

Aviation safety, adoption of regulations

Number: INFORMAL

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The Honorable Ronald A. Silver
Senator, District 38
115 Northwest 167 Street, Second Floor
North Miami Beach, Florida 33169

Dear Senator Silver:

This is in response to your letter indicating your interest in drafting legislation relating to aviation safety, in light of recent air disasters. While aware that the Federal Government regulates the aviation industry, you ask what jurisdiction the state has in this area, particularly in regard to the transportation of hazardous materials on airplanes and airport security.

The Federal Government exercises complete and exclusive national sovereignty of all airspace of the United States.[1] While it has been recognized that states may impose criminal sanctions for unlawful operation of aircraft above the lands and waters of a state,[2] the federal act operates to preempt state regulation of air carriers.[3] Federal law specifically addresses airport security, including employment standards and training of security personnel.[4] Moreover, the federal act prescribes safety regulations to promote safe flight of civilian aircraft.[5]

Thus, while there are specific areas in which a state may exercise its authority relative to air transportation, the federal act generally operates to preempt state or local regulation of air carriers and airport security. It would appear, therefore, that the state may not exercise jurisdiction over the transportation of goods on air carriers, nor may the state become involved in the training or regulation of security personnel for airports.

I trust that these informal observations will assist you in drafting the legislation you are contemplating.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See 49 U.S.C. Chapters 401, *et seq.* "General Aviation Revitalization Act of 1994" Public Law 103-298, sections 1-4, 108 Statute 1552.

[2] See *People v. Valenti*, 200 Cal. Rptr. 862, 153 Cal. App. 3d Supp. 35 (1984). See also

Wardair Canada, Inc. v. Florida Department of Revenue, 477 U.S. 1 (1986) (federal act does not preempt state statutes imposing sales tax on the sale of aviation fuel).

[3] 49 U.S.C. s. 41713(b)(1).

[4] 49 U.S.C. s. 44935.

[5] See *generally* 49 U.S.C. Chapter 447, and see, 49 USC s. 44701(b).