

# Airport Fees



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Airports can charge the locals extra.

ONE OF THE MANY “assurances” that airports give in order to receive federal funds is that the facility will be available for public use on “reasonable conditions” and without “unjust discrimination.”

In other words, an airport can set conditions for users and even discriminate against some users, as long as the discrimination is “just.”

In the politically correct world of our federal government, what is “just” discrimination? A recent U.S. Circuit Court of Appeals decision affirmed an FAA decision that an airport may “discriminate” against airport tenants by charging them fees that are not charged to other aircraft operators.

The case began with R/T 182, LLC, a company that owned a Cessna 182 based at Portage County Airport (29G) in Ravenna, Ohio. R/T filed a complaint with the FAA stating that the Portage County Regional Airport Authority (PCRAA) violated the statutory assurance against unjust discrimination because the authority assessed fees against airport tenants but not transient aircraft.

The PCRAA adopted a fee structure under which aircraft based at the airport are charged an annual fee depending on weight and the frequency of usage. The fee range is not large, and is therefore not strongly related to the impact each aircraft has on the airport. The lightest aircraft used the fewest times is charged a fee of \$4.17 a month, while the largest aircraft used frequently is charged \$35.00 a month. Aircraft that land at the airport, but are not based there, are not charged this fee.

The FAA found that even if the Airport Authority could record all of the transient users, the process of billing and collection could easily cost more than the fees generated, and therefore the airport was reasonable in not pursuing transient users. The FAA supported this finding with the fact that airports are open to the public and transient users may have no business relationship with the airport. Some airplanes merely touch and go again for practice purposes. It therefore found that discriminating between based-users and transient users was not “unjust.”

On appeal to federal court, the standard of review is whether there was “substantial evidence” supporting the FAA’s decision. The U.S. Circuit Court of Appeals agreed with the FAA’s conclusion that the collection costs would exceed the small fees imposed.

So where does the FAA draw the line on airport charges to general aviation? According to FAA policy, the FAA will not ordinarily investigate the reasonableness of a general aviation airport’s fees unless there’s evidence of a progressive accumulation of surplus aeronautical revenues. Experience shows that government agencies can churn through extraordinary sums of money without accumulating any surplus. This policy statement is perfectly designed to make sure that airport authorities burn up their budgets every year.

General aviation operators might take comfort in FAA policy statements such as: “Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.” This broad statement of fairness should protect you whether you fly a Cessna

182 or a Cessna Citation X.

There is less comfort for general aviation in statements like this: “A properly structured peak pricing system that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the policies expressed in this policy statement, establish fees that enhance the efficient utilization of the airport.” These “congestion” policies may be used to price out light aircraft, and business jets as well.

However, in at least one case, general aviation attacked itself over the issue of discrimination. According to a 2000 complaint filed with the FAA, Concord, N.C., Regional Airport (JQF), “in trying to establish a clean, modern business airport, made formal and informal decisions to preclude aircraft and owners who did not fit the city’s image and the city structured its rules and regulations to preclude aircraft that did not fit its business airport image.”

The complainant was the owner of an experimental aircraft, and he felt that Concord was driving him out to keep the business jet owners happy. He argued: “The city’s goal, I contend, was to keep out unattractive aircraft, small aviation businesses, hobbyists, greasy coveralls, collections of parts, and to attract wealthy owners with expensive aircraft. . . . Taken individually, each rule promulgated might seem to be reasonable, but when considered on the whole, the result is to deny access to a considerable number of aeronautical activities, in violation of the Assurances.”

Sadly, though not surprisingly, Concord succeeded in “discriminating” against “greasy coveralls.” One of the main complaints of the experimental aircraft owner was that the city was preventing him from working on his own airplane in his rented T hangar. The FAA’s position favored the city, stating that “Reasonable rules and regulations should be adopted to confine aircraft maintenance and fueling operations to appropriate locations with equipment to be commensurate to the job being done.” Even the “wealthy owners with expensive aircraft” are often frustrated by airport rules that severely restrict self-fueling and “hangar maintenance.”

FAA policy on self-fueling/maintenance states: “Any unreasonable restriction imposed on the owners or operators of aircraft regarding the servicing of their own aircraft and equipment may be construed as a violation of this policy. Where no attempt has been made to perform such services for others, aircraft owners should be permitted to fuel, wash, repair, paint and otherwise take care of their own aircraft.” This has been interpreted by the FAA to mean that there can be a great deal of *reasonable* restriction, which typically means safety-related restrictions.

The fight over “user fee” funding options for the FAA continues to drag on in Congress. Airport user fees have been with us for many years, and they have consistently stirred controversy and infighting among users, even within the general aviation community. Few people in aviation would point to these fee concepts to be a successful model to build on for the future. ■