



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

January __, 2022

Westchester County Board of Legislators
Michaelian Office Building
148 Martine Avenue, Suite 800
White Plains, New York 10601

Re: Request for Authorization to Commence Legal Action Regarding Ongoing Violations of Airport Terminal Use Procedures

Dear Honorable Members of the Board of Legislators:

Attached for your consideration is an Act which, if approved, would authorize the commencement of legal action, including litigation, against certain airlines that operate at the Westchester County Airport (the Airport).

As you know, Section 712.462 of the Laws of Westchester County sets forth the Airport's Terminal Use Procedures (TUPs). Subsection 1 states that the TUPs "shall apply to all use of the passenger terminal" by any airline "providing Passenger Service," and that "[a]ll Passenger Service provided at the Airport shall be provided at the Terminal." Subsection 2 defines "Passenger Service" as "any air service to or from the Airport for which seats are individually offered or sold to the public or a segment of the public, regardless of whether such individual seats are offered or sold directly by the aircraft operator, a charterer, another Airline, or any other entity." The TUPs have been reviewed by the Federal Aviation Administration (FAA), whose Office of the Chief Counsel has represented to the County that the TUPs comply with federal aviation law.

We have been informed by now-former Airport Director Peter Scherrer and his recent replacement, April Gasparri, that certain airlines operating at the Airport have been violating the aforementioned law by operating air service to or from the Airport (for which seats are sold to a segment of the public) not from the Terminal, as required, but rather from Forward Operating Bases (FBOs). Our Office has, in conjunction with outside aviation law counsel, the Wicks Group, PLLC, sent cease-and-desist letters to these airlines.

Unfortunately, certain of these airlines remain in violation of the TUPs. Accordingly, we have concluded that the only way to ensure compliance is to initiate legal action.



For these reasons, we are respectfully requesting authorization on behalf of the County to commence legal action against the airlines who remain in violation of County law, including possible litigation to obtain a declaratory judgment and injunctive relief against said airlines.

Very truly yours,

John M. Nonna, Esq.
Westchester County Attorney

JNM/dhc
Encls.

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if approved, would authorize the commencement of legal action, including litigation, against certain airlines that operate at the Westchester County Airport (the Airport).

Section 712.462 of the Laws of Westchester County sets forth the Airport's Terminal Use Procedures (TUPs). Subsection 1 states that the TUPs "shall apply to all use of the passenger terminal" by any airline "providing Passenger Service," and that "[a]ll Passenger Service provided at the Airport shall be provided at the Terminal." Subsection 2 defines "Passenger Service" as "any air service to or from the Airport for which seats are individually offered or sold to the public or a segment of the public, regardless of whether such individual seats are offered or sold directly by the aircraft operator, a charterer, another Airline, or any other entity." These TUPs have been reviewed by the Federal Aviation Administration (FAA), whose Office of the Chief Counsel has represented to the County that the TUPs comply with federal aviation law.

Your Committee has been informed by the County Attorney and the Airport Director that certain airlines operating at the Airport have been violating the aforementioned law by operating flights at the Airport (for which seats are sold to the public) not from the Terminal, as required, but rather from Forward Operating Bases (FBOs). The Office of the County Attorney has sent cease-and-desist letters to these airlines, in conjunction with outside aviation law counsel. Certain of these airlines remain in violation of the TUPs, however. Accordingly, the County Attorney seeks authorization to commence litigation against those airlines.

Your Committee concurs with the Westchester County Attorney, and therefore recommends that your Board approve the annexed Act to commence legal action, including litigation against these airlines for declaratory and injunctive relief.

Dated: White Plains, New York

_____, 2022

COMMITTEE ON

ACT NO.

-2022

AN ACT authorizing the County Attorney to commence legal action, including litigation, against certain airlines that operate at the Westchester County Airport to enjoin them from violating the County's Terminal Use Procedures.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The County Attorney is hereby authorized on behalf of the County of Westchester to commence legal action, including litigation, against certain airlines that operate at the Westchester County Airport (the Airport), and any other necessary parties, to enjoin them from further violation of the Laws of Westchester County, including but not limited to Section 712.462 thereof, which sets forth the Airport's Terminal Use Procedures (TUPs). Certain airlines have been in violation, and continue to be in violation, of the TUPs by operating flights at the Airport (for which seats are sold to the public) not from the Terminal, as required, but from Forward Operating Bases (FBOs). These airlines have each refused to comply with cease-and-desist letters and other communications intended to resolve the issue from both the Office of the County Attorney and from the Wicks Group, the County's outside aviation counsel.

Section 2. The County Attorney is hereby authorized and empowered to undertake such legal proceedings and prepare all documents necessary or desirable to accomplish the purpose of this Act.

Section 3. This Act shall take effect immediately.