

(5) Purchase, acquire, develop, establish, construct, own, control, lease, equip, improve, administer, maintain, operate, and/or regulate airports and/or landing fields for the use of airplanes and other aircraft and all facilities incidental thereto, within the limits of Mecklenburg County; and for any of such purposes, purchase, acquire, own, develop, hold, lease, sublease, and operate real and/or personal property comprising such airports.

(6) Purchase real and personal property.

(7) Sue and be sued in the name of the Commission.

(8) In addition to the powers granted by subdivisions (4) and (5) of this subsection, (i) upon the consent of the governing bodies of such airports, to acquire by purchase or otherwise and to hold lands for the purpose of constructing, maintaining, and/or operating existing airports in Cabarrus, Gaston, Iredell, Lincoln, and Union Counties and (ii) upon the consent and agreement of the Boards of County Commissioners of Cabarrus, Gaston, Iredell, Lincoln, and Union Counties, to acquire land and construct, make improvement, extension, enlargement, or equipping of future airport facilities in such counties.

(9) Charge and collect fees, royalties, rents, and/or other charges, including fuel flowage fees, for the use and/or occupancy by persons of the airports and other property owned, leased, subleased, or controlled by the Commission or for services rendered in the operation thereof.

(10) Make all reasonable rules and regulations and policies as it may from time to time deem to be necessary, beneficial, or helpful for the proper maintenance, use, occupancy, operation, and/or control of any airport or airport facility owned, leased, subleased, or controlled by the Commission and provide and enforce civil and criminal penalties for the violation of such rules, regulations, and/or policies; provided that such rules, regulations, policies, and penalties are not in conflict with any applicable law, rules, or regulation of the State of North Carolina, the United States, or any agency, department, or subdivision of either of them, including the rules and regulations of the FAA or the Transportation Security Administration.

(11) With the approval of the City, sell, exchange, lease, sublease, or otherwise dispose of any property, real or personal, belonging to the Commission and not needed by the Commission to operate any airport owned or operated by it or to generate revenues to pay debt obligations of the Commission, or grant easements over, through, under, or across any real property belonging to the Commission, or donate to another governmental entity within North Carolina or to the United States any surplus, obsolete, or unused personal property; provided Article 12 of Chapter 160A of the General Statutes does not apply and is not applicable to any such sale, exchange, lease, sublease, grant, donation, or other disposition.

(12) Purchase such insurance and insurance coverages as the Commission may from time to time deem to be necessary, beneficial, or helpful.

(13) Deposit, invest, and/or reinvest any of its funds as provided by the Local Government Finance Act for the deposit or investment of unit funds.

(14) Operate, own, lease, sublease, control, regulate, and/or grant to others the right to operate on any airport premises owned, operated, or controlled by

the Commission, general aviation terminal and fixed-base operations, aircraft deicing equipment and systems, restaurants, snack bars and vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandise outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service stations, garage service facilities, motion picture shows, personal service establishments, and/or all other types of facilities, activities, and enterprises as may be directly or indirectly related to the maintenance and/or furnishing of public commercial service and/or general aviation airport facilities.

(15) Accept grants of money and/or materials or property of any kind for any existing or future airport facilities from the State of North Carolina, the United States, or any agency, department, or subdivision of either of them, including the FAA or from any private agency, entity, or individual, upon such terms and conditions as may be imposed, and enter into contracts and grant agreements with the FAA and/or with the State of North Carolina or any of its agencies, departments, or subdivisions, in the capacity of sponsor or cosponsor of any airport development project involving the acquisition, construction, development, reconstruction, improvement, extension, enlargement, or equipping of any existing or future airport facilities.

(16) Employ and fix the compensation of an Executive Director, who shall serve at the pleasure of the Commission or pursuant to the terms of an employment contract awarded by the Commission and who shall manage the affairs of the Commission under the supervision of the Commission.

(17) Employ, or provide for the employment of such employees by the Executive Director, including law enforcement officers, as the Commission may from time to time deem to be necessary, beneficial, or helpful.

(18) Employ, hire, retain, or contract with such servants whose services may from time to time be deemed by the Commission to be necessary, beneficial, or helpful. In order to effectuate a seamless transfer of the Airport from the ownership and operation by the City of Charlotte to the ownership and operation by the Commission, the Commission will honor and be bound by all existing contracts between the City and such servants as presently are engaged to assist the City with respect to the Airport.

(b) As provided by general law, it shall be the responsibility of the City as governed by its Council for all issuance of revenue bonds and/or refunding revenue bonds pursuant to the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, all issuance of general obligation debt pursuant to the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes, and all purchase of any of its outstanding bonds or notes. The Commission shall keep the City Manager and Council promptly appraised of any future need for such actions.

"Section 5.57. **Eminent Domain.**

The Commission may not exercise any powers of eminent domain. Any eminent domain with respect to acquisition of property for airport purposes shall be exercised by the City.

"Section 5.58. **Exemptions; Taxes.**

The Commission has the same exemptions with respect to payment of taxes and license fees as provided for the City by the laws of this State. The Commission is not authorized to levy any tax.

"Section 5.59. **Funds and Property.**

(a) The Commission shall have control, on behalf of the City, of the Airport Property, Airport Facilities, and all other property held or owned by the City of Charlotte with respect to the Airport, real or personal, tangible or intangible, and includes all cash and cash equivalents and checking, investment, and demand deposit bank accounts held by the City pertaining to or generated from revenues of the Airport, including, without limiting the generality hereof, amounts on deposit in or with respect to the Discretionary Fund, the Cannon Fund, the Revenue Fund, the Operating Fund, the Bond Funds, the Debt Service Funds, the Construction Funds, the Capital Projects Funds, Passenger Facility Charges, Contract Facility Charges, and all other funds and accounts of the City with respect to the Airport. This Article does not impair the City's obligations to servants and employees of the Commission and bondholders of the City's

General Airport Revenue Bonds, and including, without limiting the generality hereof, the obligations under the Revenue Bond Order adopted November 18, 1985, and all Series Resolutions issued under the Bond Order, the Special Facility Bond Order adopted May 11, 1987, and all Series Resolutions adopted under the Special Facility Bond Order, and the Taxable Special Facility Revenue Bonds (Consolidated Car Rental Facilities Project) Series 2011 General Trust Indenture and the Series Indenture, Number 1, both dated November 1, 2011, and all agreements and understandings with respect to trustee(s) or paying agent(s) of the City's airport revenue bonds, letters of credit, or other credit facilities of the City with respect to airport revenue bonds, and all leases, licenses, options to purchase, and other encumbrances on the Airport Property and Airport Facilities, whether or not those encumbrances are recorded. Any such payments shall be made by the City through the Commission under the terms of such contracts first with funds under the jurisdiction of the Commission. This act does not affect the title of any property. If the property was titled to the City of Charlotte prior to enactment of this Article, that title remains with the City.

(b) The Commission acts on behalf of the City with respect to all rights, duties, and obligations of the City in any commercial or development agreements pertaining to or related to the Airport Property and Airport Facilities that are in effect at the time of the transfer, and any commercial agreements, development agreements, and other contracts of the City pertaining to or related to the Airport Property and Airport Facilities that are in effect on enactment of this Article remain in effect.

(c) The Commission, on behalf of the City, shall:

(1) Honor and be bound by all pending or executory land or real property purchase contracts by the City with respect to property and lands to be acquired for and in connection with the Airport.

(2) Honor and be bound by all existing rules and regulations of the Aviation Department of the City of Charlotte with respect to the Airport, including the Airport Security Plan, until such rules and regulations shall be amended by the Commission in accordance with the provisions of this Article.

(3) Honor and be bound by all existing contracts of the City with third-party concessionaires and management contractors with respect to the Airport.

(4) Honor and be bound by all existing contracts and grant agreements of the City with respect to the Airport.

(5) Be deemed as a matter of law to have appointed as its initial Executive Director the Aviation Director of the City of Charlotte as of February 14, 2013, with initial compensation and benefits of the initial Executive Director being the same compensation and benefits as were being received from the City of Charlotte on February 14, 2013, and the initial Executive Director shall be entitled as a matter of law to the continuation of the rights and benefits extended to him or her under the existing retirement system of the City.

(6) Be deemed as a matter of law to have adopted initially the employment and human resources policies of the Commission, such policies of the City as they applied to employees of the Airport on the effective date of this Article, and the Commission shall be deemed to have adopted the current employee handbook of the City applicable to the Airport until the Commission adopts different policies or a different employee handbook.

"Section 5.60. **Assistance by City.**

Upon the request of the Executive Director of the Commission, the City shall continue to provide such services to the Commission as it currently provides to the Airport Department and shall receive as compensation therefor from the Commission such amount as is appropriate for such services as provided by OMB Circular A-87 until the Commission shall direct the City to terminate such services.

"Section 5.61. **Employees.**

(a) The employees assigned to the City's Aviation Department or under the direction of the Aviation Director as of the date of enactment of this Article are administratively assigned to the Commission and shall be employed in accordance with this Article as provided by Section 5.56 of this Charter and compensated by the Commission (the "Airport Employees").

(b) Following the time this bill becomes law, the Airport Employees shall continue to receive, until provided otherwise by the Commission through the adoption of new personnel

policies as provided by this Article, all employment benefits currently available to the Airport Employees, including, but not limited to, health care benefits, retirement benefits, disability insurance, life insurance, and accrued time off or leave, and the Commission shall promptly reimburse the City the costs of providing such benefits.

"Section 5.61A. **Annual Reports.**

The Commission shall make annual reports to the Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, and Union County Boards of Commissioners and the Council setting forth a summary of its general operations and transactions conducted by it pursuant to this Article.

"Section 5.62. **Statutory Construction.**

The powers of the Commission created by this Article shall be construed liberally in favor of the Commission. No listing of powers included in this Article is intended to be exclusive or restrictive, and the specific mention of, or failure to mention, particular powers in this act shall not be construed as limiting in any way the general powers of the Commission as stated in Section 5.56 of this Charter. It is the intent of this Article to grant the Commission full power and right to exercise all authority necessary for the effective operation and conduct of the Commission. It is further intended that the Commission should have all implied powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which the Commission is created. The fact that this Article specifically states that the Commission possesses a certain power does not mean that the Commission must exercise such power unless this Article specifically so requires.

"Section 5.63. **Initial Guidance.**

In its initial decisions, the Commission shall consider the consultant recommendations made to the City in 2013 concerning governance of the Airport."

SECTION 4.(a) There is created as an agency of the City of Charlotte the Charlotte Douglas International Airport Oversight Committee (Committee), which shall consist of five members appointed as follows:

(1) One by the Governor.
(2) One by the President Pro Tempore of the Senate.
(3) One by the Speaker of the House of Representatives.
(4) One by the Mayor of the City of Charlotte.
(5) One by the City Council of the City of Charlotte.

SECTION 4.(b) The Committee shall monitor the actions of the Charlotte Douglas International Airport Commission (Commission) established by this act and make regular reports and recommendations, if needed (including, but not limited to, an interim report in June of 2014 and a final report in June of 2015) to the Mayor and City Council on the following points:

(1) Whether the Charlotte Douglas International Airport (Airport) continues to be one of the best performing and lowest cost major hub airports.
(2) Whether that Airport finances are completely separate from those of the State or of any local government.
(3) Whether the Airport contracts and pays for only the services it needs and uses, including services from the State or from any local government.
(4) Whether the Airport continues to have a compensation system that enables it to attract and retain top talent.
(5) Whether the operations of the Commission comply with the provisions of this act.

SECTION 4.(c) The initial meeting of the Committee shall be called by the mayoral appointee or by any three members. A quorum is three members. The Committee may adopt other rules of procedure that do not conflict with State law.

SECTION 4.(d) This section expires and the Committee terminates July 1, 2015.

SECTION 5. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 6. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 26th day of July, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

E

7/29/2013 - Letter from the Associate Administrator for Airports to N.C. Attorney General and City Manager

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

Office of the Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

JUL 29 2013

The Honorable Roy Cooper
Attorney General for the State of North Carolina
9001 Mail Service Center
Raleigh, NC 27669

The Honorable Ron Carlee
Charlotte City Manager
Charlotte-Mecklenburg Government Center
600 East 4th Street
Charlotte, NC 28202

Dear Messr. Cooper and Carlee:

The Federal Aviation Administration (FAA) is aware of recent legislation that has been enacted to transfer the operation of the Charlotte Douglas International Airport, a federally-obligated airport, from the city of Charlotte, the current sponsor, to a newly created entity. While, FAA views the matter of who governs the airport as a local decision, only the Agency has the authority to issue an airport operating certificate under 49 United States Code (U.S.C.), § 44706 as implemented by 14 Code of Federal Regulations (CFR), part 139, and to approve the transfer of the Federal obligations to another eligible sponsor. Until FAA makes a determination on the transfer of Federal obligations and issues an Airport Operating Certificate to the new entity, the city of Charlotte remains the airport sponsor and the certificate holder.

The FAA has conducted a preliminary review of Senate Bill 380. We have several concerns about the legislation, including whether it conforms to Federal law. As we read Bill 380 an Airport Commission is created which would operate the airport and control the airport property, but title to the airport property would remain with the city when the act becomes law. Upon the consent of the governing bodies, the Airport Commission could also acquire other general aviation airports. These transfers however cannot take effect until FAA makes the requisite determination on the eligibility of the new entity to carry out the Federal obligations required of sponsors, which are contained in the AIP grant application and grant agreements, and in the part 139 Operating Certificate.

We request that the Attorney General of the State of North Carolina provide a legal opinion opining on who is the airport sponsor within the meaning of this legislation, and the entity empowered to enter into a Federal grant agreement under the laws of the State of North

Carolina. If the opinion confirms that it is the newly formed Airport Commission, we request that the opinion also address whether the Commission has the ability to make application for and accept grants without undue interference from the land owner. We would recommend that this opinion certify that it was premised on an examination of the Federal grant assurances.

We provide the following to outline the steps in the process to transfer an airport to another eligible recipient and some of the important issues that you should consider as you move forward. The first step in the review and approval process is for FAA to make a determination on the eligibility of the sponsor. This review requires the sponsor, in this case, the newly formed entity, to demonstrate to FAA that it is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations required of sponsors, which are contained in the AIP project application and grant agreements forms. This would also include reviewing an official copy of the legislation enacted into law setting out the power and authority of the proposed airport sponsor. The sponsor must also show that it has the authority to act as a sponsor. An opinion of the sponsor's attorney as to its legal authority to act as a sponsor and carry out its responsibilities under the grant agreement is required.

When addressing eligibility, the sponsor should provide the following in its certification and representations to FAA:

- The entity will give assurance that it possesses good title for the airport lands in its control. If it does not possess good title, it must give specific assurances to FAA that good title will be acquired. (Grant Assurance 4. Good Title).

- The entity must obtain and retain, in all its transfers, leases, and agreements, its capability to sufficiently control the airport in order to carry out its commitments to the Federal Government. The FAA is looking for the sponsor to identify any terms and conditions of the arrangement which could prevent the realization of the full benefits for which the airport was constructed, or which could develop into a restriction on the new operator's ability to meet its obligations to the Federal government. (Grant Assurance 5. Preserving Rights and Powers).

- The entity must ensure when/if it engages in any lease or agreement granting a secondary entity the right to serve the public on the premise of any or all of the airports in its possession should be subordinate to the sponsor's Federal obligations and the entity must maintain and retain sufficient control over the operation to guarantee that patrons will be treated fairly. (Grant Assurance 5. Preserving Rights and Powers).

In addition to the sponsorship eligibility, FAA requires sponsors to certify that they understand and are capable of abiding by all grant assurance obligations. Specifically, the entity should certify the following:

- The entity will ensure that the facilities of the airport are made available to the public on fair and reasonable terms without unjust discrimination. (Grant Assurance 22. Economic Discrimination).

- The entity will ensure the previous airport owner has not granted an exclusive right for the use of the airport, and will ensure it will not grant an exclusive use of the airport. (Grant Assurance 23. Exclusive Rights).

- The entity will ensure it will maintain a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible, in accordance with 49 U.S.C., § 47107. (Grant Assurance 24. Fee and Rental Structure). The entity will ensure its disposition of airport revenue conforms to Federal law and policy, including FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7696 (Feb. 16, 1999) (Revenue Use Policy). (Grant Assurance 25 Airport Revenue).

Generally speaking, legislation establishing entities responsible for airport operations must be consistent with applicable Federal law under the doctrine of Federal pre-emption where applicable. As the parties move forward with constructing the governance and administration function of the airport operator, FAA cautions the parties to ensure all directives identified in the legislation, whether specifically, inferred, or assumed, shall be executed by the airport operator in accordance with Federal statute, law, regulations, and policy.

Specifically the FAA offers the following initial comments:

- The entity must ensure all uses of airport revenues are administered in accordance with Grant Assurance 25 and the Revenue Use Policy. The airport revenue may only be used for eligible expenses and projects. Providing assurances to the Agency that the entity understands its Federal obligations and will abide by them will be critical in the sponsorship eligibility determination.

- The FAA will need certification that the entity will administer its operations in accordance with Grant Assurance 24 Fee and Rental Structures as cited above. Also the entity must file annual financial reports with FAA (FAA Forms 5100-126 and 5100-127) in accordance with Grant Assurance 26.

- The entity must complete a title search to verify that all federally-obligated airport property will be under the control of the new entity.

- The entity must develop and implement a transition plan to the satisfaction of FAA.

The new airport sponsor must demonstrate the ability to meet all requirements under 14 CFR, part 139 to ensure safety in air transportation. The entity must agree to certain safety and operation standards that include, but are not limited to, qualified and sufficient personnel, airfield standards and equipment, self-inspection program, and aircraft rescue and firefighting personnel, and equipment.

Again, please keep in mind that until FAA approves the transfer of Federal obligations and issues an Airport Operating Certificate to the new entity, the city of Charlotte remains the airport sponsor and the certificate holder.

The FAA looks forward to working with the parties to resolve all possible issues involving Federal concerns or requirements. We are available to discuss these items at your convenience. The point of contact for providing the above referenced documentation will be Kevin C. Willis, Manager, FAA's Office of Airports Compliance at (202) 267-8741.

Sincerely,

Christa Fornarotto
Associate Administrator
for Airports

F

Preliminary Injunction

- 8/9/2013

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13-CVS-126789

CITY OF CHARLOTTE,
a municipal corporation,

Plaintiff,

Vs.

PRELIMINARY INJUNCTION

THE STATE OF NORTH CAROLINA and CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT COMMISSION,

Defendants.

This matter came on for hearing before, Robert C. Ervin, Superior Court Judge, presiding over the July 29, 2013 session of Civil Superior Court in Mecklenburg County on the Amended Motion for Preliminary Injunction filed by the plaintiff City of Charlotte. Upon review and examination of the City's Verified Amended Complaint and Amended Motion for Preliminary Injunction, the various affidavits filed by the City of Charlotte and the Charlotte Douglas International Airport Commission (hereinafter "Commission"), and considering the briefs and arguments of counsel for the parties, the Court, in the exercise of its discretion, grants the Amended Motion for Preliminary Injunction in accordance with the provisions of this order.

A party is entitled to a preliminary injunction if it can demonstrate: (1) a "likelihood of success on the merits;" and (2) "irreparable harm," or if issuance of the preliminary injunction "is necessary for protection of (the plaintiff's rights) during the course of the litigation." A.E.P. Industries, Inc. v. McClure, 308 N. C. 393, 401-405, 302 S. E. 2d 754, 759-762 (1983). In considering whether to issue a preliminary injunction, the court should also balance the equities by looking to the harm, if any, the parties may suffer. United Tel. Co. v. Universal Plastics, Inc., 287 N. C. 232, 214 S. E. 2d 49 (1975).

The Court concludes that the City did not establish a likelihood of success on the merits on Count 1 of its Amended Complaint. The Court concludes that Count 2 of the Amended Complaint creates a serious question as to whether the provisions of Session Law 2013-358 (the "Act") which purport to vest immediate control of the Airport in the newly created Commission conflict with the Federal Aviation Administration's authority to issue certificates of operation to entities operating airports in the United States. Where a serious question exists the hearing judge considers the relative conveniences and inconveniences of the parties in determining the propriety of a preliminary injunction and

the terms thereof. Setzer v. Annas, 286 N. C. 534, 212 S. E. 2d 154 (1975). When the propriety of injunctive relief is a close question, the hearing judge should consider the relative convenience and inconvenience to the parties in determining whether to grant the motion. G. Gray Wilson, North Carolina Civil Procedure, 3d ed. Section 65-1, p. 65-5-65-6.

The Commission conceded at the hearing that it will not suffer any harm if this preliminary injunction is granted. The State of North Carolina did not contend that it would suffer any harm as a result of the granting of an injunction.

The City has also demonstrated that an injunction preventing immediate implementation of the Act pending the necessary determinations by the FAA concerning the authority of the Commission to operate the Airport is necessary for the protection of the City's rights during the course of the litigation. The implementation of the Act without the necessary FAA determinations creates the potential for triggering violations of federal law and the City's sponsorship obligations. The City also has no adequate remedy at law because the Act terminates the City's ability to operate the Airport as a business in the manner it deems appropriate.

It is also proper for the Court to take into account probable injuries to persons not parties to the action and the public if such an injunction were to be issued or denied. See Huggins v. Wake County Board of Education, 272 N. C. 33, 157 S. E. 2d 703 (1967); Iredell Digestive Disease Clinic, P. A. v. Petrozza, 92 N. C. App. 21, 373 S. E. 2d 449 (1988). The public has a significant interest in the continued successful operation of the Airport which should not be jeopardized absent a compelling interest. Travelers using the airport, employees of the Airport and the businesses operating there and commercial concerns engaged in transactions with the Airport's operator should not have their convenience or livelihoods disrupted by uncertainty resulting from the proposed shift in control of the Airport without FAA approval.

Wherefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, in the exercise of the Court's discretion, that:

1. The Plaintiff's Amended Motion for a Preliminary Injunction is hereby granted in accordance with the provisions of this order.

2. The Commission, and all of its agents, servants and employees, are enjoined from exercising the powers and duties set forth in Section 5.56(a) of Session Law 2013-358 during the pendency of this litigation. The Commission may exercise the powers set forth in sub-sections (a)(1), (2), (7), (12) and (16) only.

3. The Commission may not exercise the powers and duties assigned to it by Session Law 2013-358 until a certificate of operation is obtained from the FAA or the FAA indicates that no transfer has occurred, and, consequently, that the Commission would be permitted to act under the City's existing certificate of operation.

4. This injunction does not enjoin the Commission from taking actions attempting to obtain a certificate of operation from the FAA or a determination by the FAA that no transfer occurred, and, therefore, that the Commission is permitted to operate under the existing certificate.

5. In the event that the Commission believes it has obtained a certificate of operation from the FAA or a determination by the FAA that no transfer has occurred, then the Commission may file a motion to dissolve this preliminary injunction.

6. The City shall not be required to post any bond to secure this injunction, in accordance with Rule 65(c) of the North Carolina Rules of Civil Procedure, since there is no injury to the Commission by the entry of this order.

This the 9th day of August, 2013.

Robert C. Ervin
Superior Court Judge

G

House Bill 133 – An Act to Clarify that the Charlotte Douglas International Airport Commission is an Agency within the City of Charlotte

- 6/18/2014

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2014-10
HOUSE BILL 133

AN ACT TO CLARIFY THAT THE CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT COMMISSION IS AN AGENCY WITHIN THE CITY OF CHARLOTTE AND TO EXTEND THE CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT OVERSIGHT COMMITTEE BY ONE YEAR.

The General Assembly of North Carolina enacts:

SECTION 1. This Act shall be known and may be cited as the "Charlotte Douglas International Airport Commission Clarification Act."

SECTION 2.(a) Section 4(d) of S.L. 2013-358 (Charlotte Douglas International Airport Oversight Committee) reads as rewritten:

"**SECTION 4.(d)** This section expires and the Committee terminates ~~July 1, 2015.~~July 1, 2016."

SECTION 2.(b) Section 4(b) of S.L. 2013-358 (Charlotte Douglas International Airport Oversight Committee) reads as rewritten:

"**SECTION 4.(b)** The Committee shall monitor the actions of the Charlotte Douglas International Airport Commission (Commission) established by this act and make regular reports and recommendations, if needed (including, but not limited to, an interim report in June of ~~2014~~ 2015 and a final report in June of ~~2015)~~ 2016) to the Mayor and City Council on the following points:

(1) Whether the Charlotte Douglas International Airport (Airport) continues to be one of the best performing and lowest cost major hub airports.
(2) Whether that Airport finances are completely separate from those of the State or of any local government.
(3) Whether the Airport contracts and pays for only the services it needs and uses, including services from the State or from any local government.
(4) Whether the Airport continues to have a compensation system that enables it to attract and retain top talent.
(5) Whether the operations of the Commission comply with the provisions of this act."

SECTION 3. Section 5.51 of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"Section 5.51. **Charlotte Douglas International Airport Commission.**

There is created the Charlotte Douglas International Airport Commission, which shall be an agency of and within the City, having the powers, authority, and jurisdiction set out in this Article and such other and additional powers and authority as shall be conferred upon it by future acts of the General Assembly."

SECTION 4. Section 5.55(a) of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"(a) The members of the Commission shall elect annually from their membership a chair, vice-chair, and shall elect a secretary and such other officers as they deem appropriate and otherwise provide for the efficient administration of the Commission's affairs; provided, however, the Commission may provide by resolution that the finance officer of the City shall by virtue of that office be also the finance officer of the Commission, and in such case shall serve as such finance officer without additional compensation. All funds of the Commission shall be kept by its treasurer in a separate bank account or accounts from other funds of the City and shall be paid out only in accordance with procedures established by such Commission. Quarterly operating statements of the Commission and an annual audited statement shall be

presented to the Council. The Commission shall ~~be deemed a "special district," as defined in G.S. 159-7, for purposes of the Local Government Budget and Fiscal Control Act and shall budget and administer its fiscal affairs according to the provisions of that act applicable to special districts.~~budget and administer its fiscal affairs according to the provisions of the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159 of the General Statutes, applicable to special districts, but in no event shall the Commission be deemed a special district for any purpose."

SECTION 5. Section 5.56 of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"Section 5.56. **Powers and Duties.**

(a) The Commission shall operate the airport in a proper, efficient, economical, and business-like manner, to the end that it may effectively serve the public needs for which it was established at the least cost and expense to the City. To that end, the Commission shall have the power and authority to do the following:

...

(4) Operate the ~~airport.~~Airport on behalf of the City.

(5) Purchase, acquire, develop, establish, construct, own, control, lease, equip, improve, administer, maintain, operate, and/or ~~regulate~~regulate, on behalf of the City, airports and/or landing fields for the use of airplanes and other aircraft and all facilities incidental thereto, within the limits of Mecklenburg County; and for any of such purposes, purchase, acquire, own, develop, hold, lease, sublease, and ~~operate~~operate, on behalf of the City, real and/or personal property comprising such airports.

(6) Purchase real and personal ~~property.~~property on behalf of the City.

...

(10) Make all reasonable rules and regulations and policies as it may from time to time deem to be necessary, beneficial, or helpful for the proper maintenance, use, occupancy, operation, and/or control of any airport or airport facility owned, leased, subleased, or controlled by the ~~Commission~~City and provide and enforce civil and criminal penalties for the violation of such rules, regulations, and/or policies; provided that such rules, regulations, policies, and penalties are not in conflict with (i) any applicable law, rules, or regulation of the State of North Carolina, the United States, or any agency, department, or subdivision of either of them, including the rules and regulations of the FAA or the Transportation Security ~~Administration.~~Administration or (ii) the terms of any grant agreement in effect with the FAA.

(11) With the approval of the ~~City,~~Council, sell, exchange, lease, sublease, or otherwise dispose of any property, real or personal, ~~belonging to~~owned by the Commission and not needed by the Commission to operate any airport owned or operated by it or to generate revenues to pay debt obligations of the Commission, or grant easements over, through, under, or across any real property belonging to the Commission, or donate to another governmental entity within North Carolina or to the United States any surplus, obsolete, or unused personal property; provided Article 12 of Chapter 160A of the General Statutes does not apply and is not applicable to any such sale, exchange, lease, sublease, grant, donation, or other disposition.

...

(15) Accept on behalf of the City grants of money and/or materials or property of any kind for any existing or future airport facilities from the State of North Carolina, the United States, or any agency, department, or subdivision of either of them, including the FAA or from any private agency, entity, or individual, upon such terms and conditions as may be imposed, and enter into contracts and grant agreements on behalf of the City with the FAA and/or with the State of North Carolina or any of its agencies, departments, or subdivisions, in the capacity of sponsor or cosponsor of any airport development project involving the acquisition, construction, development, reconstruction, improvement, extension, enlargement, or equipping of any existing or future airport facilities.

...

(18) Employ, hire, retain, or contract with such servants whose services may from time to time be deemed by the Commission to be necessary, beneficial, or helpful. In order to effectuate a seamless ~~transfer of the Airport from the ownership and operation by the City of Charlotte to the ownership and operation by~~ start-up of the ~~Commission,~~ Commission's operation, the Commission will honor and be bound by all existing contracts between the City and such servants as presently are engaged to assist the City with respect to the Airport.

(19) Apply for and hold an airport operating certificate issued by the FAA. Should the FAA or a court of competent jurisdiction determine that the Commission lacks any necessary FAA authorizations, the Commission shall not exercise any rights, powers, or duties that require authorization from the FAA until the Commission either obtains such authorizations or secures an appropriate determination from the FAA or a court of competent jurisdiction.

(b) As provided by general law, it shall be the responsibility of the City ~~as governed by its Council~~ Council to take all necessary actions for all issuance of revenue bonds and/or refunding revenue bonds pursuant to the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, all issuance of general obligation debt pursuant to the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes, and all purchase of any of its outstanding bonds or notes. The Commission shall keep the City Manager and Council promptly appraised of any future need for such actions."

SECTION 6. Section 5.57 of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"Section 5.57. **Eminent Domain.**

The Commission may not exercise any powers of eminent domain. Any eminent domain with respect to acquisition of property for airport purposes shall be exercised by the ~~City.~~ Council."

SECTION 7. Section 5.58 of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"Section 5.58. **Exemptions; Taxes.**

The Commission has the same exemptions with respect to payment of taxes and license fees as otherwise provided for the City by the laws of this State. The Commission is not authorized to levy any tax."

SECTION 8. Section 5.59 of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"Section 5.59. **Funds and Property.**

(a) The Commission shall have control, on behalf of the City, of the Airport Property, Airport Facilities, and all other property held or owned by the City of Charlotte with respect to the Airport, real or personal, tangible or intangible, and includes all cash and cash equivalents and checking, investment, and demand deposit bank accounts held by the City pertaining to or generated from revenues of the Airport, including, without limiting the generality hereof, amounts on deposit in or with respect to the Discretionary Fund, the Cannon Fund, the Revenue Fund, the Operating Fund, the Bond Funds, the Debt Service Funds, the Construction Funds, the Capital Projects Funds, Passenger Facility Charges, Contract Facility Charges, and all other funds and accounts of the City with respect to the Airport. This Article does not impair the City's obligations to servants and employees of the Commission and bondholders of the City's General Airport Revenue Bonds, and including, without limiting the generality hereof, the obligations under the Revenue Bond Order adopted November 18, 1985, and all Series Resolutions issued under the Bond Order, the Special Facility Bond Order adopted May 11, 1987, and all Series Resolutions adopted under the Special Facility Bond Order, and the Taxable Special Facility Revenue Bonds (Consolidated Car Rental Facilities Project) Series 2011 General Trust Indenture and the Series Indenture, Number 1, both dated November 1, 2011, and all agreements and understandings with respect to trustee(s) or paying agent(s) of the City's airport revenue bonds, letters of credit, or other credit facilities of the City with respect to airport revenue bonds, and all leases, licenses, options to purchase, and other encumbrances on the Airport Property and Airport Facilities, whether or not those encumbrances are recorded. Any such payments shall be made by the City through the Commission under the terms of such

contracts first with funds under the jurisdiction of the Commission. This act does not affect the title of any property. ~~If the property was~~ Property titled to the City of Charlotte prior to enactment of this ~~Article, that title remains with the City.~~Article remains titled to the City following enactment of this Article.

(b) The Commission acts on behalf of the City with respect to all rights, duties, and obligations of the City in any commercial or development agreements pertaining to or related to the Airport Property and Airport Facilities that are in effect at the time of the ~~transfer,~~ enactment of this Article, and any commercial agreements, development agreements, and other contracts of the City pertaining to or related to the Airport Property and Airport Facilities that are in effect on enactment of this Article remain in effect.

(c) The Commission, on behalf of the City, shall:

(1) Honor and be bound by all pending or executory land or real property purchase contracts by the City with respect to property and lands to be acquired for and in connection with the Airport.

(2) Honor and be bound by all existing rules and regulations of the Aviation Department of the City ~~of Charlotte~~ with respect to the Airport, including the Airport Security Plan, until such rules and regulations shall be amended by the Commission in accordance with the provisions of this Article.

(3) Honor and be bound by all existing contracts of the City with third-party concessionaires and management contractors with respect to the Airport.

(4) Honor and be bound by all existing contracts and grant agreements of the City with respect to the Airport.

(5) Be deemed as a matter of law to have appointed as its initial Executive Director the Aviation Director of the City of Charlotte as of February 14, 2013, with initial compensation and benefits of the initial Executive Director being the same compensation and benefits as were being received from the City of Charlotte on February 14, 2013, and the initial Executive Director shall be entitled as a matter of law to the continuation of the rights and benefits extended to him or her under the existing retirement system of the City.

(6) Be deemed as a matter of law to have adopted initially the employment and human resources policies of the Commission, such policies of the City as they applied to employees of the Airport on the effective date of this Article, and the Commission shall be deemed to have adopted the current employee handbook of the City applicable to the Airport until the Commission adopts different policies or a different employee handbook."

SECTION 9. Section 5.60 of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"Section 5.60. ~~**Assistance by City.**~~**Implementation; Assistance from other City departments.**

(a) The Council, Mayor, and City Manager shall, and are hereby required to, take all actions within their respective powers in order to do the following:

(1) Implement the provisions of this Article.

(2) Secure for the Commission the right and ability to fully exercise the powers granted to it under this Charter and the laws of this State.

(3) Obtain a determination from the FAA that the Commission may operate the Airport under the existing operating certificate issued to the City or, in the alternative, a new operating certificate permitting the Commission to operate the Airport.

(4) Enter into such agreements or provide such assurances as the FAA may request in connection with its provisions of grants to the City or Commission for the improvement or development of the Airport.

(b) Upon the request of the Executive Director of the Commission, the ~~City~~ Council, City Manager, and other City departments shall continue to provide such services to the Commission as ~~it currently provides~~ they previously provided to the ~~Airport~~ City's Aviation Department and shall receive as compensation therefor from the Commission in such amount as is appropriate for such services as provided by OMB Circular A-87 until the Commission shall direct the City Manager to terminate such services."

SECTION 10. Section 5.61(b) of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"(b) Following the time this bill becomes law, the Airport Employees shall continue to receive, until provided otherwise by the Commission through the adoption of new personnel policies as provided by this Article, all employment benefits currently available to the Airport Employees, including, but not limited to, health care benefits, retirement benefits, disability insurance, life insurance, and accrued time off or leave, and the Commission shall promptly reimburse the City departments providing these services the costs of ~~providing~~ such benefits."

SECTION 11. Section 5.62 of the Charter of the City of Charlotte, being S.L. 2000-26, as added by S.L. 2013-358, reads as rewritten:

"Section 5.62. **Statutory Construction.**

(a) The powers of the Commission created by this Article shall be construed liberally in favor of the Commission. No listing of powers included in this Article is intended to be exclusive or restrictive, and the specific mention of, or failure to mention, particular powers in this act shall not be construed as limiting in any way the general powers of the Commission as stated in Section 5.56 of this Charter. It is the intent of this Article to grant the Commission full power and right to exercise all authority necessary for the effective operation and conduct of the Commission. It is further intended that the Commission should have all implied powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which the Commission is created. The fact that this Article specifically states that the Commission possesses a certain power does not mean that the Commission must exercise such power unless this Article specifically so requires.

(b) It is intended that the Commission shall be an agency of and within the City and thus part of the City's government. Nothing in this Article is intended to transfer the Airport or any Airport-related property away from the City. It is further intended that, following the enactment of this Article, the City, acting through the Commission, shall (i) continue to own and operate the Airport, (ii) continue to serve as sponsor of the Airport in connection with any grants given by the FAA, and (iii) refrain from taking any action that would impair the Commission's exercise of the powers granted to the Commission or that would impair the efficient operation and management of the Airport by the Commission.

(c) Notwithstanding any reference in this Article to ownership by the Commission of real or personal property, all real or personal property subject to this Article is owned by the City and is operated and/or administered by the Commission."

SECTION 12. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 13. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2014.

s/ Phil Berger
Presiding Officer of the Senate

s/ Tim Moore
Presiding Officer of the House of Representatives

H

Judgment and Permanent Injunction

- 10/13/2014

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

2014 OCT 13 AM 8:59

SUPERIOR COURT DIVISION

COUNTY OF MECKLENBURG MECKLENBURG COUNTY, C.S.C. 13-CRS-12678

CITY OF CHARLOTTE, a
municipal corporation,

Plaintiff,

Vs. JUDGMENT

THE STATE OF NORTH CAROLINA
and CHARLOTTE DOUGLAS
INTERNATIONAL AIRPORT
COMMISSION,

Defendants.

This matter came on before Robert C. Ervin, Superior Court Judge, presiding over the October 6, 2014 session of Mixed Civil and Criminal Superior Count in Mecklenburg County on the defendant's Motion to Dismiss and Motion for Judgment on the Pleadings and the plaintiff's Motion for Summary Judgment. The Court, having reviewed the Court's file and the briefs and materials submitted by the parties and having heard arguments from counsel for the parties, determines that there are no genuine issues of material fact and concludes as follows:

1. The plaintiff filed this action to challenge the validity of certain actions taken by the General Assembly of North Carolina relating to the operation of Charlotte Douglas International Airport.

2. The General Assembly initially enacted Session Law 2013-272.

3. On July 26, 2013, the General Assembly enacted Session Law 2013-358 or the "Charlotte Douglas International Airport Commission Act" (hereinafter the "Commission Act").

4. The Commission Act was structured as an amendment to the Charter of the City of Charlotte and created the "Charlotte Douglas International Airport Commission."

5. The Commission Act indicated that the Commission "shall be an agency of the City, having powers, authority and jurisdiction set out in this Article."

6. The Commission consists of 13 members, including three appointed by the Mayor and four appointed by the City Council. The remaining six commissioners are appointed by the Board of Commissioners of six different counties located in the vicinity of the airport.

7. The Commission Act provided that "the Commission shall operate the airport in a proper, efficient and economical, and business-like manner." In particular, the Commission was given the power to "operate the airport" and "operate, own, lease, sublease, control, regulate, and/or grant to others the right to operate on any airport premises owned, operated, or controlled by the Commission, general aviation terminal and fixed-base operations, aircraft deicing equipment and systems...and/or all other types of facilities, activities and enterprises as may be directly or indirectly related to the maintenance and/or furnishing of public commercial service and/or general aviation airport facilities."

8. The Commission Act provided that "the Commission shall have control, on behalf of the City, of the Airport Property, Airport Facilities, and all other property held or owned by the City of Charlotte with respect to the Airport."

9. The Commission Act provided that "this act is effective when it becomes law." The Commission Act became law on July 26, 2013.

10. The General Assembly subsequently enacted Session Law 2014-10 which is known as the "Charlotte Douglas International Airport Commission Clarification Act" (hereinafter the "Clarification Act").

11. The Clarification Act amended certain provisions of the Commission Act to indicate that the Commission exercised certain powers "on behalf of the City."

12. The Clarification Act provided a new Power and Duty to the Commission. The Commission was granted the power and duty to:

> Apply for and hold an airport operating certificate issued by the FAA. Should the FAA or a court of competent jurisdiction determine that the Commission lacks any necessary FAA authorizations, the Commission shall not exercise any rights, powers, or duties that require authorization from the FAA until the Commission either obtains such authorization or secures an appropriate determination from the FAA or a court of competent jurisdiction.

13. The Clarification Act provides that "this act is effective when it becomes law." The Clarification Act became law on June 18, 2014.

14. After the Commission Act was enacted, the plaintiff amended its Complaint in this action to assert two claims for relief. This Court subsequently dismissed the first claim for relief.

15. In the second claim for relief, the plaintiff contends that the Commission Act was unconstitutional because it abridged the provisions of Section 5 of Article I of the Constitution of North Carolina.

16. The City does not assert any other basis in this action to contend that either the Commission Act or the Clarification Act is unconstitutional or in violation of North Carolina law.

17. This Court entered a preliminary injunction on or about August 13, 2013 enjoining the Commission from exercising certain powers under the Commission Act. The Court's order did

not preclude certain provisions of the Commission Act from taking effect and the Act itself thereby became effective at least by August 13, 2013.

18. The Court has received and considered various affidavits and documents beyond the pleadings in this action. Rule 12(c) provides that when matters outside the pleadings are presented to and considered by the court, the motion is converted to one for summary judgment under Rule 56. Conover v. Newton, 297 N. C. 506, 256 S. E. 2d 216 (1979).

19. The initial issue for the court is whether certain provisions of the Commission Act are preempted by federal law.

20. 49 U. S. C. Section 44706(a) provides in pertinent part that "the Administrator of the Federal Aviation Administration shall issue an airport operating certificate to a person desiring to operate an airport...if the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part."

21. An airport operating certificate issued under this section shall contain terms necessary to ensure safety in air transportation. 49 U. S. C. Section 44706(b).

22. 49 U. S. C. Section 44711(a)(8) provides that "a person may not operate an airport without an airport operating certificate required under section 44706 of this title or in violation of any term of the certificate."

23. 14 C. F. R. Section 139.101 provides that "no person may operate an airport specified under 139.1 of this part without an Airport Operating Certificate..."

24. "An applicant for an Airport Operating Certificate is entitled to a certificate if—

* * *

(c) The Administrator, after investigation, finds the applicant is properly and adequately equipped and able to provide a safe airport operating environment..." 14 C. F. R. Section 139.107

25. Except as authorized by the Administrator, no person may operate an airport specified under Section 139.1 of this part without an Airport Operating Certificate or in violation of that certificate, the application provisions, or the approved Airport Certification Manual. 14 C. F. R. Section 139.101.

26. Section 5 of Article I of the Constitution of North Carolina provides that "every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of this State in contravention or subversion thereof can have any binding force."

27. Similarly, Article VI(2) of the Constitution of the United States provides that "This constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

28. In the construction of the provisions of the State Constitution, the meaning given by the Supreme Court of the United States to even an identical term in the Constitution of the United

States is not binding, though highly persuasive. Bulova Watch Co. v. Brand Distributors of North Wilkesboro, Inc., 285 N. C. 467, 206 S. E. 2d 141 (1974).

29. North Carolina's courts give great weight to decisions of the Supreme Court of the United States interpreting provisions of the Constitution of the United States which are parallel to provisions of the State constitution to be construed. State v. Petersilie, 334 N. C. 169, 432 S. E. 2d 832 (1993); State v. Hicks, 333 N. C. 467, 428 S. E. 2d 167 (1993).

30. In construing a provision of the State constitution, North Carolina's courts find highly persuasive the meaning given by the United States Supreme Court in construing a similar provision of the Federal Constitution. State v. Huff, 325 N. C. 1, 381 S. E. 2d 635 (1989).

31. In this instance, the Court will rely on federal case law concerning the Supremacy Clause to construe the meaning of Section 5 of Article I of the state constitution.

32. In the area of aviation regulation, federal concerns are preeminent. Asheville Jet, Inc. v. City of Asheville, 202 N. C. App. 1, 8, 689 S. E. 2d 162 (2010).

33. It is difficult to visualize a more comprehensive scheme of combined regulation, subsidization and operational participation than Congress has provided in the field of aviation. Asheville Jet, 202 N. C. App. at 8.

34. Preemption can arise when state authority conflicts with and thus has been displaced by the existence of federal government authority. State ex. Rel. Utilities Commission v. Carolina Power and Light Co., 359 N. C. 516, 525, 614 S. E. 2d 281 (2005).

35. Conflict preemption exists when compliance with both state and federal requirements is impossible or where State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Guyton v. FM Lending Services, Inc., 199 N. C. App. 30, 681 S. E. 2d 465 (2009). See also Davidson County Broadcasting, Inc. v. Rowan County Board of Commissioners, 186 N. C. App. 81, 649 S. E. 2d 904 (2007).

36. The Supreme Court of the United States has found preemption where it is impossible for a private party to comply with both state and federal requirements or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. English v. General Electric, 496 U. S. 72, 110 L. Ed. 2d 65 (1990).

37. A conflict is more likely to occur when a state provides that compliance with a federal standard is not mandated or when compliance with federal law actually results in a violation of local law. Southern Blasting Services v. Wilkes County, 288 F. 3d 584 (4th Cir. 2002).

38. The General Assembly in the Commission Act directs the Commission to operate Charlotte Douglas Airport.

39. The Commission Act provides that the Commission shall operate the airport and provides that the act is effective when it became law or immediately.

40. In essence, the General Assembly enacted a statute that purports to permit the Commission to begin operating Charlotte Douglas International Airport without the required federal operating certificate. This action, if followed by other states, would permit States to open airports across the country and circumvent the federal mandate.

41. On or about August 14, 2013, the Charlotte Douglas International Airport Commission applied for an Airport Operating Certificate.

42. To date, the Commission has not received an Airport Operating Certificate from the Federal Aviation Administration.

43. The provisions of the Commission Act and the Clarification Act are preempted to the extent that they would permit the Commission to operate the airport prior to obtaining an operating certificate or a determination that the Commission can utilize the City's existing certificate.

44. The City contends that the unconstitutional provisions of the Commission Act and the Clarification Act invalidate both acts because they cannot be severed from the remainder of those acts.

45. When determining whether an unconstitutional portion of a statute may be severed and the remainder of the statute enforced, courts look to the intent of the General Assembly. In re Appeal of Springmoor, Inc., 348 N. C. 1, 13, 498 S. E. 2d 177 (1998).

46. The test for severability is whether the remaining portion of the legislation can stand on its own and whether the General Assembly would have enacted the remainder absent the offending portion. State v. Webb, 358 N. C. 92, 98, 591 S. E. 2d 505 (2004).

47. Courts may sever unconstitutional portions of statutes when consistent with the legislature's intended goal and when the remaining portions of the statute are sufficient to accomplish their proper purpose. Springmoor, 348 N. C. at 13.

48. Severance may be applied to save the remainder of the statute if it is apparent that the legislative body, had it known of the invalidity of the one portion, would have enacted the remainder alone. Springmoor, 348 N. C. at 13.

49. The inclusion of a severability clause within a statute will be interpreted as a clear statement of legislative intent to strike an unconstitutional provision and to allow the balance to be enforced independently. Springmoor, 348 N. C. at 13. See also State v. Webb, 358 N. C. at 98.

50. The Commission Act provides in Section 5 that "if any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or applications, and to this end the provisions of this act are severable."

51. The inclusion of this severability clause is a clear statement of a legislative intent to strike an unconstitutional provision and allow the balance of the Commission Act to be enforced.

52. The Court also interprets the provisions of the Clarification Act quoted above in paragraph 12 of this order to indicate a similar intent on the part of the General Assembly.

53. The provisions of the Commission Act that make the Commission's operation of the airport effective immediately can be severed from the remainder of the act and the Court perceives that the General Assembly would have enacted the remainder of the act absent the offending portion.

54. The City urges the Court to declare the nature of the relationship between the Commission and the City presumably for the benefit of the Federal Aviation Administration.

55. The FAA is not a party to this litigation.

56. The State further contends that the FAA cannot be joined as a party to this litigation.

57. It is axiomatic that a judgment cannot be binding upon persons who were not party or privy to an action. Miller v. Lemon Tree Inn, Inc., 32 N. C. App. 524, 233 S. E. 2d 69 (1977).

58. Nonparties are not bound by an adjudication. Paschal v. Autry, 256 N. C. 166, 123 S. E. 2d 569 (1962).

59. A judgment in a proceeding to which other parties are strangers with no opportunity to be heard is not binding upon them. Peel v. Moore, 244 N. C. 512, 94 S. E. 2d 491 (1956).

60. The Court has no power to declare or deny a right to one not seeking a determination of his rights. Howard v. Boyce, 255 N. C. 712, 122 S. E. 2d 601 (1961).

61. A court exceeds its jurisdiction by adjudging the rights of parties not before it and seeking its aid. Howard, 255 N. C. at 712.

62. Parties cannot be bound without an opportunity to be heard. No matter how laudable the purpose of the parties to the action, no judicial declaration should be made which could have no binding effect. Britt v. Baptist Children's Homes, Inc., 249 N. C. 409, 106 S. E. 2d 479 (1959).

63. The Court cannot bind the Federal Aviation Administration to any interpretation of the Commission Act or the Clarification Act. Any determination by this court concerning the nature of the relationship between the City and the Commission would not be conclusive to the FAA.

64. Furthermore, the FAA's determination of issues of airport safety are not governed by the legal structure of the arrangement between the City and the Commission.

65. The FAA and not this Court should make appropriate decisions concerning airport safety that arise from the Commission Act and the Clarification Act.

66. Furthermore, the resolution of these issues is not necessary to a determination whether certain provisions of the Commission Act and the Clarification Act are preempted by federal law.

Based on the foregoing conclusions of law, it is hereby ordered that:

1. The City of Charlotte's Motion for Summary Judgment is allowed;

2. The Defendants' Motion to Dismiss is denied;

3. The Defendants' Motion for Judgment on the Pleadings is denied;

4. The Commission is permanently enjoined from operating the Charlotte Douglas International Airport until it obtains the necessary operating certificate from the Federal Aviation Administration or a declaration from the Federal Aviation Administration that the Commission is permitted to operate the airport in reliance on the City' s operating certificate; and

5. The Defendants are taxed with the costs of this action.

This the ___ day of October, 2014.

Robert C. Ervin

Superior Court Judge

I

No Appeal Press Release

- 11/14/2014

14-11-14 Press Release

Fenton, Dana

From: Hagemann, Robert
Sent: Friday, November 14, 2014 3:05 PM
To: Austin, Alvin J.; Autry, John; Fallon, Claire; Clodfelter, Daniel; David Howard; Edmund Driggs; Elkins, Susan; Phipps, Greg A.; Smith, Kenny R.; Mayfield, LaWana; Michael Barnes; Patsy Kinsey; Kinsey, Patsy; Lyles, Vi A.
Cc: Carlee, Ron; Fenton, Dana; D'Elosua, Sandy
Subject: RE: Charlotte Douglas International Airport

FOR IMMEDIATE RELEASE

Contact:
Sandy D'Elosua,
City of Charlotte
Corporate Communications & Marketing
704- 336-2643
980- 253-4918 (cell)
sdelosua@charlottenc.gov

No appeal of Oct.13 airport case judgment

Charlotte, N.C. (Nov. 14, 2014)- Judge Robert C. Ervin ruled on October 13, 2014 that only the Federal Aviation Administration (FAA) can determine who operates Charlotte Douglas International Airport. The deadline to appeal this ruling passed this week without an appeal being filed.

In the interest of bringing this matter to resolution, the City sent a letter today to the Chief Counsel of the FAA asking the agency to determine whether the Commission legislation meets Federal requirements necessary for the Commission to operate the Airport. The City also provided the FAA with a written opinion from outside counsel concluding that the legislation does not satisfy necessary requirements.

"We have consistently stated from the beginning of this conflict that the attempted transfer was both unnecessary and poorly designed," said Charlotte City Attorney Robert Hagemann. "The governance and management structures established by the legislation are confusing and internally inconsistent, and – in the opinion of our outside counsel – unacceptable under FAA standards."

"We hope that the FAA will bring an end to this dispute so that we can continue to focus our efforts on the operations and prosperity of the airport," said Mayor Dan Clodfelter.

Not only has the City demonstrated exemplary stewardship under many mayors, city councils and professional managers for over 78 years, but the governance and management structure proposed in the legislation risked harm to the airport and damage to the City and region.

In the capable hands of interim aviation director Brent Cagle, his management team and the dedicated City employees who operate the sixth busiest airport in the country, we are confident the airport will continue to thrive and be an economic leader in our region.

Attached is a letter and other documents that were recently sent to the FAA.

From: Hagemann, Robert
Sent: Friday, November 14, 2014 2:46 PM
To: Austin, Alvin J.; Autry, John; Fallon, Claire; Clodfelter, Daniel; David Howard; Edmund Driggs; Elkins, Susan; Phipps, Greg A.; Smith, Kenny R.; Mayfield, LaWana; Michael Barnes; 'Patsy Kinsey'; Kinsey, Patsy; Lyles, Vi A.
Cc: Carlee, Ron; Fenton, Dana; D'Elosua, Sandy
Subject: Charlotte Douglas International Airport

Mayor and Council,

We have confirmed that there is no appeal of Judge Ervin's October 13 judgment in the airport case. Attached is a letter and attachments thereto that I have just sent to the FAA. We will also send you a press release shortly.

Bob

Robert E. Hagemann
CITY ATTORNEY
OFFICE OF THE CITY ATTORNEY

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J

Letter from City Attorney to Chief Counsel for the Federal Aviation Administration

- 11/14/2014

CHARLOTTE.

CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY

November 14, 2014

Reginald C. Govan, Chief Counsel
Federal Aviation Administration
Office of the Chief Counsel
800 Independence Avenue SW
Washington, DC 20591

Re: Charlotte Douglas International Airport

Dear Mr. Govan:

I am sure you are aware of an ongoing dispute over control of Charlotte Douglas International Airport (CDIA), a dispute that included litigation between the City of Charlotte, the current operator and sponsor of CDIA, and the State of North Carolina and the Charlotte Douglas International Airport Commission (Commission), an entity created by the State legislature with the intent that it assume operation and control of CDIA from the City. I am writing to let you know that the litigation is now concluded and to share with you a legal opinion that has been provided to the City by outside counsel regarding the Commission's ability, or inability, to operate CDIA under Federal standards and requirements.

One of the key points in the lawsuit was the City's contention that by purporting to permit the Commission to operate CDIA without the prior approval of the Federal Aviation Administration (FAA), the legislation was preempted by Federal law. In a Judgment entered on October 13, 2014 (copy enclosed), North Carolina Superior Court Judge Robert C. Ervin agreed with the City's contention and granted the City's motion for summary judgment. Significantly, Judge Ervin ordered as follows:

> The Commission is permanently enjoined from operating the Charlotte Douglas International Airport until it obtains the necessary operating certificate from the Federal Aviation Administration or a declaration from the Federal Aviation Administration that the Commission is permitted to operate the airport in reliance on the City's operating certificate.

The deadline to appeal the Court's ruling has now passed with no appeal having been filed. So the language quoted above is a final judicial determination.

Recognizing, then, that only the FAA can resolve this matter, the City asked outside counsel for a legal opinion regarding the legislation at issue and the Commission's ability to either obtain a Part 139 Airport Operating Certificate from the FAA or a determination from the FAA that the Commission can operate CDIA pursuant to the Airport Operating Certificate previously issued to the City. As you can see from the enclosed opinion letter, it is our counsel's conclusion that neither option is viable under Federal law.

In light of the forgoing, the City of Charlotte respectfully asks that the FAA make a determination as to whether, under Federal law, the Charlotte Douglas International Airport Commission acting pursuant to North Carolina Session Law 2013-358, as amended by Session Law 2014-10: (a) is eligible to receive a Part 139 Airport Operating Certificate; (b) can operate Charlotte Douglas International Airport under the Airport Operating Certificate previously issued to the City of Charlotte; or (c) neither.

Thank you for your consideration of this extremely important matter.

Sincerely,

Robert E. Hagemann
City Attorney

enclosures

K

Letter from Anderson Kreiger to City Attorney

- 11/14/2014

ANDERSON
KREIGER

SCOTT P. LEWIS
lewis@andersonkreiger.com
617-621-6560
617-621-6660

November 14, 2014

BY EMAIL AND FEDERAL EXPRESS

Robert Hagemann
City Attorney
City of Charlotte
Charlotte-Mecklenburg Government Center
600 E. 4th Street
Charlotte, NC 28202

Re: Charlotte Douglas International Airport

Dear Mr. Hagemann:

You have asked for our opinion on certain issues of federal aviation law arising from legislation recently enacted by the General Assembly of North Carolina concerning the operation and control of the Charlotte Douglas International Airport (the "Airport"). We refer to the Charlotte Douglas International Airport Commission Act ("Commission Act"), North Carolina Session Law 2013-358 (a copy of which is attached at Tab A), as amended by the Charlotte Douglas International Airport Commission Clarification Act ("Clarification Act"), North Carolina Session Law 2014-10 (a copy of which is attached at Tab B) (collectively the "Amended Commission Act"). The Amended Commission Act purports to transfer control of the Airport from the City of Charlotte (the "City"), the current sponsor of the Airport, to the newly-created Charlotte Douglas International Airport Commission (the "Commission").

We understand that the City challenged the constitutionality of this state-mandated transfer of control in state court; that on October 13, 2014 Superior Court Judge Robert C. Ervin entered judgment for the City; and that the Court permanently enjoined the Commission from operating the Airport until the Federal Aviation Administration ("FAA") either provides the necessary Operating Certificate to the Commission or declares that the Commission is permitted to operate the Airport under authority of the City's Operating Certificate. We also understand that the time period for appeal of the Superior Court judgment has expired and that no appeal has been sought by any party. Finally, we understand that you intend to share this opinion with the FAA and with others interested in the operation and control of the Airport.

You have asked for our opinion on two specific issues:

> First, whether certain representatives of the City can, consistent with the City's federal obligations as the sponsor of the Airport, comply with the requirement of § 5.60(a) of the Amended Commission Act that they exercise their official power to implement the transfer and obtain a favorable determination from the FAA about the Commission's ability to operate the Airport under the Amended Commission Act; and
>
> Second, whether the Amended Commission Act creates a structure for the governance of the Airport which complies with federal law and will enable the safe and efficient operation of the Airport in accordance with federal standards.

I.

With respect to your first question, the Amended Commission Act provides in § 5.60(a) that:

> (a) The Council, Mayor, and City Manager shall, and are hereby required to, take all actions within their respective powers in order to do the following:
>
> (1) Implement the provisions of this Article.
>
> (2) Secure for the Commission the right and ability to fully exercise the powers granted to it under this Charter and the laws of this State.
>
> (3) Obtain a determination from the FAA that the Commission may operate the Airport under the existing operating certificate issued to the City or, in the alternative, a new operating certificate permitting the Commission to operate the Airport.
>
> (4) Enter into such agreements or provide such assurances as the FAA may request in connection with its provisions of grants to the City or Commission for the improvement or development of the Airport.

Because we believe that the new governance structure for the Airport created by the Amended Commission Act does not comply with applicable federal law, we have grave concerns that any efforts by the City's representatives to secure for the Commission to right to control the Airport and to obtain FAA approval for the new governance structure would violate the City's own obligations as the sponsor of the Airport.

As required to obtain many millions of dollars of federal funding for the Airport, the City has signed congressionally-mandated Grant Assurances. *See* 49 U.S.C. § 47107. One of the Grant Assurances required by the FAA is Assurance 5, "Preserving Rights and Powers." Grant Assurance 5(a) provides that, as the sponsor of the Airport, the City:

> will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

Grant Assurance 5(f), in turn, provides:

> If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance herewith.

These assurances embody the fundamental principle that a sponsor of a federally-obligated airport, such as the City, has a duty to insure that the airport is and will be operated in a fashion consistent with FAA requirements and that all the federal obligations undertaken in connection with the receipt of federal grants will be met. These assurances contemplate that a change in an airport's governance structure can occur with the approval of the Secretary of Transportation, but *only if* the new structure complies with applicable federal requirements.

As we elaborate below, in our view the governance structure created by the Amended Commission Act does not comply with federal requirements. Clarity of responsibility for compliance with federal obligations is a foundational requirement of any lawful airport governance structure. The U.S. Department of Transportation ("USDOT") recently underscored this requirement in the context of the continuing debate concerning control of the Charlotte Airport. In his September 18, 2014 letter to Congressman Robert Pittenger, the Deputy Secretary of the USDOT, Victor M. Mendez, observed that when reviewing sponsor eligibility when a change in an airport's governance structure is proposed, the FAA must insure that there is "*no ambiguity* regarding responsibility for the Federal obligations" (emphasis added) (a copy of this letter is attached at Tab C). The Amended Commission Act does not satisfy this requirement and leaves open fundamental questions about how operational responsibilities would be apportioned and who would ultimately control mission-critical decision-making for the Airport.

In our opinion, the practical uncertainties that flow from these unanswered questions, coupled with the ambiguous and contradictory language of the Amended Commission Act, render the directive in § 5.60(a) contrary to the obligations which the City has undertaken in the Grant Assurances it has provided to the FAA. The Mayor, City Council, and City Manager cannot, in good faith, represent to the FAA that the governance structure created by the Amended Commission Act will insure that the terms, conditions, and assurances given in the grant

agreements will be met or that the Airport can be operated in a safe and efficient fashion under that structure.

As you know, and as the Court recognized when it enjoined the Commission, federal aviation law preempts inconsistent state laws which purport to govern the operation of the Airport. Throughout the aviation realm, "[f]ederal control is intensive and exclusive." *City of Burbank* v. *Lockheed Air Terminal Inc.*, 411 U.S. 624, 633 (1973), quoting *Northwest Airlines, Inc.* v. *Minnesota*, 332 U.S. 292, 303 (1944) (Jackson, concurring). Grant Assurance 5, which embodies controlling federal law, prevents the City from taking "any action" to promote approval of a governance structure that violates applicable federal standards. The directive in the Amended Commission Act, requiring certain City officials to exercise their power to transfer the City's operational authority over the Airport to the Commission and to seek a determination from the FAA favorable to the Commission, is therefore preempted by federal law.

II.

With respect to your second question, we believe that the Amended Commission Act establishes a governance structure for the Airport that is internally inconsistent, leaves open to question whether the Commission, the City, or both, are in control of the Airport, and fails to comply with the foundational requirement that there be no ambiguity regarding responsibility for compliance with applicable federal obligations.

As a threshold matter, the Amended Commission Act reflects deep confusion about the Commission's very identity, and specifically regarding whether the Commission is part of the City, subordinate to the City, or separate and autonomous from the City. The Commission is defined as "an agency of and within the City and thus part of the City's government." § 5.62(b). Nevertheless, the Commission has an independent governance structure separate from the City, reflecting interests distinct from those of the City, including six members appointed by the Boards of Commissioners from six neighboring counties. § 5.53(a). The Commission's members do not serve at the City's pleasure, but may be removed only by their appointing authority or by a majority vote of the other Commission members, and only for cause. § 5.53(g).[1] Most significantly, certain provisions of the Amended Commission Act empower the Commission to operate the Airport without oversight from the City, §§ 5.56(a) & 5.62(a), and without any mechanism for the City to force the Commission to operate the Airport in accordance with federal law.

The Commission's "identity crisis" is only the start. The Amended Commission Act's allocation of statutory powers between the City and the Commission is internally inconsistent and often incomprehensible, creating ambiguity about who would actually run the Airport. The statute

[1] This governance structure stands in stark contrast to the structure in place at Los Angeles World Airports in California. There, the City of Los Angeles is the sponsor and the City's airport system is run by a Commission, but the Mayor appoints the Commissioners and has the power to remove them without cause. *See* Los Angeles City Charter § 502(d).

provides no clear answers, and creates a governance structure that virtually guarantees confusion, conflict and gridlock.

For example, § 5.56(a) provides the Commission with broad powers, including the power to: "[o]perate the airport on behalf of the City," § 5.56(a)(4); "purchase, ... own, ..., lease [and] sublease ... on behalf of the City" real property comprising the Airport and other airports in Mecklenburg County, § 5.56(a)(5); "purchase real and personal property on behalf of the City," § 5.56(a)(6); "operate, own, lease, sublease, control [and] regulate ... any airport premises owned, operated or controlled by the Commission," § 5.56(a)(14); enter into grant agreements "on behalf of the City" with the FAA or the State of North Carolina and act as the "sponsor or cosponsor of any airport development project," § 5.56(a)(15); and employ an Executive Director and other staff. §§ 5.56(a)(16) & (17). Section 5.62(a) provides that the powers of the Commission "shall be construed liberally in favor of the Commission" and that the Amended Commission Act is intended "to grant the Commission full power and right to exercise all authority necessary."

But then § 5.62(b), added by the Clarification Act, expressly undercuts much of the Commission's authority granted by § 5.56. According to § 5.62(b), "the Commission shall be an agency of and within the City and thus part of the City's government." Section 5.62(b) continues, "the City, acting through the Commission, shall (i) continue to own and operate the Airport; [and] (ii) continue to serve as sponsor of the Airport in connection with any grants given by the FAA." The section also provides, incomprehensibly, that "the City, acting through the Commission, shall ... refrain from taking any action that would impair the Commission's exercise of [its] ... powers." Finally, § 5.62(c) states that "[n]otwithstanding any reference in this Article to ownership by the Commission of real or personal property, all real or personal property subject to this Article is owned by the City."[2]

These contradictory statutory provisions are further confused, not harmonized, by the Amended Commission Act's sporadic insertions of the phrase "on behalf of the City" after many, but not all, of the descriptions of the Commission's powers. *See, e.g.*, §§ 5.56(a)(4), (a)(5), (a)(6) & (a)(15). For example, the Commission is empowered "to operate the Airport on behalf of the City," § 5.56(a)(4), but is empowered elsewhere to "operate, own, lease, sublease, control [and] regulate" the Airport, on its own account, without the qualification that the exercise of such power is "on behalf of the City." § 5.56(a)(14).

Even if the Commission's powers were consistently qualified by the "on behalf of" language, the statute would still be unworkable. The term "on behalf of" suggests a principal/agent

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[2] According to Grant Assurance 4, "the sponsor hereby assures and certifies" that it "holds good title, satisfactory to the Secretary, to the landing area of the airport." The contradictory directives of the Amended Commission Act with respect to Airport property make it impossible to determine whether the City or the Commission controls the Airport's real estate. *Compare* §§ 5.56(a)(5), (6), (11) & (14) *with* § 5.62(c). The Amended Commission Act has, at least in § 5.56(a)(14), effectively extinguished all the attributes of the City's ownership, and vested these attributes in the Commission, yet § 5.62(c) provides that "all real or personal property subject to this Article is owned by the City."

relationship between the City and the Commission, but the statute contains no mechanism that would empower the City to compel the Commission to do the City's bidding. *See State* v. *Weaver,* 359 N.C. 246, 258, 607 S.E. 2d 599, 606 (2005) ("the principal's control over the agent" is an "essential element[ ] of an agency relationship"). The added "on behalf of" language merely adds to the confusion.

The language in § 5.62(b) grants equivalently broad, and inconsistent, powers to the City to own and operate the Airport. The qualifying phrase, that the City's power is exercised "through the Commission," is as confusing as the parallel qualifier on the Commission's power to act "on behalf of the City." Once again, there is no statutory mechanism which gives any meaning to the words that the City acts "through the Commission" or which otherwise gives the City, as the sponsor, the power to compel the Commission to serve the City's interests. In sum, the Amended Commission Act gives both the Commission and the City broad but conflicting and overlapping powers, with the Commission acting "on behalf of the City," and the City acting "through the Commission," but with no statutory mechanism to make workable the principal/agent relationship which the statute seems to contemplate.

The confused relationship between the City and the Commission reflected in the Amended Commission Act stands in direct violation of Grant Assurance 5(f). If the Airport is managed or operated by an entity other than the sponsor, then the sponsor at least must "reserve sufficient rights and authority to ensure that the airport will be operated and maintained" in accordance with federal law. After all, if the sponsor is liable for violations of the grant assurances, it must retain the ability to insure compliance.[3] The Amended Commission Act fails to reserve to the City the "rights and authority" to insure compliance with federal law.

Given the requirements of Grant Assurance 5, it is not surprising that the FAA has already recognized that there is serious doubt whether it could issue an Operating Certificate to the Commission under 14 CFR Part 139 or approve a transfer of the Airport's sponsorship from the City to the Commission. Before the General Assembly tried to fix the defects in the Commission Act with the so-called "Clarification Act," the FAA noted that it was unable to determine "whether the Commission is an agency of the City or an independent, special district; and who is now responsible for the key roles of airport sponsor and operator." *See* May 21, 2014 letter from Benito De Leon, Acting Associate Administrator for Airports, to Robert H. Stolz, Chairman, Charlotte Douglas International Airport Commission (a copy of which is attached at Tab D). Mr. De Leon's letter notes that "the State law is silent about which entity is responsible for fulfilling key functions of an airport sponsor under Federal law, such as crash, fire and rescue services required under Part 139," and that "[f]illing in the gaps in a State law that is silent about which of the two entities is responsible for key airport sponsor function[s] exceeds the authority of the Federal Government." Mr. De Leon's letter concludes:

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[3] Under 49 U.S.C. § 47107(n), for example, the City's General Fund could be exposed to liability for the recovery of illegally diverted funds if the City were unable to prevent the Commission from using airport revenue for purposes prohibited by 49 U.S.C. § 47107(b)(1).

> In summary, it is our view that the governance structure must be clearly defined by a responsible entity at the state and local level in sufficient detail in material areas. The FAA will not be in a position to ascertain the eligibility of the proposed new airport sponsor and whether to issue a part 139 certificate until responsible state and local entities clearly articulate the governance structure in sufficient detail to comply with Federal law. Until the State's Attorney General and the city of Charlotte resolve this matter, the city remains the airport sponsor and holder of the part 139 operating certificate.

As Mr. De Leon points out, a clear governance structure and chain of command are critical to the safe and efficient operation of any major international airport. This is especially so in the context of an airport emergency. Yet even with respect to firefighting and law enforcement, the governance structure for the Airport seems open to question. The Airport police and fire chiefs report to the City Manager, who reports to the Mayor and the City Council, not to the Commission. Though the Amended Commission Act requires the City to provide the same firefighting and policing services it previously provided to the Airport, § 5.60(b), there is no mechanism for decision-making if either the City or the Commission proposes changes in firefighter or law enforcement staffing. This is likely why the FAA singled out responsibility for "crash, fire and rescue services" as one of key areas that were left ambiguous in the Amended Commission Act.[4]

Following Mr. De Leon's May 21, 2014 letter, the General Assembly passed the so-called "Clarification Act," which added the "on behalf of the City" qualifier to some, but not all, of the Commission's statutory powers, and then seemingly undercut the Commission's statutory powers by adding § 5.62(b), which returned significant powers to the City. In our view, these provisions of the Clarification Act made the statute more incomprehensible than it was when Mr. De Leon first reviewed it. Even after passage of the Clarification Act, and with reference to the ongoing dispute in Charlotte, the Deputy Secretary of Transportation underscored the FAA's obligation to ensure that there is "no ambiguity" regarding responsibility for federal compliance when efforts are made to implement new governance structures for federally-obligated airports (*see* Tab C).

Although the state court litigation regarding the Amended Commission Act has ended, basic questions remain unanswered regarding the Commission's corporate character, its legal relationship to the City and how operational disagreements between the City and the Commission would be resolved, if at all.

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[4] This is not the only area where conflict seems inevitable. For example, if the City, as sponsor, is required to undertake a major pavement restoration project, but the Commission opts to spend its resources in a different manner, it is unclear how the City could force the Commission to do its bidding, or how that dispute might otherwise be resolved. Similarly, § 5.57 provides that "[t]he Commission may not exercise any powers of eminent domain. Any eminent domain with respect to acquisition of property for airport purposes shall be exercised by the Council." The statutory division of authority virtually assures gridlock if the Commission needs real estate and the Council refuses to acquire it or if the Council acquires real estate and the Commission declines to use it.

In sum, it is our opinion that the directive in § 5.60(a) of the Amended Commission Act, requiring the City's representatives to take all actions in their official power to effect a transfer of its operating authority over the Airport to the Commission and to seek FAA approval of the new governance structure, is preempted by federal law. It is also our opinion that, as the FAA has already concluded, the Amended Commission Act fails to "clearly articulate the governance structure in sufficient detail to comply with Federal law." The governance structure set forth in the Amended Commission Act is ambiguous, unworkable and inconsistent with the requirements of federal law.

Please let me know if you require further information.

Sincerely yours,

Scott P. Lewis
/s

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Letter from Special Deputy Attorney General to Chief Counsel for the Federal Aviation Administration

- 3/10//2015

ROY COOPER
ATTORNEY GENERAL

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Department of Justice
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March 10, 2015

Reginald C. Govan
Office of the Chief Counsel
Federal Aviation Administration
800 Independence Ave., SW
Washington DC 20591
(also via email to Reggie.Govan@faa.gov)

Re: Charlotte Douglas International Airport

Dear Mr. Govan:

In your letter dated November 19, 2014 to the Attorney General, you asked whether the State intended to submit a response to the City of Charlotte's outside counsel's opinion letter, which the City submitted to the FAA on November 14, 2014. (This outside counsel opinion, authored by Scott Lewis of Anderson Kreiger, will hereinafter be referred to as the Lewis Opinion.) Pursuant to this office's December 18, 2014 letter responding in the affirmative, this office now provides this response to the Lewis Opinion for the FAA's consideration.[1]

In a follow-up conversation to your November 19 letter, you and I discussed the scope of the State's response to the Lewis Opinion. You indicated that the FAA believes the scope should be limited to addressing concerns related to the

[1] This letter is in response to the Lewis Opinion and is not to be interpreted as either an informal advisory letter or formal Advisory Opinion from the Attorney General. Rather, this letter is a continuation of this office's defense of the two local bills passed by the General Assembly related to the Charlotte Airport Commission: 2013 N.C. Sess. Laws 358, as amended by 2014 N.C. Sess. Laws 10.

second issue presented in the Lewis Opinion, namely: "whether the Amended Commission Act creates a structure for the governance of the Airport which complies with federal law and will enable the safe and efficient operation of the Airport in accordance with federal standards." Lewis Op. p. 2.

This letter addresses issues of North Carolina law only and explains the Charlotte Douglas International Airport Commission Act ("Commission Act"), 2013 N.C. Sess. Laws 358, as amended by the Charlotte Douglas International Airport Commission Clarification Act ("Clarification Act"), 2014 N.C. Sess. Laws 10. Issues regarding the application of federal law to the City and the Commission are beyond the scope of this letter.

In the view of the Lewis Opinion, the Commission Act is "ambiguous," "contradictory" and "internally inconsistent." Lewis Op. pp. 3-4. The Lewis Opinion first contends that state law is unclear as to whether the Commission is a part of the City or an independent entity.[2] Lewis Op. pp. 4-5. However, when the North Carolina General Assembly created the Commission, it declared that the Commission "shall be an agency of the City" of Charlotte. 2013 N.C. Sess. Laws 358, § 3 (codified in the Charter of the City of Charlotte ("Charter") § 5.51).[3] The General Assembly clarified its intent that the Commission is an agency of the City by enacting the Clarification Act. 2014 N.C. Sess. Laws 10. By that Act, the Legislature amended certain provisions of the City's Charter to dispel any alleged ambiguity in the original Act as to the Commission's nature. The intent of the Legislature was expressly stated through the Commission and Clarification Acts. The remainder of the Act must be read in this context and any ambiguity is resolved to further the intent of the Legislature under North Carolina principles of statutory construction. *Elec. Supply Co. of Durham v. Swain Elec. Co.*, 328 N.C. 651, 656, 403 S.E.2d 291, 294 (1991).

The relationship of the Commission to the City is underscored by the powers that the Legislature reserved to the City. The Commission has no power to tax, to issue bonds, or to condemn property, and does not itself own or dispose of

[2] The use of the terms "City" and "Commission" is for convenience only. It is not intended to suggest that the Commission is not a part of the City.

[3] In North Carolina, the General Assembly creates all cities, enacts their charters, and routinely amends their charters as local needs require. *E.g.*, N.C. Const. art. VII, § 1; N.C. Gen. Stat. § 160A-67 (describing the general management structure of North Carolina cities, which shall prevail "[e]xcept as otherwise provided by law").

property. Charter §§ 5.56(a)(11), 5.56(b), 5.57, 5.58, 5.62(c). All of these are indicia of independent governance that the Commission lacks. The General Assembly also intended for the Commission to not be an independent special district. 2014 N.C. Sess. Laws 10, § 4 (codified at Charter § 5.55(a)). Finally, the City appoints a majority of the Commission's members. Charter § 5.53(a).

The Lewis Opinion correctly observes that a minority of the Commission's members are not appointed by the City and that the commissioners cannot be removed at the pleasure of the City Council or Mayor. Lewis Op. p. 4. The Lewis Opinion also contends that the Commission is empowered to operate the Airport "without oversight from the City." Lewis Op. p. 4. However, the Commission's day-to-day management authority does not render it an independent entity. *See News & Observer Pub. Co. v. Wake County Hospital Sys., Inc.*, 55 N.C. App. 1, 9, 284 S.E.2d 542, 547 (1981) (collecting cases from various contexts). Although the Commission has significant management authority over the Airport, it is dependent on the City regarding taxes, bonds, and eminent domain power, among others.

The expressed intent of the General Assembly and the limitations on the Commission's authority in favor of the City render the Commission an agency of the City of Charlotte under North Carolina law, created by the General Assembly and provided with certain authority to operate the City's Airport.

The Lewis Opinion details various provisions enacted and language used by the General Assembly and suggests that these render the Commission Act (as amended) "contradictory" and "confused." Lewis Op. pp. 4-5. However, the General Assembly expressed its intent for the Commission to fall under the City of Charlotte's authority. The Commission Act (as amended), states:

> It is further intended that, following the enactment of this Article, the City, acting through the Commission, shall (i) continue to own and operate the Airport, (ii) continue to serve as sponsor of the Airport in connection with any grants given by the FAA, and (iii) refrain from taking any action that would impair the Commission's exercise of the powers granted to the Commission or that would impair the efficient operation and management of the Airport by the Commission.

Charter § 5.62(b) (quoted in part at Lewis Op. p. 5). The provision is clear: because the Commission is part of the City, the City "continue[s] to own and operate the Airport" and "continue[s] to serve as sponsor of the Airport in connection with any grants given by the FAA" (as specified in clauses (i) and (ii)). This relationship is created by statute and exists independent of the FAA entering into Sponsor Assurances with the Commission. Clause (iii) directs the City to implement the Commission Act without impeding the Commission's management authority.

The General Assembly established in the Clarification Act that the Commission was designed to operate as an agency of the City and to exercise its authority on the City's behalf. As part of this effort, the Legislature inserted the phrase "on behalf of the City" in six locations in the Charter. 2014 N.C. Sess. Laws 10, § 5 (codified at Charter §§ 5.56(a)(4)-(6),(15)). This language added to the four existing instances of the phrase in the original Commission Act. That the General Assembly did not include this phrase at every opportunity is immaterial given the express overall intent that the Commission acts for the City. *See, e.g., King v. Town of Chapel Hill*, 367 N.C. 400, 404-05, 758 S.E.2d 364, 369 (2014).

Finally, the Lewis Opinion contends that the "governance structure" regarding emergency services "seems open to question." Lewis Op. p. 7. The Lewis Opinion examines Charter § 5.60, which allocates the authorization of services between the City and the Commission:

> Upon the request of the Executive Director of the Commission, the City shall continue to provide such services to the Commission as it currently provides to the Airport Department and shall receive as compensation therefor from the Commission such amount as is appropriate for such services as provided by OMB Circular A-87 until the Commission shall direct the City to terminate such services.

The Lewis Opinion argues that because the City Council and Mayor control the City's police and fire services, requests by the Commission to alter staffing may cause irreconcilable problems. Lewis Op. p. 7.

First, Charter § 5.60 does not obligate the City to provide the exact same quantity of services it currently does. It states that the City shall provide "such

services . . . as it currently provides." Because the City currently provides properly-staffed public safety services, it shall continue to do so at the Commission's request. Second, Charter § 5.56(a)(17) gives the Commission the power to "[e]mploy, or provide for the employment of such employees by the Executive Director, including law enforcement officers, as the Commission may from time to time deem to be necessary, beneficial, or helpful." Further, Charter § 5.60 allows the Commission to "terminate" the use of City-provided services. *See also* Charter § 5.60(a)(10) (allowing the Commission to "enforce civil and criminal penalties for the violation of" its own rules regarding the "proper maintenance, use, occupancy, operation, and/or control of" the Airport).[4] Therefore, the Airport's public safety and emergency services should continue to operate effectively, regardless of whether those services are provided by the City or by the Executive Director.

Though North Carolina law imbues the Commission with certain powers regarding the management of the Airport, the Commission is not a political body separate and apart from the City for which it exercises that authority.

Please feel free to call me if there is anything that we need to discuss.

Sincerely,

Marc Bernstein
Special Deputy Attorney General

[4] The Lewis Opinion also suggests that "conflict" may be "inevitable" regarding major airport requirements such as runway paving. Lewis Op. p. 7 n.4. The alleged problem that is identified appears to be addressed solely to the exercise of federal authority. However, the State notes that the Lewis Opinion separates the Commission from the City. Because the Commission is a part of the City, any requirement the City faces regarding the Airport is also a requirement of the Commission. *See, e.g.*, Charter § 5.59(c)(4) (requiring that the Commission is "bound by all existing contracts and grant agreements of the City with respect to the Airport"). Any directive by the FAA to the City is a directive to the Commission.

The Lewis Opinion further contends that "gridlock" is possible because the City retains eminent domain authority. Lewis Op. p. 7 n.4. However, the Commission Act (as amended) prohibits the City from acting in a way that will "impair the efficient operation and management of the Airport by the Commission." Charter § 5.62(b)(iii).

Copies: Martin Bracket
Robert Hagemann

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Federal Aviation Administration Policy on Evaluating Disputed Changes of Sponsorship at Federally Obligated Airports

- 81 Fed. Reg. 36144 (6/16/2016)

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

Notice of Policy on Evaluating Disputed Changes of Sponsorship at Federally Obligated Airports

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of policy.

SUMMARY: This document clarifies the FAA's legal authority and policy for addressing disputed changes of sponsorship at federally obligated, publicly owned airports. This document also explains the requirements for state or local government entities to coordinate with the FAA when contemplating actions that may impact an airport's ownership, sponsorship, governance, or operations.

DATES: June 6, 2016.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Manager, Airport Compliance Division, ACO–100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile: (202) 267–4629.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document clarifies the FAA's legal authority and policy for monitoring and approving requests to change the sponsorship of, and/or operational responsibility for, an airport from one public agency to another public agency when there is a dispute surrounding the proposed change.[1] This document also describes the requirements for coordination between the FAA and state or local governments contemplating actions that may impact an airport's ownership, sponsorship, governance, or operations, to ensure that such actions are consistent with Federal requirements. Where the current sponsor/operator and the proposed new sponsor/operator agree to a change of sponsorship and/or operational control, Section IV of this document does not apply.

II. FAA Legal Authority and Responsibility

While state or local legislative action, or a judicial action, as the case may be, may seek to change an airport's ownership, sponsorship, governance, or operations, only the FAA has the authority to determine sponsor eligibility, approve and formally change airport sponsorship, and approve and issue a new Airport Operating Certificate pursuant to 14 CFR part 139. The FAA has a statutory obligation to ensure that an airport sponsor/operator is capable of assuming all grant assurances, safety compliance, and other Federal obligations, and has the expertise to operate the airport. Specifically, an airport sponsor/operator must meet the requirements set out in title 49 U.S.C. 44706, as implemented by 14 CFR part 139, for obtaining an Airport Operating Certificate, (if applicable) or in 49 U.S.C. 47102, as implemented by FAA Order 5100.38D (which includes provisions governing sponsor eligibility for Airport Improvement Program (AIP) funding) and/or 14 CFR part 158 (which governs the Passenger Facility Charge (PFC) program pursuant to 49 U.S.C. 40117).

The FAA's obligation extends to reviewing sponsor/operator eligibility when state and local governments propose a change in the airport governance structure to ensure that there is no ambiguity regarding responsibility for Federal obligations and that any proposed changes will not impact compliance with Federal law. (In the event of a local or state dispute regarding sponsorship/operation of the airport, the FAA will apply the policy set out in Section IV below.) If any proposed changes give rise to such concerns by the FAA, the agency will work with state and/or local government(s) to resolve the concerns or, if the concerns cannot be addressed, deny the request.

Airport sponsors and operators are required to maintain compliance with Federal requirements at all times, and this document does not preclude the FAA from taking enforcement action if a sponsor or operator fails to fulfill its obligations, even if the FAA has approved the transfer.

III. Coordination of Potential Actions To Change Sponsorship/Operations

Any state or local legislative body or public agency considering whether to take an action, such as drafting legislation, that would impact airport ownership, sponsorship, governance, or operations should (1) consult with and obtain the consent of the current sponsor/operator (absent extraordinary circumstances, such as substantial evidence of mismanagement on the part of the current sponsor/operator);[2] and (2) request technical assistance from the FAA about the interrelationship between Federal and state or local requirements, and seek the FAA's review and comment as early in the deliberative process as is practicable. A failure to consult may cause FAA to deny a proposed change to airport sponsorship and/or operating authority. In all cases, final decisions regarding the proposed change will be made by FAA's Office of Airport Compliance and Management Analysis.

In seeking technical assistance, representatives of the existing and/or proposed sponsors and operators must contact the appropriate Regional Office or Airport District Office (ADO) as early in the process as practicable. The Regional Office or ADO will inquire as to whether the proposed change is disputed, and the FAA will not act upon the proposed change until the dispute is resolved in accordance with Section IV below. In the absence of a dispute or upon final resolution of a dispute, the Regional Office or ADO will work with prospective airport sponsors and operators to ensure understanding of and compliance with the legal obligations associated with being an airport sponsor or operator (including those under part 139 as well as the AIP grant assurances and the PFC program requirements).

As soon as Regional Offices and ADOs become aware of a proposed change in ownership, sponsorship, governance, or operations, they must alert the FAA Office of Airport Compliance and Management Analysis, which will advise the Office of Airport Safety and Standards and Office of Airport Planning and Programming. The Office of Airport Compliance and Management Analysis is responsible for approving all changes to an airport's ownership, sponsorship, governance, or operations. The Office of Airport Safety and Standards is responsible for administering 14 CFR part 139. The Regional Airport Safety and Standards Offices are responsible for approving changes to the part 139 Airport Certification Program Handbook. The Office of Airport Planning and Programming also plays a role in determining sponsor eligibility, and

[1] The policy does not apply to a change of sponsorship or ownership of a privately-owned airport, transfers under the Airport Privatization Pilot Program, or changes when the Federal Government exercises its right of reverter.

[2] Consent from the current sponsor/operator before a change of sponsorship or operational authority is a critical factor for the FAA in determining whether safety, efficiency, and compliance with grant assurances as required by Federal law will be fully satisfied prior to, during, and after any transition period between sponsors/operators. Even when consent is obtained, the FAA independently will determine whether the proposed sponsor/operator is able to satisfy Federal requirements for airport sponsorship or operation.

administers the AIP and PFC programs, as well as several associated programs and requirements.

IV. FAA Policy on Disputed Changes to Airport Sponsorship or Operations

The determination of whether to seek a new applicant for airport sponsorship is a state or local decision. The FAA expects that all disputes about whether to change airport sponsorship and/or operating authority will be resolved through a legally-binding agreement between the parties involved in the dispute or a final, non-reviewable legal decision. While parties should seek technical assistance from the FAA as early as practicable, parties are encouraged to wait until a dispute has been resolved before submitting an application to the FAA seeking the agency's approval of a change in sponsorship of, and/or operational responsibility for, an airport. In matters in which a proposed change is contested by a current sponsor or operator, the FAA will not act on a part 139 application or a change of airport sponsorship and/or operating authority until the dispute is definitively resolved to the satisfaction of the FAA. Resolution may be demonstrated by issuance of a final, non-reviewable judicial decision requiring such a change, by the issuance of a consent letter between the existing airport sponsor and/or operator and the proposed new sponsor and/or operator, or by other legally definitive means deemed acceptable to the FAA.

The FAA will accept an application for a change in airport sponsorship/operation only upon a legally definitive resolution of a dispute. At that time, the FAA will evaluate whether an application is complete and whether the proposed airport sponsor/operator is capable of assuming all grant assurances, safety compliance, and other Federal obligations, and has the expertise to operate the airport as required by law.

V. Reimbursement of Airport Investments

In circumstances in which a change in sponsorship or operation of an airport is approved and effectuated, the new airport sponsor and/or operator should reimburse the prior sponsor for investments that have been made by the prior sponsor of the airport but have not been fully recouped at the time of the change in airport sponsorship. Any such reimbursements must be consistent with the FAA's *Policy and Procedures Concerning the Use of Airport Revenue*, 64 FR 7696 (Feb. 16, 1999).

Issued in Washington, DC, on May 25, 2016.

Eduardo A. Angeles,

Associate Administrator for Airports.

[FR Doc. 2016–13177 Filed 6–1–16; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Parts 203, 250, 251, 252, 254, 256, 280, 282, 290, and 291

[Docket ID: BSEE–2016–0006; EEEE500000 16XE1700DX EX1SF0000.DAQ000]

RIN 1014–AA15

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Technical Corrections

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Final rule.

SUMMARY: This rule makes minor edits, changes, and updates to BSEE regulations. These changes include, but are not limited to: correcting all current Office of Management and Budget (OMB) control numbers from "1010" to "1014"; adding two new control numbers to regulations as required by the Paperwork Reduction Act (PRA); changing the BSEE address from "Herndon, VA" to "Sterling, VA"; changing "shall" to "will" or "must" and changing "which" to "that"; and revising other language where necessary for improved clarity.

DATES: This rule becomes effective on July 28, 2016.

FOR FURTHER INFORMATION CONTACT: Amy White, Regulations and Standards Branch at (703) 787–1665 or email at *regs@bsee.gov.*

SUPPLEMENTARY INFORMATION:

Background

The technical corrections in this rulemaking affect offshore operators, lessees, pipeline right-of-way holders, and permittees. The corrections are necessary to reflect accurate regulatory citations, add or change a few words for clarification, and revise section numbering. Also, regulatory text that was inadvertently removed in a 2013 regulatory update is being re-inserted where it belongs. These corrections will make the regulations easier to read, understand, and comprehend, but will not change the purpose, scope or effect of the regulations.

Because this rule makes no substantive change in any rule or requirement, BSEE for good cause finds that notice and public comment are unnecessary pursuant to 5 U.S.C. 553(b)(3)(B).

This rulemaking will correct regulations in 30 CFR parts 203, 250, 251, 252, 254, 256, 280, 282, 290, and 291 to reflect the changes discussed below. The following table shows the current regulatory citation and what changes were made.

Section-by-Section Discussion

Current citation	Description of revision
30 CFR part 203	Revises the authority citation for Part 203 from "43 U.S.C. 1331 *et seq.*" to "43 U.S.C. 1334". Revises the "Herndon, VA" address to reflect the new address in "Sterling, VA".
§ 203.3(b)	Provides a correct Web site address for the BSEE *Fees for Services* page (application fees) for electronic payments of royalty relief fees.
§ 203.5(a)	Corrects the OMB Control Number from "1010–0071" to "1014–0005".
30 CFR part 250	Revises the "Herndon, VA" address to reflect the new address in "Sterling, VA".
§ 250.102(b)	Adds the word "part" before "250" in paragraphs (b)(1) through (b)(18) in the table of general references for these regulations.
§ 250.102(b)	Adds new paragraph (b)(19) to the table of general references for these regulations, to include "Safety and Environmental Management Systems (SEMS), 30 CFR part 250, subpart S".
§ 250.114(a)	Adds the cross reference "(as incorporated by referenced in § 250.198)" after the phrase "Division 2".
Undesignated Center Heading before § 250.118.	Adds "Gas Storage or Injection" as an undesignated center heading to assist the reader with the regulatory text that follows.
§ 250.126	Provides a correct Web site address for the BSEE *Fees for Services* page (application fees) for electronic payments, adds the words "or permit," and makes structural changes so that all text is contained in subsections (a) and (b).