

July 15, 1985

Mr. Brad Avery  
Office of the Secretary of State  
State of Kansas  
State Capitol - Second Floor  
Topeka, Kansas 66612

RE: Senate Bill 51; Aircraft Lien  
for Child Support Arrearage

Dear Mr. Avery:

Thank you for providing us with a copy of the Bill, now apparently law since it was signed by the Governor on May 10, 1985. We are of the opinion that Section 29, which establishes the right to file a lien on aircraft (and vehicles and vessels) on account of unpaid child support, can be recorded at the FAA Aircraft Registry. However, there appear to be some procedural problems on which we would appreciate your advice.

First, we would like to know when the lien attaches; when the arrearage accrues, or when the lien is received by the Registry? The problem appears to be that a lien can be filed for each month of arrearage (S. 29(a)), and when we receive information that the aircraft has been sold or, perhaps, repossessed, at what point in time can we decline recordation as not applicable to its registered owner? We are of the opinion that the date of receipt here should control in order to simplify the situation. Also, please be mindful that we have a backlog of several weeks, and an aircraft could be sold before we get a chance to work the lien.

Second, how long is the lien effective? If a lien statement is filed, and no other lien or release is submitted, at what point can title searchers determine that it is no longer enforceable? We recognize that it is to be foreclosed just as security agreements under the Uniform Commercial Code, but does this also imply the same statute of limitations?

Third, the statute states that the lien "may be enforced and foreclosed in the same manner as a security agreement under the provisions of the Uniform Commercial Code." Does this contemplate recognition of the right of repossession rather than judicial foreclosure? Can the lienor simply locate and peacefully take possession of the aircraft, notify us, and apply for aircraft registration in her or the Secretary's name, or sell it? We are reluctant to ascribe this intent to the Legislature, although that is the plain language of the Bill. Your advice on this will be helpful; perhaps something in the legislative history will help.

Fourth, we are unsure as to the significance of the assignment provisions. Apparently, only the Secretary of Social and Rehabilitative Services can assert the lien, or one of his contractors, if the lien has been assigned. This language is unclear to us. The Secretary can assert the lien; what contractors are we talking about? Collection agents? Attorneys? Court Trustees? We do not understand the function or authority of such contractors. Should such assignment be sent to us with the lien?

We would appreciate it if your procedures for assertion of the lien would require the lienor to identify the aircraft by make, model designation, serial number, and registration number. This will assist us in positively identifying the aircraft subject to the lien. We are assuming the Secretary, or any assignee, has the authority to release the lien, and that partial lien releases will not be used.

We will be happy to discuss these items with you at any time. Please call the undersigned at 405-686-2296.

Sincerely,

Joseph R. Standell  
Aeronautical Center Counsel

Original Signed By  
R. BRUCE CARTER

By:

R. Bruce Carter  
Attorney Advisor

bcc:  
AAC-250

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