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Municipality's Aircraft Noice Control Ordinances Upheld

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MUNICIPALITY'S AIRCRAFT NOICE CONTROL ORDINANCES UPHELD

ENVIRONMENTAL LAW–NOISE POLLUTION: Municipal ordinances enacted to reduce noise at city-owned and operated airport held not preempted by Federal Aviation Act. *Santa Monica Airport Association v. City of Santa Monica,* 659 F.2d 100 (9th Cir. 1981).

The city of Santa Monica is located within the greater Los Angeles basin, just west of Los Angeles. Santa Monica owns and operates its own airport. The airport is located within the city's boundaries and is enclosed by residential neighborhoods on three sides. The fourth side is under development.

An increase in the use of jet aircraft and helicopters led the Santa Monica city council to enact several ordinances designed to control noise in and around the airport. The ordinances prohibited all helicopter flight training,[1] all jet landings and takeoffs,[2] takeoffs and landings past a certain hour at night,[3] and touch-and-go, stop-and-go, and low aircraft approaches on weekends.[4] The city also imposed fines for any jet landings and takeoffs[5] and for exceeding a maximum single event noise exposure level (SENEL).[6]

The Santa Monica Airport Association (SMAA), a nonprofit organization comprised of airport users,[7] filed suit against the city of Santa Monica in federal district court attacking the ordinances. The complaint in *Santa Monica Airport Association v. City of Santa Monica*[8] presented four issues to the trial court for determination. The issues were whether federal law preempted municipal enactment of

1. Santa Monica, Cal., Ordinance 10105A2 (1977).
2. Santa Monica, Cal., Ordinance 10105A1 (1975).
3. Santa Monica, Cal., Ordinance 10101 (1977).
4. Santa Monica, Cal., Ordinance 10111C (1979).
5. Santa Monica, Cal., Ordinance 10105E (1975).
6. Santa Monica, Cal., Ordinance 10105B (1979). SENEL is a method of measuring in decibels the amount of noise emanating from an airplane over a period of time. Meters at various locations around the airport obtain readings necessary for the measurements. The meters are hooked to a computer that interprets and locates aircraft violating the noise standard. Santa Monica Airport Ass'n v. City of Santa Monica, 481 F. Supp. 927, 941 (C.D. Cal. 1979).
7. The membership consists of pilots and aircraft owners who use the Santa Monica airport and operators of aviation-oriented businesses. 481 F. Supp. at 930.
8. 481 F. Supp. 927 (C.D. Cal. 1979).

aircraft noise control ordinances,[9] whether the ordinances violated the commerce or equal protection clauses of the United States Constitution,[10] whether the city of Santa Monica had breached various grant and lease agreements,[11] and whether the ordinances violated the Federal Aviation Act.[12] Except for the ban on jet landings and takeoffs and the accompanying fines, the district court for the Central District of California held all of the ordinances to be valid and constitutional.[13] The Court of Appeals for the Ninth Circuit affirmed the district court.[14] The appellate opinion addressed only the issue of preemption at length.

SMAA made three preemption arguments on appeal. First, it contended that the Federal Aviation Act preempted the enactment of municipal aircraft noise control ordinances. Second, SMAA asserted that the SENEL method of regulation frustrated "the United States' exclusive control over aircraft flight and management."[15] Finally, SMAA argued that the SENEL method was invalid because it induced aircraft operation inconsistent with federal law.

Santa Monica countered that the Federal Aviation Act did not preempt municipal proprietors from enacting noise control ordinances. The city contended that a municipality's proprietary powers allowed it to enact such ordinances to enhance the quality of the environment and to help limit the city's financial liability.[16]

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9. Preemption occurs when there is an outright conflict between a federal scheme and a state requirement as well as when congressional action creates an implicit barrier to state regulation, e.g. when state regulation would unduly interfere with the accomplishment of congressional objectives. G. GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 344 (10th ed. 1980).

10. U.S. CONST. art. I, § 8, cl. 3; amend. XIV.

11. The city of Santa Monica had entered into various airport leases as well as grant agreements with the Federal Aviation Administration to finance the building of the airport. SMAA argued that it had third party beneficiary status and that the ordinances violated those portions of the agreements which provided that the airport "shall be available for public use on fair and reasonable terms and without unjust discrimination." Santa Monica Airport Ass'n v. City of Santa Monica, 481 F. Supp. 927, 946 (C.D. Cal. 1979). The district court disagreed with SMAA's argument that any individual who uses the airport or leases space at it may enforce the grant agreements as third party beneficiaries. The court of appeals affirmed.

12. 49 U.S.C. §§ 1301-1552 (Supp. 1980).

13. Santa Monica Airport Ass'n v. City of Santa Monica, 481 F. Supp. 927, 932 (C.D. Cal. 1979).

14. Santa Monica Airport Ass'n v. City of Santa Monica, 659 F.2d 100 (9th Cir. 1981).

15. *Id.* at 104.

16. As an owner-operator of the airport, the city of Santa Monica can be held constitutionally liable for the "taking" of private property near the airport under the Supreme Court's holding in Griggs v. Alleghany County, 369 U.S. 84, *reh. denied*, 369 U.S. 857 (1962). *Griggs* held that a municipal airport proprietor can be held financially responsible for property damage resulting from aircraft noise from overflying commercial flights. A municipality can only be held liable for this sort of "taking" of property when it owns and operates its airport. The court of appeals agreed that the city of Santa Monica needed a way to limit its liability in light of the holding in *Griggs*.

SMAA argued that the United States Supreme Court's decision in *Burbank v. Lockheed Air Terminal*[17] resolved the first preemption issue in its favor. The Court in *Burbank* held that, in light of the pervasive nature of the scheme of federal regulation, the federal government has full control over aircraft noise, preempting state and local control. In so doing, the Court reviewed the legislative history behind the portion of the Federal Aviation Act that addresses aircraft noise. The *Burbank* opinion quoted portions of the Senate record:

> [T]he proposed legislation will not affect the rights of a State or local public agency, as the proprietor of an airport, from issuing regulations or establishing requirements as to the permissible level of noise which can be created by aircraft using the airport. Airport owners acting as proprietors can presently deny the use of their airports to aircraft on the basis of noise considerations so long as such exclusion is nondiscriminatory.[18]

The appellants in *Santa Monica* argued that this legislative history did not create a municipal proprietor exemption from federal aircraft noise regulation. The Ninth Circuit rejected this argument.

The city of Santa Monica further relied on *National Aviation v. City of Hayward*[19] to support the validity of its ordinances. In that case, the federal district court for the northern district of California held that the Federal Aviation Act did not preempt a municipal night curfew ordinance. SMAA argued that following *Hayward* would render *Burbank* meaningless. SMAA contended that, because most of the nation's airports are municipally owned, following Santa Monica's argument would grant municipalities freedom to impose ordinances without restrictions. The court in *Santa Monica* held that legislative history clearly demonstrated congressional intent not to preempt a municipal airport proprietor's right to enact noise control ordinances.

SMAA, conceding the existence of a municipal proprietor's exemption, next argued that federal law preempted the use of the SENEL method. This method monitors noise created by aircraft in flight. SMAA contended that the Federal Aviation Act has exclusive control over aircraft in flight, thereby preempting the use of the SENEL method. Turning again to the legislative history, the court of appeals found congressional intent to allow a municipality flexibility in fashioning reasonable noise regulations. The court found SENEL to be one of the most reasonable monitoring methods available to Santa Monica and therefore upheld its use.

Finally, SMAA argued that "preemption as applied" invalidated

17. 411 U.S. 624 (1973).
18. *Id.* at 635-36 n.14.
19. 418 F. Supp. 417 (N.D. Cal. 1976).

the SENEL ordinances. SMAA contended that "because the SENEL system induces such [unsafe] practices within the airspace and as a part of flight [by causing pilots to attempt to 'beat the box'], it amounts to a local regulation of airspace and flight which matters are within the exclusive domain of the federal government."[20] The Ninth Circuit held that the SENEL ordinances did not regulate airspace or flight because "the tendency to violate a certain law does not render the law improper or illegal."[21] The court rejected SMAA's final preemption argument.

The opinion in *Santa Monica* recognizes a municipality's need to protect against potential liability. If a city can be held liable for property damage resulting from aircraft noise, then perhaps it should be able to enact noise control ordinances without the fear of federal preemption.

While the holding in *Santa Monica* appears to grant municipal proprietors broad discretion to enact noise control ordinances, the facts in *Santa Monica* are unique. The airport was owned and operated by the city and located within its borders. The airport was also too short to accommodate commercial airlines. Users of larger airports may successfully distinguish the case on these grounds in attacks on municipal aircraft noise control ordinances. Future judicial decisions may therefore limit the opinion in *Santa Monica.*

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20. Santa Monica Airport Ass'n v. City of Santa Monica, 481 F. Supp. 927, 941 (C.D. Cal. 1979) *as quoted in* Santa Monica Airport Ass'n v. City of Santa Monica, 659 F.2d 100, 105 (9th Cir. 1981).

21. Santa Monica Airport Ass'n v. City of Santa Monica, 659 F.2d 100, 105 (9th Cir. 1981).