

ILLINOIS POLLUTION CONTROL BOARD  
May 12, 1977

IN THE MATTER OF PETITION FOR )  
ADOPTION OF AN AMENDMENT TO )  
CHAPTER 8: NOISE REGULATIONS, ) R77-4  
ILLINOIS POLLUTION CONTROL )  
BOARD RULES AND REGULATIONS )

DISSENTING OPINION (by Mr. Young):

On May 12, 1977, the Board denied (3-2) the Motion by the Air Transport Association of America to postpone all evidentiary hearings in R77-4 until the completion of proceedings pending before the Federal Aviation Administration concerning proposed regulations to regulate airport noise submitted by the United States Environmental Protection Agency pursuant to the requirements of the Federal Aviation Act of 1958 as amended by the Noise Control Act of 1972 (PL 92-547). As the Motion points out, there are similarities between the proposed regulations now being considered by the Federal Aviation Administration and those proposed in R77-4 which might render Board hearings duplicative of the Federal proceedings. However, I could not grant the stay on that basis alone since any regulatory requirement adopted by the Federal Aviation Administration which would impact the State regulation during the pendency of R77-4 could be integrated into the final proposal before Board adoption.

I am unable to concur in the denial of the Motion, however, because I believe that the Board is governed in this proceeding by the decisions in The Village of Bensenville et al v. City of Chicago (1st Dist. 1973) 16 Ill.App.3d 733, 306 N.E.2d 562; LaSalle National Bank v. County of Cook et al (1st Dist. 1975) 34 Ill.App.3d 264, 340 N.E.2d 79; and Praznik v. Sport Aero, Inc. (1st Dist. 1976) 42 Ill. App.3rd 330, 355 N.E.2d 686 wherein the court concluded that the United States, under the Supremacy and Commerce clauses of the Constitution, has, through the Federal Aviation Act, as now supplemented by the Noise Control Act of 1972 and the regulations issued thereunder, so occupied the regulation of aircraft noise and air pollution as to pre-empt any state or local action in that field. I am unable to agree with the proposition set forth in the proponent's Petition for Adoption (at page 3) that we are able to disregard the decisions cited above by reference to footnote 14 of Burbank v. Lockheed Air Terminal,

Inc. 411 U.S. 624, 93 S.Ct. 1854 (1973). The Illinois Court had the Burbank decision, including the footnotes, before them before arriving at their decision in Bensenville and I must therefore reject the contention that a reliance on the "proprietor's rights" theory of Burbank avoids the clear statement of federal pre-emption made by the Illinois Court in Bensenville.

It is my feeling that the pre-emption question must be finally resolved before any further proceedings in R77-4 and I must therefore dissent from the Order of the Board in denying the Motion to Stay.

  
James L. Young

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Dissenting Opinion was submitted to me on the 3<sup>RD</sup> day of June, 1977.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board