

LAW OFFICES

MOSES, MCCLELLAN, ARNOLD, OWEN & McDERMOTT

UNION LIFE BUILDING

LITTLE ROCK, ARKANSAS 72201

TELEPHONE 374-3774

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ERWIN M. ARNOLD
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HARRY E. McDERMOTT, JR.

CHARLES W. BAKER
WILLIAM L. OWEN
BENJAMIN F. ARNOLD

October 9, 1970

AIR MAIL

Federal Aviation Administration
Washington, D. C.

Attention: Lien Registration Department

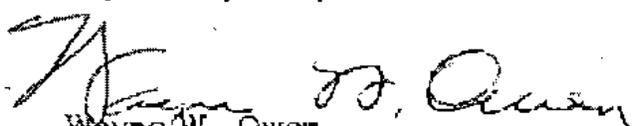
Gentlemen:

We attach hereto a copy of a debenture issued by Purdue Airlines, Inc. of Lafayette, Indiana, running in favor of the Union Life Insurance Company of this city. This debenture is not as such a lien upon the airplane described therein but it affects the saleability of such and affects the power of the owner thereof to encumber the same.

We know that the Federal Aviation Administration is the proper tribunal in which to file liens on airplanes such as mortgages, title retaining notes, et al, but we do not know whether or not you have facilities for the recordation of instruments such as the attached which would serve to put the public on notice that there is an impairment of the right of the owner to sell or encumber such.

We would appreciate your looking at this debenture and telling us whether or not a copy or certified copy may be filed with you for the purpose of giving notice of restrictions on the alienation of this equipment.

Yours very truly,


Wayne W. Owen

WWO/jt

Enc.

4 November 1970

Mr. Wayne W. Owen
Union Life Building
Little Rock, Arkansas 72201

Dear Mr. Owen:

Your letter of October 9, 1970 has been referred to this office for reply.

In your letter you inquire as to whether a debenture, dated 1 August 1969 and issued by Purdue Airlines, Incorporated, in favor of Union Life Insurance Company, would be eligible for recordation under the provisions of Title V of the Federal Aviation Act of 1958, as amended. You point out that the debenture "is not as such a lien upon the airplane described therein but it affects the saleability of such and affects the power of the owner thereof to encumber the same."

Section 503(a) of the Federal Aviation Act of 1958, as amended, sets forth those items which are eligible for recording at the FAA Aircraft Registry. Subparagraph (a)(1) of that section provides for the recordation by the Administrator of "any conveyance which affects the title to, or any interest in, any civil aircraft of the United States." The term "conveyance" is defined in Section 101(17) of the Act as meaning:

"A bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property."

The question of the recordability of debentures has not been formally ruled on by this Agency. However, based upon a review of the language of the Act, we conclude that the debenture referenced in your letter is a conveyance within the meaning of the Act. In this connection, we note that Purdue Airlines agrees in the debenture not to permit the placing of any mortgage, security instrument, or other charge or impairment of title on the aircraft. Furthermore, it provides that any violation of any of these agreements permits the holders of the debenture to declare the entire amount immediately due and payable. Finally, the holders are given the power to have a deed of trust for the aircraft executed by Purdue Airways to a trustee appointed by the holders. These provisions, together with the general definition of a debenture as a charge in writing on certain property coupled with the repayment of money lent by a person named therein, leads us to conclude that the debenture forwarded by you is an instrument which affects an interest in the aircraft referenced therein. Accordingly, we consider that the debenture is recordable under the provisions of Section 503 of the Act.

2

A copy of our opinion has been forwarded to the FAA Aircraft Registry for their guidance in the event you decide to submit the certificate for recordation. Of course, such recording is subject to all of the other requirements of Part 49 of the Federal Aviation Regulations.

We trust that this will be of assistance to you. If you have any further questions, please feel free to contact us.

Sincerely,

ORIGINAL SIGNED BY
FREDERICK C. WOODRUFF

FREDERICK C. WOODRUFF
Asst. Aeronautical Center Counsel, AC-7

cc:
AC-250 ✓
GC-10