AAC-250

No R#

February 10, 1987

Mr. Daniel J. Fowler
Attorney at Law
Daugherty, Bradford, Fowler & Moss
900 First City Place
204 North Robinson
Oklahoma City, OK 73102

Dear Dan:

Thank you for your letter of November 17, 1986, in which you ask "whether, under the Federal Aviation Act of 1958, as amended, (the "Act"), an instrument such as a leveraged lease from which certain financial provisions such as rental and insurance requirements had been omitted and are contained in one or more separate agreements, is eligible for recordation under the Act, where the separate agreement or agreements are not filed with the FAA."

As you know, the test for recordability under Section 503(a) of the Federal Aviation Act is whether a particular document is a conveyance as defined in Section 101(20) of the Act. Leases are recordable conveyances. Feldman v. Philadelphia National Bank, 408 F. Supp. 24 at 34. (U.S.D.C. E.D. Penn, 1976).

A leveraged lease, as any other contract, fails for lack of consideration. Blagg v. Rutledge, 251 P.2d 196, Supreme Court of Oklahoma, 1952. However, the failure to specify the consideration will not necessarily invalidate a lease. 51 C.J.S. Landlord and Tenant, Section 211(1)b (in connection with real property).

I am of the opinion that a lease with rental and insurance provisions set out in separate documents which are referenced in the lease but not filed for recordation, is a recordable conveyance within the meaning of Section 101(20) of the Federal Aviation Act. That is, such a lease affects an interest in an aircraft notwithstanding the absence of the rental amount and insurance requirements; provided, that the lease is otherwise complete and constitutes a present transfer of a leasehold interest in an aircraft.

During your visit to my office a few weeks ago, we expressed mutual concern about the U.S. Supreme Court's admonition in Philko Aviation, Inc. v Shacket that unrecorded transfers of interests in aircraft should not affect innocent third parties. 76 L. Ed. 2d 678 at 684. I would not speculate as to the success of a Philko type argument in devaluating the effect of recordation of your proposed lease. The argument might urge that no constructive notice of the lease need be taken because the recorded document is not per se a conveyance since it does not set out (but merely references) all terms and conditions.

Please consider this letter as relating only to the matters of lease rent and insurance requirements. Specifically, this letter should not be interpreted as authority for recording a lease which recites a present leasehold transfer but specifies that the relevant terms and conditions are set out in a separate (but unsubmitted) document.

Sincerely,

Original signed by:
Joseph R. Standell

Joseph R. Standell
Aeronautical Center Counsel

cc:
AGC-7
AGC-200
AAC-250

AAC-7:JRStandell:pw:2296:2-10-87