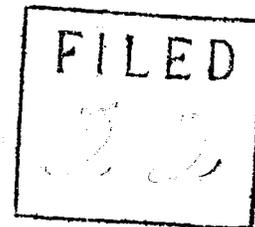


DIVISION OF RESOURCES AND DEVELOPMENT:) Federal Government cannot con-
CIVIL AIR REGULATIONS:) fer on state agencies and
COURTS:) courts power to enforce civil
air regulations.

June 17, 1947

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Mr. Hugh Denney, Director
Division of Resources and Development
Department of Business and Administration
Jefferson City, Missouri

Dear Mr. Denney:

This is in reply to your letter of June 9, 1947,
requesting an opinion from this department, which reads as
follows:

"The Civil Aeronautics Board, through
its legal counsel, has requested the
member states of the National Associa-
tion of State Aviation Officials to se-
cure opinions of their respective
Attorney-Generals concerning the legality
of federal legislation conferring upon
the states the powers to enforce safe fly-
ing sections of the Civil Air Regulations.

"Can the Federal Government, by passing
enabling legislation, confer upon the
State of Missouri, its enforcement agen-
cies and courts, the power to enforce
all or a part of the Civil Air Regula-
tions?"

"An early opinion on this question will
be very much appreciated as it will enable
us to make this information available to
the officials of N.A.S.A.O, who desire to
formulate a policy to present to the Civil
Aeronautics Board."

It is a general rule of law that the Federal Govern-
ment cannot confer jurisdiction upon state agencies and courts.
In the case of *Ex Parte Gounis*, 263 S. W. 988, the supreme
Court, In Banc, said at page 990:

"* * * Congress cannot confer jurisdiction upon the state courts; neither can it regulate or control their modes of procedure. * * *

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"state courts cannot take cognizance of criminal offenses committed against the authority of the United States, or of actions for the recovery of penalties and forfeitures (wholly penal in character) arising under the laws of the United States. * * *"

Under this authority it is clear that the Federal Government cannot confer upon the enforcement agencies and courts of Missouri the power to enforce civil air regulations which are penal in nature and for the recovery of penalties and forfeitures, and punish violators thereof.

However, the jurisdiction of the state and federal courts may be concurrent with respect to civil actions under the federal laws, but even then Congress cannot confer that jurisdiction on the state courts. Such jurisdiction can only result from the Constitution and laws of the state. This rule is set out in *Ex Parte Gounis*, supra, page 990:

"* * * With respect to civil actions the jurisdiction of the state and federal courts may be concurrent. In cases arising under the Constitution, laws, and treaties of the United States, if exclusive jurisdiction in the United States courts be neither express nor implied, 'the state courts have concurrent jurisdiction whenever, by their own Constitution, they are competent to take it.' * * * * *"

And is followed in *Niehaus v. Joseph Greenspon's Son Pipe Corp.*, 164 S. W. (2d) 180, where the St. Louis Court of Appeals said at page 186:

"Indeed, in cases of a civil nature arising under acts of Congress and not involving the enforcement of penal laws, a state court, if invested with competent jurisdiction by the constitution and laws of its

own sovereignty, has concurrent jurisdiction with the federal courts, unless, in the enactment of the particular legislation which creates the right of action, its jurisdiction is expressly or impliedly denied. * * * * *

"However, notwithstanding the fact that a civil case arising under federal laws may be adjudicated in a state court if falling within the general scope of its jurisdiction, the state court, in entertaining such case, retains its identity as a state court, with its sole power to function as a court derived from the authority of the state creating it. Minneapolis & St. Louis R. Co. v. Bombolis, supra. In other words, if the state court has competent jurisdiction to enforce the federal right, it is for the reason that the state itself has so invested it; and Congress can neither confer jurisdiction upon a state court, nor by the same token, can it regulate or control its mode of procedure in the exercise of the jurisdiction it possesses. * * * * *"

We are not aware of the enactment of any particular legislation which creates such jurisdiction in the state courts. If the courts were to hold otherwise, the entire burden of enforcing the civil air regulations, so far as could be done through the prosecution of civil actions, could be imposed upon the state enforcement agencies and courts. The court, speaking of the National Prohibition Act, said in the Gounis case, at pages 991-992:

"We entirely agree with the petitioner that Congress is without power to compel the state courts to assume jurisdiction of actions brought to enforce the provisions of the National Prohibition Act. If the United States can institute such actions in state courts by a county prosecuting attorney, it can do so by the Attorney General of the United States or any United States Attorney; and if the state courts are bound to entertain jurisdiction in such actions, then the entire burden of enforcing

the National Prohibition Act, so far as it can be done through the prosecution of civil actions, can be transferred from the courts of the United States to those of the states. In such event the state courts through the stress of national business would cease to function locally. In this connection what is said by the Supreme Court of New Jersey in *Rushworth v. Judges*, supra, is in point:

"If Congress has, without the consent of the state, the power to impose such a duty upon the state courts, there is no legal limit to the authority of the national Legislature to burden the state courts with such a volume of business as to essentially impair their capacity to exercise the judicial functions for which they were created by the state.

* * * * *

"* * * Where an act of Congress, such as the National Prohibition Act, is designed to suppress a public evil, it is clearly the duty of Congress to provide efficient national instrumentalities, including courts, for its enforcement. It cannot impose that burden or any part of it upon the state courts; nor is there in any case an implication of duty on the part of a state court to lend its jurisdiction to the enforcement of the laws of the United States in behalf of the United States. That duty devolves wholly upon the courts of the United States, which were created for the purpose of maintaining in part its sovereign authority.

"* * * There is no apparent reason, therefore, for the state's prosecuting officers to institute, or its courts to entertain, actions under the federal law for the enforcement of constitutional prohibition.

If in the proper exercise of their respective powers and prerogatives they effect enforcement of the state law they will have discharged in full measure the duties severally incumbent upon them in that behalf."

It is the duty of the Federal Government to furnish agencies and instrumentalities for the purpose of enforcing its laws.

Our conclusion is further strengthened by the rule that such officers must look to the statutes for their authority. In *Lamar Township v. City of Lamar*, 261 Mo. 171, the court held, at page 189:

"Officers are creatures of the law, whose duties are usually fully provided for by statute. In a way they are agents, but they are never general agents, in the sense that they are hampered by neither custom nor law and in the sense that they are absolutely free to follow their own volition. * * * * * The law which fixes his duties is his power of attorney; if he neglect to follow it, his cestui que trust ought not to suffer. In fact, public policy requires that all officers be required to perform their duties within the strict limits of their legal authority."

In the absence of legislation to that effect, the law-enforcement officers and the officers of the courts are not authorized nor permitted to take jurisdiction of the enforcement of federal civil air regulations.

Conclusion

Therefore, it is the opinion of this department, that the Federal Government cannot confer upon the enforcement agencies and courts of Missouri the power to enforce civil air regulations.

Mr. Hugh Denney, Director

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However, the state may, by appropriate legislation, invest in such courts jurisdiction concurrent with that of the federal courts with respect to such regulations as are civil in nature.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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