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The Federal Aviation Administration

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The Federal Aviation Administration

The Federal Aviation Administration (FAA) was established in 1967 with the creation of the Department of Transportation.⁷⁶ At that time, the independent Federal Aviation Agency was absorbed into DOT and all of its functions were placed under the direct authority of the DOT Secretary. Although federal control of the airways has continued to grow from its beginning in 1926,⁷⁷ the structure and responsibilities of the FAA were established with the Federal Aviation Act of 1958.⁷⁸ In this act, the FAA incorporated the Civil Aeronautics Administration, the Airway Modernization Board, and those parts of the Civil Aeronautics Board which pertained to the establishment and enforcement of air safety rules.⁷⁹

Organization and Legislative Process

The FAA is organized under the executive authority of an Administrator. Both he and his Deputy are appointed by the President. Attached to their office are eight components serving in different capacities the general administration of the FAA.⁸⁰ The principal business of the Administration is conducted through five offices, each headed by an Associate Administrator. These offices are: the Office of Planning, the Office of Personnel and Training, the Office of Administration, the Office for Operations and the Office of Development.⁸¹ Regional offices directing the general operations of the FAA are appointed by the Secretary in each of the five geographic areas which include the continental United

76. Dept't of Transportation Act of October 15, 1966, 49 U.S.C. §§ 1651 *et seq.* (1970).

77. Federal control of commerce and transportation began in 1926 with the passage of the Air Commerce Act which placed aviation under the direction of the Secretary of Commerce. 44 Stat. 2119. In 1934 the Aeronautics Branch of the Commerce Department became the Bureau of Air Commerce. Its primary functions were to administer medical and licensing controls over aviators, develop communications and ground facilities, and regulate the air industry. In 1938 the Bureau was renamed the Civil Aeronautics Authority, which was subsequently subdivided into the Civil Aeronautics Board and the Civil Aeronautics Administration. Economic regulatory and rule making responsibilities were given to the Board, which was to be an independent regulatory agency. The Aeronautics Administration was put in charge of the airways operation, and incorporated into the Department of Commerce. FAA, *The Federal Aviation Administration* (GPO Pamphlet #0-265-094, 1967) at 1.

78. 72 Stat. 731.

79. *Id.*

80. The eight units assisting the Office of the Administrator are: the Office of Aviation Medicine, Office of International Aviation Affairs, Office of Appraisal, Office of General Aviation Affairs, Regulatory Council, Office of Information Services, Office of the General Counsel, Office of the Congressional Liaison. The latter two offices are particularly instrumental in legislative drafting. DOT Manual, *supra* footnote 60, at V-9 to V-29.

81. *Id.*

States, Alaska, Hawaii and the Pacific Islands.⁸² Each component serves the FAA's general responsibilities to promote and regulate safe civil aviation, to supervise the use of air space for civil and military purposes, and to insure the availability and development of suitable airport facilities.⁸³

The Offices of the Administrator and Deputy Administrator are responsible for overall planning, direction and control of FAA activities.⁸⁴ The offices' five Associate Administrators advise and assist the Administrator, supervising FAA operational activity in their respective areas.⁸⁵

The General Counsel's Office, a staff unit attached to the Office of the Administrator, has primary responsibility for all FAA legal problems. Its principal duties pertinent to the FAA legislative process include the following: (1) conducting a rules codification program; (2) drafting and interpreting FAA rules, regulations and orders; (3) development and processing of the FAA's legislative program; (4) acting as the principal legal enforcement arm of the Administration; and (5) representing the FAA before courts, legislative committees, government agencies and other administrative hearings.⁸⁶

In its legislative activities, the General Counsel's Office works closely with the Office of Congressional Liaison, which has primary responsibility for advising the Administrator on all FAA Congressional actions.⁸⁷ In this sense, the latter office has functions similar to its counterpart in the Department itself.⁸⁸

In developing its legislative program for the forthcoming session, FAA's Office of General Counsel, through its legislative attorney, solicits all responsible units within the Administration for comments and proposals.⁸⁹ This is done

82. Interview with Mr. John T. Stewart, FAA General Counsel's Office, at FAA, March 10, 1972 [hereinafter cited as Stewart Interview].

83. Federal Aviation Act of 1958, 49 U.S.C. § 1343(a-i) (1970).

84. Federal Aviation Act of 1958, 49 U.S.C. § 1341(a) (1970); U.S. CODE CONG. & AD. NEWS, 85th Cong., 1st Sess. 870 (1958).

85. The Associate Administrators are organized on a functional basis, with control and operation of the Administration's statutory programs divided among them. The Associate Administrator for Personnel and Training supervises the FAA personnel and training activities. The Associate Administrator for Administration oversees the budgeting, auditing, management systems and security requirements of the Administration. The three remaining Associate Administrators are in charge of specific operational functions of the Administration: the Associate Administrator for Development supervises airport development, systems research, national airspace programming and logistical development; the Associate Administrator for Operations directs FAA rulemaking actions relating to flight safety standards, the development of a national system of airports, and the proper maintenance and development of air traffic and navigation systems; and, the Associate Administrator for Plans insures the Administration's development of a national aviation system directing the Office of Aviation Economics, the Office of Aviation Policy and Plans and the Office of Noise Abatement. DOT Manual, *supra* footnote 60, at V-5 to V-19.

86. *Id.*

87. *Id.*

88. *Id.*

89. Stewart Interview, *supra* footnote 82.

in compliance with the Secretary's general charge to prepare a departmental legislative program. In processing legislative reports to the Congress, and in drafting specific proposals, the legislative attorney coordinates commenting efforts of the interested offices of the FAA, developing the FAA's final product from the work of those components.⁹⁰

In discussing the legislative process, attorneys stated frequently that the same or similar bills were asked to be commented upon and in these instances legislative materials relating to particular topics could be consulted and usually relied upon. Preparing congressional reports and doing related legislative activity, it was estimated, accounted for over 80 percent of the legislative attorneys' time. Whereas drafting was thought to involve less than 10 percent.⁹¹ Finally, concerning the FAA's involvement in legislation generally, it was emphasized that the Administration's activity had increased substantially in recent years.

The Airport and Airway Act

It has been apparent at least since the Aviation Act of 1958 that the challenge of technological advance requires extensive regulation of airways at the federal level.⁹² Problems relating to the construction of transportation facilities inevitably became a part of air traffic growth.⁹³ Throughout the 1960's, however, legislative proposals pertinent to wide-spread airport development were considerably underfinanced in terms of both local and federal participation.⁹⁴ The results were predictable. By 1969 it was estimated that congestion at all levels cost the airlines in excess of \$50 million per year.⁹⁵

This is exclusive of the very substantial cost to the passenger in terms of lost time and inconveniences. Air cargo can now cross the North Atlantic in 6 hours, yet wait days to be processed at the airport. General aviation users have been delayed at the major hub airports, and in some cases, forced to avoid certain major airports.⁹⁶

90. *Id.*

91. *Id.*

92. U.S. CODE CONG. & AD. NEWS, 85th Cong., 2d Sess. 3752 (1958).

93. H.R. Rep. No. 91-601, 91st Cong., 1st Sess. 4-9 (1969) [hereinafter cited as House Airways Report].

94. For example, it was shown by Stuart Tipton, president of the Air Transport Association, that the disparity between federal appropriations to airports and airport requests increased enormously between 1967 and 1970. For the years of 1960-66, inclusive, the average federal appropriation was \$71.6 million, while the average total request for the same years was \$149.2 million. Between 1967 and 1970 the average federal appropriation dropped to \$59.0 million while the average request increased to \$365.2 million. *Hearings on H.R. 12374 and 12780 Before the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 1st Sess., ser. 22, pt. 1, at 231 (1969) [hereinafter cited as House Airways Hearings].

95. House Airways Report, *supra* footnote 93, at 5.

96. *Id.* In addition the Committee noted that the congestion problem has a "deleterious effect"

The financial loss resulting from limited airport facilities, however, was recognized by many authorities as secondary to the probable growth in unsafe conditions, both in the air and on the airfields.⁹⁷ In addition, estimates of future demands projected percentage increases across-the-board in airline travel growth.⁹⁸ All technological and economic indices that were available to the FAA and the industry pointed to the inadequacy of the revenue generating power of the airlines as compared with the necessity for developing safer and more efficient airport facilities.⁹⁹ The general feeling seemed to be that the growth capability of the airlines was at a crossroads and that some change was vitally necessary.

Bills on airport development had been before the Congress throughout the Johnson Administration. FAA spokesmen indicated that during this period their appropriation request exceeded by five times the FAA's authorization figure, and by a factor of ten the actual appropriation itself.¹⁰⁰ However, it should be noted that the FAA and the Department itself failed to initiate independent analyses of the national airport problem.¹⁰¹

on many of the nation's smaller airports. There had not been sufficient funds available to meet their needs due to the limited resources available and the acute demands of the major traffic centers.

97. *Id.* at 5-6. Over the past five years, for example, the certified air carrier fleet has increased from a substantially piston fleet of 2,079 aircraft to an almost completely jet fleet of 2,586 aircraft. The number of miles flown increased from 94.8 billion to 210 billion. Figures pertinent to other areas of civil aviation growth, such as air corps, tonnage, operating revenues, employment and private aircraft were available. Operating revenues, for example, from 1963 to 1968 had more than doubled (3.76 billion to 7.75 billion). In terms of employment the airline industries reported more than 300,000 employees by the end of 1968, a two-thirds increase over the figure of 1963.

98. The FAA in the spring of 1969 held its first annual National Aviation System Planning Review Conference, a mechanism by which the Administration hoped to provide "for public participation in identifying long-range needs of the national aviation systems and in helping to evaluate alternatives to meet those needs." In preparation for the Conference the FAA published a document entitled the "National Aviation System Plan, 1970-1979." The material sets forth predictive cost requirements for the Administration's programs through 1979. In testimony before the Senate and House Committees the FAA submitted a summary of the Administration's long-range planning assumptions and projections in memorandum form. The memo contains information on the expected expenditures, needs and requirements that faced the FAA, particularly in research, technological development and airport improvements. House Airways Hearings, *supra* footnote 94, at 216-35.

99. The Department in its analysis of the funding problem states the following:

Today's deficiencies are traceable to unprecedented aeronautical demands during the last decade and exist despite the fact that the Nation has invested almost \$1.5 billion in airport development during the last five years. Approximately 70 percent of that burden was shouldered by local government, about 9 percent by the states, and the balance or 21 percent by the federal government. For the system's development to have kept pace during the same period, hindsight now discloses that public investment more than tripled that actually made would have been necessary.

Id. at 67.

100. House Airways Hearings, *supra* footnote 94, at 73-76.

101. See text accompanying footnotes 131-37 for analysis of the FAA's processing of the Airways legislation and particularly the opposition by the OMB and the Treasury Department to the trust fund concept.

Origins of the Bill

The files are unclear as to the initial developments which led to the Department's drafting of the Airways legislation. However, interviews revealed that a prototype bill had circulated in the FAA for some time without generating the necessary impetus for legislative action.¹⁰² Inaction by the Administration at this point, although in part attributable to the limitations of the Department's budget, seems to indicate problems of organization and communication.¹⁰³ Congressional and industrial pressure was brought to bear upon the higher policymakers in DOT and an "Airport" Task Force headed by the Assistant Secretary for Policy and Development, Mr. M. Cecil Makey, was appointed.¹⁰⁴

The principal representatives of DOT and the FAA on the interagency Task Force included persons from DOT's Policy and Development Office and the FAA's Offices of Budget, Airport Service Section, Planning, and the General Counsel.¹⁰⁵ At their initial meetings the groups assigned first priority to obtaining a workable draft bill. The files indicate that once the proposed measure had been drafted by the FAA's General Counsel's Office, the legislation was circulated for comments among the appropriate offices of the FAA and DOT.¹⁰⁶

FAA Activity

Legislative activity in the FAA declined considerably until January, 1968—over nine months later.¹⁰⁷ Spokesmen for the FAA, when asked specifically about the activity of the administration and the Task Force during this period, replied that the remaining portion of the session had been devoted to research and the gathering of supportive data. They noted that the Task Force met infrequently mainly because the data required for committee presentation and internal differences on specific issues were matters better explored at the unit level.¹⁰⁸

In the interim, President Johnson requested specifically that DOT propose legislation containing an Airway's Users' Tax.¹⁰⁹ A proposed draft by Mr. Webber, submitted to the Task Force on January 15, 1968, however, was

102. In fiscal year 1967, the FAA proposed increased users' taxes, but was opposed *in toto* to the concept of the trust fund. House Airways Hearings, *supra* footnote 94, at 772.

103. See text accompanying footnotes 138-41.

104. The task force was formed around April 1967. DOT-FAA, note 1.

105. Stewart Interview, *supra* footnote 82.

106. DOT-FAA note 2.

107. DOT-FAA notes 3 and 4.

108. Stewart Interview, *supra* footnote 82.

109. DOT-FAA note 3.

dropped until internal policy differences between the Policy Office in DOT and the Planning unit in FAA could be resolved.¹¹⁰ Finally, in March 1968, the Task Force, under pressure from White House and high Administration policymakers, assigned the matter to two senior attorneys in the Department's General Counsel's Office, Mr. Tidd and Mr. Webber.¹¹¹

The files at this point reflect a marked change in the processing and drafting of the legislation. It seems that the General Counsel's Office made clear that the Airway's legislation was to have the highest priority. The speed with which the interdepartmental comments were exchanged verifies this position.¹¹² Drafts of the bill were quickly circulated to all pertinent DOT and FAA offices.¹¹³ Substantive replies were obtained from the Associate General Counsel, General Legal Services Division of the FAA, the Director, Airport Service and the Associate Administration for Operations in FAA.¹¹⁴ Within six days comments were again exchanged between the General Counsel's Office in FAA and Mr. Tidd.¹¹⁵ Afterwards a session held in Mr. Tidd's office incorporated the agreed-upon provisions.¹¹⁶

The bill was then sent to the OMB for comment and clearance. However, opposition particularly to the users' tax provisions stalled action on the measure.¹¹⁷ An interdepartmental commenting procedure, principally involving the Treasury Department, OMB, and DOT was followed with at least two meetings held between respective representatives of the agencies involved.¹¹⁸

In DOT intra-agency comments on changes in the proposed bill were received from the Director of Airport Service and the FAA's General Counsel's Office.¹¹⁹ By May 14th the measure was returned to OMB for clearance. A notation in Mr. Webber's files indicates that many of the specifics of the bill were being cleared by the Secretary with the President.¹²⁰

Congressional Activity and the "Trust Fund" Concept

The bill itself was sent to the House on May 20, 1968. Soon afterwards DOT received virtually hundreds of letters objecting strenuously to the provisions of

110. DOT-FAA notes 4 and 5.

111. DOT-FAA note 6.

112. DOT-FAA notes 6-12.

113. *Id.*

114. *Id.*

115. DOT-FAA notes 11 and 12.

116. DOT-FAA note 12.

117. DOT-FAA notes 13 and 14.

118. DOT-FAA notes 13-20.

119. DOT-FAA notes 18 and 19.

120. DOT-FAA note 21.

the legislation, particularly the users' tax.¹²¹ Interviews confirmed that the opponents were influenced largely by various Washington lobbyist groups, which had circulated position papers urging the membership to write in opposition to the tax.¹²² With the bill deep in Committee and a presidential election imminent, the matter was put off until the next Congress.

The files indicate that even before the opening of the new session a new proposal was circulated to the appropriate commenting components in DOT.¹²³ In January, as the new Secretary, Mr. Volpe, became acquainted with the major issues, a decision was made to lower significantly the tax provisions incorporated in the bill and to alter certain other provisions in the legislation.¹²⁴ In March the new Deputy Under-Secretary issued a legislative schedule on the Airways bill outlining the major steps by which the Department would process the legislation.¹²⁵ The presence of a defined approach seemed to indicate a more orderly procedure in the Department's manner of processing legislative proposals.¹²⁶ The steps set forth in a memorandum to the appropriate offices were the following:

- (1) The legislation would be reviewed with OMB.
- (2) The legislation would be reviewed with appropriate Treasury officials.
- (3) The legislation would be reviewed with the Council of Economic Advisors.
- (4) Assuming nominal agreement, a briefing with OMB, the Secretary of the Treasury, and the Chairman of the Council of Economic Advisors would be held by the Secretary.
- (5) The Secretary would offer to brief the President.
- (6) Informal contacts would be established with Congress.
- (7) The Secretary would brief interested members of industry.
- (8) The Civil Aeronautics Board would be briefed.
- (9) The bill would be submitted to Congress after OMB clearance.¹²⁷

On May 7, 1969, final inputs from the Department were incorporated into the bill before its submission to OMB.¹²⁸ The files indicate that after this review comments were received from Mr. Mayo, the Chairman of the President's

121. DOT-FAA note 24.

122. Interview with Mr. Barkley Webber, Legislative Chief, Office of the General Counsel, DOT, Jan. 10, 1972.

123. DOT-FAA note 25.

124. DOT-FAA note 27.

125. DOT-FAA note 29.

126. See text accompanying footnotes 146-47.

127. DOT-FAA note 29.

128. DOT-FAA note 30.

Council on Economic Advisors.¹²⁹ Interviews confirmed that it proved unnecessary for the Secretary to directly brief the major units involved; instead, comments on the proposed draft were consolidated and reviewed by DOT and by June 15, 1969 the legislative package was cleared by OMB.¹³⁰ The bill was then transmitted to House Speaker McCormack for Congressional action on June 16.

The Role of the OMB

The development of the Airport Airways legislation as examined in the tracing procedure reflected only in broad terms the legislative processes in the Department. This seems to be the result of several significant features of the bill and the legislative process in both the FAA and the Department. It also resulted from the position of the Department and the FAA in initially opposing the major innovation of the legislation—the trust fund concept conceived by Senator Monroney.¹³¹

Interviews in the Department and with congressional staff indicate that for nearly a year prior to the official Department changeover the FAA and DOT favored incorporation of a similar trust fund concept. They failed to introduce such legislation for two principal reasons: first, the OMB was adamantly opposed to any inclusion of the trust fund concept;¹³² second, at the same time there seemed to be evidence of marked deficiencies in the FAA's and the Department's processing of the legislation, in their preparation of supportive data, and in the important area of decision responsibility for "pushing" a legislative viewpoint.

OMB Opposition

It is best perhaps to examine OMB's opposition first. Both the Treasury and Budget have traditionally been opposed to the formation of any specific trusts in appropriation matters.¹³³ In Congress, there is evidently concern over the

129. DOT-FAA note 32.

130. DOT-FAA note 34.

131. U.S. CODE CONG. & AD. NEWS, 91st Cong., 2d Sess. 292 (1970). The background of the legislation makes clear that the original trust fund proposed was initiated in 1966-67, with hearings on the matter in August, 1967. Testimony indicated that the FAA and DOT opposed totally the incorporation of the user's tax proceeds in a trust. In fact not until the advent of the Nixon Administration and the work of Mr. Paul Cherington and Secretary Volpe did the FAA or the Department publicly favor a trust format. House Airways Hearings, *supra* footnote 94, at 61,1380.

132. Interview with Mr. John Walk, Budget Office of the Federal Aviation Administration, March 9, 1972 [hereinafter cited as Walk Interview].

133. *Id.*

role and function OMB now plays.¹³⁴ Even with the approval of the OMB on the Department's introduction of an administration bill that incorporated the trust fund idea, the Budget people, by drafting changes on the bill, were able to use the new appropriations for the ordinary operating and administrative costs of the FAA, rather than exclusively for the development of the Airways and Airports as was the clear intent of the Congress.¹³⁵ When asked specifically about the role of the OMB in the drafting and processing of the Airways legislation, Department spokesmen were hesitant to comment. It was conceded that the OMB had opposed the trust fund concept and had in fact exerted its considerable influence to prohibit the FAA and the Department from introducing such legislation during the 2d Session of the 90th Congress.¹³⁶

OMB's Reply

Two senior OMB attorneys involved in the Airways legislation disagreed with the findings of the project on three counts. First, they asserted that there were valid historical and economic factors for the admitted opposition to the trust fund. It is one of the tenets of OMB that appropriations from specific tax revenues should not be geared to the funding of specified programs. This would cause havoc among the general tax and appropriations scheme which the government operates. Secondly, the purpose of the 1970 law as passed by the Congress shows a desire for flexibility in the use of the funds. This was primarily the function of the FAA and the Department; but the OMB is the overseer and determined that the allocations under the Act would better be utilized as a general revenue source for the operations of the entire department's budget rather than for the exclusive use of particular programs. Moreover, it was

134. Discussing the Airways legislation, one congressional staff member who did not wish to be directly quoted characterized the opposition of the OMB as "insidious":

The OMB has become a real threat to the development of responsive legislative policies.

They are a super agency operating without expertise on the specific policy issues involved . . . one to three people second guessing a Department which has perhaps 500 policy-makers

135. U.S. CODE CONG. & AD. NEWS, 91st Cong., 2d Sess. 3095 (1970). This conclusion is supported by two facts. First, the 1971 fiscal year appropriations for the operations of the FAA were not included in the general appropriations asked for by the Nixon Administration. This lowered appropriations requests by one-half billion dollars. The funds were obtained from the appropriation available in the trust fund set up by the Airports and Airways Act of 1970. Walk Interview, *supra* footnote 132.

Secondly, the Congress, particularly the House, became aware of OMB's maneuvering and, in 1971, the House insisted on amending the Airport and Airway Act of 1970 so that no flexibility was allowed in the use of the funds for the next fiscal year. U.S. CODE CONG. & AD. NEWS, 92d Cong., 1st Sess. 538 (1971). In 1971, the Congress allocated a minimum of \$107 million dollars for airport improvement grants and a minimum of \$300 million for the development and manufacture of air navigation facilities. *Id.* at 218.

136. Walk Interview, *supra* note 132.

claimed that in fiscal 1971 the FAA and the airports generally were not prepared to develop an adequate program for Airways Funds. Third, OMB works not for the agencies or the FAA in particular; rather, its function is to oversee the needs of the President's entire program.¹³⁷

FAA Evaluation

The Airways Bill

It is clear that the drafting and development implementation of major policy measures in the executive branch comes under the close scrutiny of the OMB. For the FAA and the Department of Transportation throughout the Airways legislation, OMB's methods caused problems which appear to have directly inhibited policy and program development. On the other hand, a notable defect in the processing of the Airways legislation supports OMB's and Treasury's objections to the development of the trust fund's concept. Much of the FAA and DOT drafting on this measure appeared haphazard and erratic. Congressman Rogers' comments in the House Airways hearings in 1969 seem pertinent here:

One of the problems I have seen in this committee over the years [is that] the FAA has not come in and really pinpointed what is needed and has not asked the Congress for many things.¹³⁸

The Airways bill files support this assertion. For example, although the FAA had set up a departmental Task Force on Airways legislation, they failed to consult Treasury—the most interested department in the executive—on the two key issues pertinent to developing a concrete legislative proposal. Thus on the issue of the users' tax and the trust fund concept, FAA and DOT spent at least a year commenting and revising various departmental proposals without considering the views of the Treasury.¹³⁹ Moreover, the comments of the interested agencies were solicited only after drafting a specific, detailed proposal, causing the proposal to be extensively redrafted to incorporate the views of the other agencies.¹⁴⁰

A second indication of the internal confusion and duplication is shown by the departmental directive placing Mr. Tidd and Mr. Webber directly in charge of the drafting of the Airways legislation. The legislation had lain virtually

137. Interview with anonymous representatives of OMB, March, 1972.

138. *House Airways Hearings*, *supra* footnote 94, at 101.

139. DOT-FAA note 29. Treasury was apparently not consulted until March 25, 1969, almost one year after drafting began.

140. DOT-FAA note 17.

dormant in the Task Force for nearly a year, and not until external pressure was applied did the Department establish a firm position.¹⁴¹

The FAA Draftsmen

The DOT and FAA draftsmen followed a pattern characterized mainly by reaction. Quick decisions and hurried administrative commenting followed long periods of relative inactivity. There are few draftsmen in the FAA. The legislative office is primarily geared toward reporting on congressional proposals, preparing memoranda and other supportive legislative material, particularly as it relates to implement the Airways Act. The legislative office serves as a compiler or recorder of legislative materials to be used in the FAA's review by congressional committees.¹⁴² Drafting in a formal sense, as the bill tracing illustrates, is done rarely. Moreover, when major legislative or policy problems face the office, the matter is brought to the attention of the legislative office at DOT. Thus, the real FAA draftsmen are to be found in the DOT General Counsel's Office.

However, there is considerable hope both in and out of the FAA that the experiences of the Airways bill drafting will mark a turning-point in FAA drafting procedures. The Airways bill gives the FAA new policies and programs. With these new programs should come additional responsibility for the initiation of legislative proposals and more refined and efficient drafting methods.

141. DOT-FAA notes 15-18.

142. Stewart Interview, *supra* footnote 82.

**DEPARTMENT OF TRANSPORTATION FILES
AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970 (DOT-FAA)**

- FILE NO. I. (4/18/67-5/20/68)** The files indicate that the idea for new airport legislation developed during the early part of 1st Session of the 90th Congress (1967). Throughout the remainder of the year the FAA was charged with development and drafting of the bill. In early 1968 Messrs. Webber and Tidd of the General Counsel's Office of DOT were given the Airport legislation assignment from the FAA. At this time, the files reflect accurately the processing of a major piece of legislation in DOT, but by May 1968, opposition to the proposed users' tax stifles the bill in the House of Representatives.
- FILE NO. II (12/13/68-6/16/69)** In the second file we note stiff interest opposition to the tax results in the drafting of a new proposal lowering the users' charge under the measure. The Nixon Administration reviews the legislation and with but a few changes processes the bill through the Department and the executive. The advent of the new administration seems to bring about a more orderly and prompt procedure regarding legislative matters, but this is partly attributable to the momentum of support which has built over the years. In June 1969, the legislation is introduced again.

NAME

POSITION

FILE NO. I

- | | |
|----------------|--|
| 1. Mr. Mackey | Assistant Secretary for Policy Development, DOT. |
| 2. Mr. Johnson | President of the United States. |
| 3. Mr. Boyd | Secretary of Transportation. |
| 4. Mr. Webber | Legislative Chief, Office of the General Counsel, DOT. |
| 5. Mr. Tidd | Ass't General Counsel, DOT. |
| 6. Mr. Rommel | Director of Legislative Reference Service, OMB. |

FILE NO. II

- | | |
|------------------|--|
| 7. Mr. Mayo | Director, BOB. |
| 8. Mr. Volpe | Secretary of Transportation |
| 9. Mr. McCormack | Speaker of the House of Representatives. |

**AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970
(DOT-FAA)**

FILE NO. I.

- | | |
|-------------------|---|
| 1. April 18, 1967 | <i>Subject:</i> Meeting of Task Force, headed by Mr. M. Cecil Mackey, Ass't Secretary for Policy Development, to discuss proposed bill for Airport and Airway development. |
| 2. April 24, 1967 | <i>Subject:</i> Draft of bill prepared by the Task Force with accompanying statement on the need for such legislation.
<i>Comment:</i> The bill, the files indicate, then was circulated |

- for comment around the DOT during the next several months.
3. Sept. 20, 1967
From President Johnson to Secretary of Transportation, Allan Boyd.
Subject: Requests legislation on an Airways' Users' Tax.
 4. Jan. 15, 1968
Subject: Draft of bill by Mr. Barkley Webber, Legislative Chief, Office of the General Counsel.
 5. Jan. 19, 1968
Subject: Meeting held to discuss the preceding draft. In attendance were personnel from the Airport Services Section of the Federal Aviation Administration and from the Budget Section, Planning Department and General Counsel's Office of the FAA. Further work on the draft was dropped pending resolution of policy differences between the Planning Department in FAA and the Planning Group in the Department of Transportation.
 6. March 19, 1968
Subject: Messrs. Webber and Tidd receive legislative assignment to work on the bill. The President had taken no action on the bill as of yet; however, internal policy making was to continue in such areas as budget requests, acquiring data on airports, etc.
 7. March 26, 1968
Subject: Draft of bill prepared by Mr. Tidd and circulated in the FAA for comment.
 8. March 28, 1968
Subject: Draft of bill circulated by Mr. Webber to Personnel, Budget and other FAA offices.
 9. March 28, 1968
Subject: Comments received from the Acting Associate General Counsel, General Legal Services Division in FAA.
 10. March 28, 1968
Subject: Comments received from Director, Airport Service. These comments were also considered by the Associate Administrator for Operations in FAA.
 11. April 1, 1968
Subject: Comments of the General Counsel sent to the FAA.
 12. April 2, 1968
Subject: Revised draft of bill prepared by the legislative section of the General Counsel's Office in the DOT, incorporating the comments of the FAA General Counsel.
 13. April 1968
Subject: Draft of the bill sent to the OMB for comment and clearance. Budget sent the bill to other interested agencies for comment.
 14. April 11, 1968
Subject: OMB meeting held at the DOT to discuss the proposed bill.
 15. May 1, 1968
Subject: Memo to the file by Mr. Webber concerning the opposition that the OMB was receiving from the other agencies in the form of comments.
 16. May 3, 1968
Subject: New draft of the bill incorporating suggestions from the April 11 meeting sent to Mr. Rommel in the OMB for information purposes only. In an attached letter the Secretary indicates that he will discuss Budget's recommendations with the White House.
 17. May 3, 1968
From Mr. Tidd to Mr. Webber.
Subject: Draft of bill with notations on changes made as

- suggested by the Department of the Treasury and other agencies.
18. May 6, 1968 *Subject:* Draft of bill circulated by Mr. Webber within the FAA for comment.
19. May 7, 1968 *Subject:* Memorandum received from the Director of Airport Service to Mr. Webber with comments on the bill.
20. May 10, 1968 From Mr. Webber to Mr. Rommel, OMB.
Subject: Contains amendments to the May 3 draft of the bill.
21. May 14, 1968 From Mr. Webber to files.
Subject: Notes that the Secretary is clearing many of the proposals with the President.
22. May 19, 1968 *Subject:* Bill cleared by the OMB.
23. May 20, 1968 *Subject:* Bill sent to the House for action by the Congress.
24. No Date *Subject:* During the next several months problems developed over the users' tax which became a part of the bill. The files indicate hundreds of letters from various interest groups, governmental agencies and private individuals voicing extreme opposition to the tax.

FILE NO. II

25. Dec. 13, 1968 *Subject:* New draft of the bill is prepared because the bill had been sent back to the Department because of the problems with the users' tax that had developed. This draft was circulated for comment within the Department.
26. Jan. 15, 1969 From Mr. Webber to files.
Subject: Indicates that he has discussed several of the problems with Budget and with Mr. Tidd. Some of these points were, it is indicated, discussed with the Secretary by Mr. Tidd also.
27. Jan. 16, 1969 *Subject:* New draft containing provisions for significantly lower taxes prepared and circulated for comment.
28. Feb. 12, 1969 *Subject:* Memo from the General Counsel of FAA to Mr. Webber calling for several changes in the language of the tax provision as a result of discussions with the Secretary and his staff.
29. March 25, 1969 From the Deputy Under-Secretary to the General Counsel, the Ass't Secretary for Policy and International Affairs and the Associate Administrator for Plans in the FAA.
Subject: Description of the plan for the presentation of the legislative package to the Congress:
- (1) Review legislation with members of OMB.
 - (2) Review legislation with appropriate Treasury officials.
 - (3) Review legislation with Council of Economic Advisors.
 - (4) Assuming nominal agreement, the Secretary will conduct briefing with Director of OMB, Secretary of the Treasury and Chairman of the Council of Economic Advisors.
 - (5) Secretary will offer to brief the President.
 - (6) Informal contacts with Congress will be established.

- (7) Secretary will brief interested members of industry.
(8) Civil Aeronautics Board will be briefed.
(9) The bill will be submitted to Congress after OMB clearance.
30. May 7, 1969 *Subject:* Final inputs received to be incorporated into the legislative package before submission to the OMB.
31. May 22, 1969 *Subject:* Memorandum to the Ass't Sec'y for Policy and International Affairs contains copies of the bill and submits to office for comment regarding the policy problems that may develop.
32. May 28, 1969 From Mr. Mayo, Director, OMB, to Secretary Volpe.
Subject: Comments on the proposed legislation.
33. June 2, 1969 *Subject:* Memorandum from Secretary Volpe discussing the OMB comments on the bill.
34. June 15, 1969 *Subject:* Legislative package cleared by OMB.
35. June 16, 1969 *Subject:* Bill transmitted to Speaker McCormack for House action.

FILES END AT THIS POINT: