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PLEASE REPLY TO DC OFFICE

SENT BY FIRST CLASS MAIL & FACSIMILE TO 570-384-4257

April 22, 2008

The Honorable Board of Supervisors
East Union Township
10 East Elm Street
Sheppton, PA 18248
Facsimile: 570-384-4257

Re: Ordinance No. 2008-6 Restricting Flight Activities

Dear Members of the Board:

I am Counsel to the Aircraft Owners and Pilots Association (AOPA). AOPA is a non-profit membership organization that represents more than 414,000 individual pilots and aircraft owners throughout the United States. AOPA's members engage in a segment of aviation known as "general aviation," a term that covers all aviation activity except for commercial airline and military flight. We have recently learned that East Union Township has enacted Ordinance No. 2008-6, which prohibits the "ascent, descent, ingress, egress and regress of aircraft in, into, from and out of East Union Township." AOPA's members are concerned that this legislation constitutes an attempt to prohibit or limit the flight of aircraft in airspace over East Union. You should be aware that, to the extent that this ordinance seeks to regulate the flight of aircraft over the Township, the ordinance is likely to be invalid under both federal and state law.

At the outset, we wish to assure you that the paramount interest of AOPA's members is safety in the operation of aircraft. However, the safe operation of aircraft in air commerce is an area specifically regulated by the Federal Aviation Administration

(FAA). Inherent in this delegation of authority is the fact that a single, uniform, pervasive Federal system of regulation is necessary to ensure that pilots act consistently and safely.

Under the Federal Aviation Act, Congress decreed that “[t]he United States Government has exclusive sovereignty of airspace of the United States.” 49 U.S.C. § 40103 (a)(1). The Act makes it clear that “[t]he Administrator of the Federal Aviation Administration shall develop plans and policy for the use of navigable airspace and assign by regulation

or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” 49 U.S.C. § 40103 (b)(1). The Administrator’s authority to regulate airspace includes a mandate to ensure the protection of persons and property on the ground. 49 U.S.C. § 40103(b)(2). Legislation such as the East Union Ordinance is preempted by federal law because it attempts to regulate the flight of aircraft in airspace, a field already occupied by the Federal government. See City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, 93 S. Ct. 1854 (1973).

In addition to being federally preempted, to the extent that this ordinance attempts to regulate flight over the Township, the ordinance is likely also invalid under state law. Under Pennsylvania’s Municipalities Planning Code, a local governing body’s zoning power is limited to regulating the usage of land and water bodies within the township. Act of July 31, 1968, P.L. 805, *as amended* 53 P.S. §10603. Consequently, East Union is overreaching its statutory grant of zoning authority by attempting to regulate the flight of aircraft in airspace.

These federal and state limitations on municipal regulation of aircraft flight reflect the practical concerns of pilots and those seeking to ensure air safety for the general public. If local flight regulations differ from what the Federal Aviation Regulations require, then it becomes nearly impossible for pilots to know how to operate their aircraft as they traverse the country. It would be unrealistic to expect pilots to have access to, and be familiar with, the local ordinances of every municipality they intend to fly over. To require such individualized effort of pilots operating in the navigable airspace of the United States is contrary to the intent of maintaining a comprehensive and consistent scheme of federal regulation over the safety of flight.

For these reasons, AOPA maintains that the East Union Ordinance, to the extent it attempts to regulate flight over the township, is an inappropriate exercise of the Township’s authority and is preempted by federal law. Therefore, we urge you to take immediate action to repeal the ordinance or redraft it to clarify that the Township is not prohibiting or limiting the flight of aircraft over East Union.

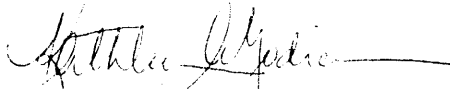
East Union Township Board of Supervisors

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This is not to imply that there cannot be local initiatives to help address citizen concerns regarding aircraft noise and safety issues. Over the years, AOPA has worked to promote pilot education and encourage pilots to voluntarily observe recommended noise abatement procedures. In our experience, most pilots exercise good faith efforts to comply with recommended operational restrictions. In addition, AOPA has provided resources to help inform local communities about aircraft operations and safety regulations, and assisted these communities in developing voluntary programs to address noise complaints. AOPA is willing to work with the Township of East Union in this, or another, capacity to help address the concerns of local residents regarding aircraft noise and safety.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathleen A. Yodice", with a horizontal line extending to the right.

Kathleen A. Yodice
Counsel for AOPA