



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

November 4, 1988

William C. Boston & Associates  
Counselors at Law  
1601 Northwest Expressway  
Oklahoma City, OK 73118

Dear Mr. Boston:

Aircraft N33W

By your letter of August 25, 1988, you requested our opinion on the recordability of a "Banking Facilities Letter," (the "Letter") which you state should be considered as a conveyance, and recorded. In support of your position favoring recordation, you submitted a copy of a promissory note from the debtors, a UCC-1 form naming the bank as the secured party and the debtors as such, a copy of the Application for Aircraft Registration from the debtors, a copy of the bank's Cashier's Check, and copies of two Oregon cases tending to support your position.

Review of the letter indicates on facial reading that there is no specific grant of a security interest, although there is language that "The Borrower shall provide the bank with the following security: Certificate of Title to a 1973 Cessna 414; Registration No. N33W; Serial No. 414-0406." Normally, in order to record an instrument as a security agreement, we require a clear grant of a security interest by the debtors (borrowers). The rest of the letter sets out the identification of the parties, the interest rate, the term of the loan, prepayment provisions, and other material which may be considered normal loan process language. The letter is signed by both a representative of the bank and by the borrowers.

The bank and the borrowers are in Oregon, and the transaction apparently took place in Oregon. The Federal Aviation Act, at 49 U.S.C 1406, states that the validity of any instrument which is the subject of recording under Section 1403, shall be governed by the laws of the State in which such instrument is delivered. You have referred to the Oregon Uniform Commercial Code, Section 79.2030 (UCC 9-203), which states that a security interest is enforceable against the debtor with respect to the collateral, when

"(a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral...

"(b) value has been given; and

"(c) the debtor has rights in the collateral."

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We are agreed that the aircraft is identified in the Letter. Since the subject aircraft was thereafter the subject of an Application for Aircraft Registration, and registered to the borrowers (or debtors), we are satisfied that the debtor(s) have rights in the collateral. The copy of the Cashier's Check and the tenor of the Letter persuade us that value has been given.

Examination of paragraph (a) of Section 79.2030 provides alternatives: either the security interest arises when the collateral is in the possession of the secured party pursuant to agreement, which we have determined that it is not, or the security interest arises when the debtor(s) have signed a security agreement which contains a description of the collateral. The debtors here have signed the Letter. It contains a description of the collateral. Therefore, the only determination is as to whether or not it is a security agreement.

Review of the two Oregon cases you submitted persuasively stand for the propositions that under Oregon law, the entire surroundings of the transaction may be considered in determining the intent of the parties to create a security interest, and that a security interest may be found even when the subject instrument does not contain the specific words of grant.

We are persuaded from the material submitted that it was the intent of the parties to create a security interest in the aircraft. Although the language used in the Letter leaves much to be desired, it does clearly identify the aircraft, and the language to the effect that the debtors shall deliver the "Certificate of Title" to the aircraft to the bank indicates an agreement that it will be treated similarly to an automobile, even though there is no Certificate of Title for aircraft upon which a bank could place lien information, as it could with an automobile. The fact that the language of "shall" may be construed as being an action in futuro does not defeat our conclusion that the parties intended by the Letter to create a security interest.

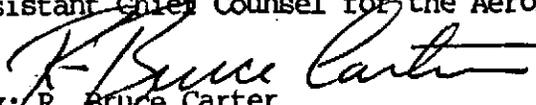
Accordingly, we are persuaded that the Banking Facilities Letter was intended by the parties to be in the nature of, and therefore equivalent to a security agreement. Finding such a security agreement, we are persuaded that the conditions of the Uniform Commercial Code have been met, and a security interest created.

Accordingly, since Oregon law controls the validity of the instrument, and Oregon law appears to us to mandate the determination that the Letter meets the requirements of a security agreement, we are of the opinion that it may be recorded.

By copy of this letter, you may so advise the FAA Aircraft Registry of this determination upon presentation of the original letter.

Sincerely,

Joseph R. Standell  
Assistant Chief Counsel for the Aeronautical Center

  
By: R. Bruce Carter  
Attorney Adviser