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The agency issues a clarification on whether a company is exempt from a ban on aerial ads

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Aerial Banners North insists a federal waiver allows it to fly commercial banners over Hawaii, but a new statement by the Federal Aviation Administration suggests otherwise.

An FAA statement issued Monday said that the waiver Aerial Banners North obtained "authorizes the company to conduct banner towing operations nationwide."

However, the statement said, "This certificate does not waive any state law or local ordinance. Should the proposed operations conflict with any state law or local ordinance, or require permission of local authorities or property owners, it is the operator's responsibility to resolve the matter."

Ian Gregor, the agency's public affairs manager, also pointed out in an email to the Hono-lulu Star-Advertiser on Monday that the city's aerial advertising ordinance has twice been challenged and then upheld by the U.S. 9th Circuit Court of Appeals.

The FAA statement clarified vague remarks made by agency officials last week that appeared to leave the pre-emption issue up to legal interpretation.

The company's contracted pilot was slapped with violating the city's aerial advertising ordinance at about 2 p.m. Friday, a Hono-lulu Police Department official said. His case will be heard in state District Court on Aug. 5.

Despite the citation, which could result in the man paying up to \$500, spending up to three months in jail or both, Aerial Banners North continued to fly its banners Saturday and Sunday, according to both the city and the company.

Michael J. McAllister, a company attorney, said its FAA waiver allows it to fly banners throughout North America and Oahu and pre-empts any state or county prohibitions.

McAllister said the man who was slapped with the citation is a pilot contracted by the company. The company itself has not been charged, but would "vigorously defend any action against it," he said, emphasizing that the plane continued to fly through the Independence Day weekend despite the citation.

Three things — an FAA technical guidance document for banner towing, language used by the 9th Circuit in its 2006 opinion in the city's case against the Center for Bio-Ethical Reform, and recently revised language in FAA's banner towing handbook — all suggest that federal authority over aerial banner towing cannot be pre-empted, he said.

The company has not yet technically flown any paid commercial advertising ads, but simply a large U.S. flag and banners that state "ABNloves America" and "God bless USA," he said.

However, "we have advertisers that are ready to start flying," McAllister said, adding that the company has heard from a number of advertisers, including local businesses, "eager to reach their customers."

Mayor Kirk Caldwell and the Outdoor Circle said they will continue to press to have Aerial Banners North cease operations.

"We believe we stand on firm ground," Caldwell told reporters Monday, saying that city police, attorneys and other officials met before the Fourth of July weekend began.

He said he is disappointed with the company's "flagrant, in-your-face" approach to the matter.

Asked whether the city is seeking an injunction to halt the company from continuing operations, Caldwell said city Prosecutor Keith Kane-shiro might attempt to do so.

Caldwell repeated his call that Oahu residents call 911 if they see a violation.

Marti Townsend, executive director of the Outdoor Circle, said her group backs the city's actions and is prepared to assist if necessary.

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