



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