



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

SEP 26 2013

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

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

Dear Messrs. Cooper and Carlee:

As you know, it is the Federal Aviation Administration's (FAA) responsibility to review and approve the transfer of federal obligations or a change in governance structure from a current airport sponsor to another eligible sponsor, and to issue an airport operating certificate under 49 USC §44706 as implemented by 14 CFR Part 139. Who governs an airport is a local decision. However, we must ensure that federally obligated airports remain safe and financially self-sustaining to support and maintain our aviation system. As a matter of federal law, the FAA has the fundamental obligation to ensure an airport sponsor is capable of assuming all grant assurances, safety compliance, and other federal obligations, as well as has the expertise to operate the airport. We do this by making a determination on whether an entity is an eligible Airport Improvement Program (AIP) sponsor, and has the legal authority to apply for, and comply with, AIP grants, and to finance and carry out a proposed AIP project. This obligation extends to reviewing sponsor eligibility when state and local governments propose a change in the airport governance structure and ensuring there is no ambiguity regarding responsibility for the federal obligations.

The FAA sent you a letter dated July 29, 2013 regarding Senate Bill 380 (referred to hereinafter as the "Commission Act") creating the Charlotte Douglas International Airport Commission. We advised that the FAA had several concerns about the legislation, and therefore requested the Attorney General of the State of North Carolina to provide a legal opinion advising who the airport sponsor is within the meaning of this legislation, and the entity empowered to enter into a grant agreement and operate the airport under the laws of the State of North Carolina. As explained in detail below, not having these questions answered about precisely how authority has been redistributed under the Commission Act creates an uncertainty that impedes the ability of the FAA to ascertain who the sponsor of the Airport is and who is responsible for the operating certificate.

On August 9, 2013, the North Carolina Superior Court issued an Order granting a motion for a Preliminary Injunction halting implementation and enforcement of the Commission Act, subject to certain conditions. The Commission is permitted to only exercise certain limited powers under the law. The Commission is barred from exercising the powers and duties assigned to it by the law 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. The Order did 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. The Order permits the Commission to file a motion to dissolve the preliminary injunction, 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.

On August 13, 2013, the Special Deputy Attorney General in the North Carolina Attorney General's office sent a letter advising that it would not be appropriate for the Attorney General's Office to issue an opinion since the matter was the subject of pending litigation. In his letter, the Special Deputy Attorney General chose instead to reassert the exposition of the law that his office had already presented in the pending matter in state court. He stated that "the Commission Act does not effect a transfer of any functions away from the City of Charlotte; it merely redistributes governing authority within the City." In a follow up telephone call on August 23, we agreed to give the Attorney General's Office additional time to see if it was possible to provide a more substantive response and allow time for the parties to reach a consensus on the interpretation of the legislation if possible. On September 19th, the Special Deputy Attorney General confirmed that the Attorney General's Office would not be providing any additional information to address the issues on which the FAA sought clarification.

The FAA reviewed the Amended Motion for Preliminary Injunction filed by the City of Charlotte, and the Airport Commission's Opposition to the Preliminary Injunction, and the various affidavits filed by the parties in the Superior Court case. These pleadings were all filed after the agency's July 29, 2013 letter. The pleadings raise an issue about whether the Commission is an agency of the City or a new, separate, and independent entity under the Commission Act. As noted above, the Special Deputy Attorney General stated in his letter of August 13th that "although the authority to operate the airport is no longer vested in the City Council, it is still within an agency of the City...the Commission Act simply effected an internal redistribution of authority within the City." The Commission similarly argues that the Commission is an agency of the City. Commission Opposition, pages 23-26. However, the City in its brief in support of the motion for preliminary injunction contends that "the Commission created by the Act is a separate unit of local government and not an agency of the City for the purpose of operating and controlling the Airport." The City relies on section 5.55(a) of the Commission Act in questioning the "separateness" of the Commission. Section 5.55(a) provides that 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." North Carolina General Statute 159-7 defines a

“‘special district’ as a unit of local government (other than a county, city, town, or incorporated village) that is created for the performance of limited governmental functions or for the operation of a particular utility or public service enterprises.”

The FAA’s Southern Region received a letter, dated August 14, 2013, from the Airport Commission Executive Director requesting that the FAA acknowledge and recognize that the City, acting through the Commission, will remain the operator of the Charlotte Douglass International Airport, in accordance with applicable law under the City’s existing Part 139 certificate. The letter went on to say “if the FAA deems that the issuance of a new or amended Part 139 certificate identifying the City as the owner of the Airport and the City, acting through the Commission as the Airport’s operator, is required, then the Commission hereby requests that the FAA issue such a new or amended certificate. FAA Form 5280-1 “Application for Certificate” and a “Section D. Remarks” form were submitted with the letter. The August 14 letter explained that “with regard to the requirement that two (2) copies of the existing ACM (Airport Certification Manual) also be filed, that does not appear to be appropriate under these circumstances.”

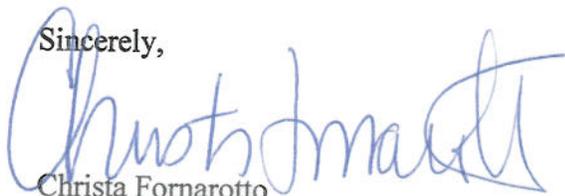
We sought the assistance of the Attorney General’s Office to address the status and authority of the Commission under the Commission Act in light of the pending litigation. It was anticipated that the opinion would explain the Commission’s status, and clarify whether the Commission acts independently of the City. As noted above, not having these questions answered about how authority has been redistributed under the Commission Act creates an uncertainty that impedes the ability of the FAA to determine who the sponsor of the Airport is and who is responsible for the operating certificate.

Absent an interpretation clarifying (1) whether the Commission is an agency of the City or an independent, special district, and (2) who is now responsible for the key roles of the airport sponsor and operator, the FAA cannot carry out its fundamental obligation under federal law. Therefore, it is our view that the Superior Court must address at least these questions of state law before the FAA would be in a position to review sponsor eligibility and determine whether a Part 139 Operating Certificate needs to be issued.

Until the FAA makes a determination on the governance structure and the possible transfer of federal obligations, and issues an Airport Operating Certificate to the new entity under federal law, the City of Charlotte remains the airport sponsor and the certificate holder. The parties should all be mindful of the federal grant assurances and the revenue use requirements, including FAA’s *Policy and Procedures Concerning the Use of Airport Revenue*, 64 Fed. Reg. 7,696 (Feb. 16, 1999) (Revenue Use Policy) as this process moves forward. The FAA continues to encourage the State and the City to work together to resolve the status and authority of the Commission under State law.

Should you require any additional information, please contact Kevin C. Willis, Manager, Compliance Division, FAA Office of Airports, Washington, DC 20591, (202) 267-8741.

Sincerely,



Christa Fornarotto
Associate Administrator
for Airports