

Revenue Diversion



Federal Aviation
Administration

New England Region Airport Compliance Workshop

Presented to: New England Airport Conference

By: Elizabeth Newman

Date: March 10, 2010



Revenue Diversion

- **49 U.S.C. § § 47107(b)(1), 47133**
- **Grant Assurance # 25**
- **Policy—64 Fed. Reg. 7696**
- **Revenue must be used for capital and operating costs of:**
 - The airport
 - The local airport system
 - Other facilities owned and operated by the sponsor that are directly related to the air transportation of passengers or property



Revenue Diversion

- **Exception**

- A law controlling financing by the airport owner/operator enacted prior to September 2, 1982 permits it
- A covenant in a debt obligation of the airport owner/operator issued prior to September 2, 1982 provides for it

Revenue Diversion

- **Applies to both private and public owners who have accepted an AIP grant after October 1, 1996**
- **Applies to direct or indirect services**
- **Airports are required to submit annual financial reports**
- **Enforcement through withholding of grant money or through civil penalty action**



Revenue Diversion—Permissible Use

- **Capital and operating expenses**
- **Promoting the airport and its services**
- **Reimbursement for owner/operator contribution to capital and operating costs**
- **Lobbying and attorney fees**
- **General government services or officials, in the proportion they serve the airport**



Revenue Diversion—Prohibited Uses

- **Payments that exceed the fair and reasonable value of services provided to the airport**
- **General Economic Development**
- **PILOTS**
- **Direct subsidies of air carriers**
- **Rental or use of facilities for non-aeronautical use at less than market value**



LAX – Revenue Diversion Case

**Air Transport Association of America and
Aircraft Owners and Pilots Association**

v.

City of Los Angeles

- **FAA Docket No. 13-95-05**
- **Decision issued June 1, 2009**
- **The Century City Freeway Project at Los Angeles, California**



Issue

- Decide on the disposition of approximately \$58 million in proceeds
 - from involuntary condemnation of property City had acquired using local funds for Los Angeles International Airport
 - condemned for an interstate highway known as “Century Freeway”



Preliminary Determination

Found certain funds were

- Airport revenue
- Not airport revenue and properly diverted under FAA policy of the time



FAA has authority and discretion to define airport revenue in a manner consistent with the purposes of the statute

Show Cause Order

- **FAA issued a Show Cause Order in July 2005**
- **Show Cause Order:**
 1. enabled the parties to have a final opportunity to be heard on the issues;
 2. supported the Preliminary Decision; and
 3. denied all outstanding motions



Specific Issues

- Whether Director properly characterized the proceeds from condemnation as not airport revenue under FAA policy in effect in 1988.
 - ATA and AOPA argued that proceeds are airport revenue under section 511(a)(12) of the Airport and Airway Improvement Act), 49 USC §47107(b), and that compliance policy first announced in 1995, and subsequently finalized in 1999, should have been retroactively applied.
- Whether Director used appropriate methodology for analyzing compensation paid for condemnation.

Final Agency Decision

- Reasonable for FAA to address use of airport revenue in accordance with the applicable handbook provisions in effect at time matter arose
 - **FAA bound by its own current orders**
- Air rights effectively permanent transfer
 - **proceeds were properly transferable to the general fund**
- State appraisal was a valid representation of the valuation used in the condemnation



Final Agency Order

- Conclusions of fact and law in the Show Cause Order affirmed with clarifications, corrections, and additional findings
- Complaints filed by ATA and AOPA dismissed
- City directed to return to airport fund \$1,986,718.72 plus 3 percent interest from March 8, 1995) until airport reimbursed total amount of principal and interest



Effect Now

- FAA subsequently issued interim and final policies and procedures clarifying term “revenues generated by the airport” for purposes of AIP grant obligations extends to involuntary sales of land acquired with local funds
 - [Policy and Procedures Concerning the Use of Airport Revenue](#) (64 Fed. Reg. 7696)
 - http://www.faa.gov/airports/resources/publications/federal_register_notices/media/obligation_final99.pdf





Questions?