SPIEGEL & MCDIARMID LLP

Port of Portland Prevails in Airport Revenue Use Case

April 23, 2019 | Peter J. Hopkins

On April 23, 2019, the United States Court of Appeals for the DC Circuit affirmed the Federal Aviation Administration's decision denying an administrative complaint brought by the Air Transport Association of America d/b/a Airlines for America (A4A) against the Port of Portland. At issue was whether the Port, which owns and operates the Portland International Airport, is violating federal law when paying certain utility charges imposed by the City of Portland as part of the Airport's operating costs.

The Airport sits within City limits and receives water and sewer services from the City. The Airport and City are independent entities. The dispute arose when the City began imposing separate line item charges as part of its combined sewer/stormwater/water bill to cover the cost of managing stormwater on public property throughout the City, and the cost of participating in the environmental investigation and cleanup of a Superfund site on the banks of the Willamette River. These costs are allocated by formula to all City water and sewer utility ratepayers, including the Port as the Airport's owner.

A4A argued that airport revenues could not be used to pay for the disputed utility charges because the charges are being imposed to pay for things that are not directly or substantially related to PDX, or for which PDX receives no value, in violation of the federal airport revenue use restrictions. Alternatively, the airlines argued that the disputed utility charges are an impermissible tax or fee on air transportation, in violation of the federal Anti-Head Tax Act.

The Court held that FAA correctly determined that the disputed components of the utility fees were imposed to recover general costs of the City utility, and, as calculated and assessed uniformly to all ratepayers based on a common cost allocation method, are operating costs of the Airport. The Court explicitly rejected the notion that operating costs of an airport must be directly and substantially related to the air transportation of passengers or property. The Court likewise rejected A4A's argument that, under federal law, airport operating costs must reflect the value of services and facilities provided to the airport. Finally, the Court rejected the notion that the disputed charges were impermissible taxes or fees on air transportation.

Spiegel partners Pablo Nüesch and Peter Hopkins represented the Port of Portland before FAA and the Court of Appeals.

FAA's Final Agency Decision can be found here, and the Court's decision denying the petition for review here.

Related Practices and Services

- Litigation and Appeals

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