

OFFICIAL OPINION NO. 69-34, Authority of State Aeronautics Commission to require safety lighting on navigational hazards additional to that required by Federal regulations

STATE OF SOUTH DAKOTA  
OFFICE OF  
THE ATTORNEY GENERAL

April 8, 1969

L. V. Hanson, Director  
State Aeronautics Commission  
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 69-34

**Authority of State Aeronautics Commission to require safety lighting on navigational hazards additional to that required by Federal regulations**

Dear Mr. Hanson:

You have requested an opinion as to whether or not the South Dakota Aeronautics Commission may require lighting on structures considered navigational hazards in addition to that required by the Federal Communications Commission and the Federal Aeronautics Administration.

The Federal Communications Commission derives their power in this area from 47 U.S.C.A. Sec. 303(q) which reads in relevant part:

Section 303 Powers and Duties of Commission.

"Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall-(q) have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to inter-navigation. The permittee or licensee shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section."

This authority has been held to extend to the Commission the duty of regulating, not only common carriers of radio but broadcasters of television programs. **Carter Mountain Transmission v. F. C. C.** 1963, 321 Fed 2d 359, 116 U.S. App. D.C. 93, cert. den. 375 U.S.951.

The Federal Aviation Administration lighting standards are described in F.A.A. circular 70/7460-1, Obstruction, Marking and Lighting.

It is my opinion that the standards prescribed by both the F.A.A. and the F.C.C. are considered minimum standards and do not preempt the field nor prohibit state regulation. This contention is strengthened by the letter you received from R. O. Zeigler, Area Manager, Department of Transportation, Federal Aviation Administration, Minneapolis Area Office, wherein he states "The Federal Aviation Administration does not object to installation of daytime strobe lighting on tall structures provided such lighting is in addition to marking and lighting standards described in F.A.A. Advisory Circular, 70/7460-1, Obstruction, Marking and Lighting. The Federal Communications Commission concurs."

The authority of the South Dakota Aeronautics Commission is derived from SDC 1960 Supp. 2.0215, Navigation Hazards: Temporary Structures; Application for Erection. No person, firm, corporation or association shall erect anywhere in this state a building, structure, tower of any kind over 150 feet in height above the terrain, without first filing with the South Dakota Aeronautics Commission a notice and application setting forth therein the location and dimensions thereof and procuring a permit approving the just and reasonable public safety of the location from the South Dakota Aeronautics Commission, . . ."

Also, SDC 1960 Supp. 2.0216 Navigation Hazards, Commission Makes Rules. The South Dakota Aeronautics Commission is authorized to issue such orders and make, promulgate and enforce such reasonable rules, regulations and requirements and to establish minimum standards and criteria, including lighting, painting, and markings of any buildings, structures, towers, and hazards referred to in SDC 1960 Supp. 2.0215, in the interest of safe operation of aircraft as it shall deem necessary in the public interest and safety. The power and authority to enforce such rules, regulations in requirements by injunction proceedings in any court of competent jurisdiction instituted in the name of South Dakota Aeronautics Commission, is hereby conferred.

A consideration of the State and Federal statutes would indicate that there is no conflict of authority so long as state rules and regulations are additional to the Federal requirements. Your specific question would therefore be answered in the AFFIRMATIVE.

Respectfully submitted,

Gordon Mydland  
Attorney General