DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

WASHINGTON, D.C. 20591

June 13, 1979

Richard A. Maresca, Esquire
Zuckert, Scoutt & Rasenberger
Brawner Building
888 Seventeenth Street, N. W.
Washington, D. C. 20006

Dear Mr. Maresca:

This is in reply to your request of May 29 for opinions reflecting the guidelines followed by the Federal Aviation Administration Registry in determining what transactions are conditional sales for aircraft registration purposes under Federal Aviation Regulations (14 CFR) §47.5(c). We enclose copies of two related opinions which indicate our interpretation but it appears best to restate it comprehensively, however briefly.

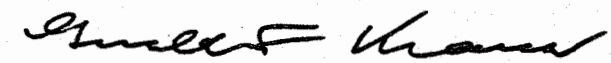
The only person entitled to register an aircraft in the United States is the owner of the aircraft under applicable law (49 U.S.C. 1401). This generally means the holder of the legal title to the aircraft. However, following O'Connor - Registration of Aircraft, 1 C.A.A. 5 (1939), the vendee under a conditional sale that makes him the equitable owner of the aircraft, with the vendor retaining title for security purposes only, has been considered the "owner" for registration purposes.

A contract of conditional sale results in the vendee being considered as the equitable owner only if contract is unconditionally binding on vendor and vendee and will result in transfer of vendor's legal title when the vendee has performed his obligations under the contract. The definitions of conditional sale in 49 U.S.C. 1301 (19) are not linked to aircraft registration either in the Act or in O'Connor. We have found, however, that the definition in section 1301(19)(b), leases constituting conditional sales, as that language is interpreted by the courts (albeit for other purposes), comports well with the foregoing principles. The words "contracts to pay as compensation

a sum substantially equivalent to the value" of the aircraft mean that the aggregate of the contractually required payments creditable on the purchase price must leave no more than an un-"substantial" balance payable with exercise of the option so that the vendee "could not afford to fail to exercise the option," Burroughs Corporation v. Barry, 380 F. 2d 427, 431 (C.A. 8, 1967).

Of course, the requirements distinguishing a true conditional sale from an ordinary lease or bailment are of the essence. We cannot allow them to become attenuated, for circumvention of the statutory requirement of registration by the "owner" only would be the result.

Sincerely,



JOHN T. STEWART, JR.
Assistant Chief Counsel
International Affairs &
Legal Policy Staff
Office of the Chief Counsel

Enclosures

April 25, 1979

Dear Mr. [redacted]

This is in reply to your recent letter in which you refer to correspondence on registration of an aircraft leased by your corporation to [redacted] Corporation, with option to purchase. The question continued to be whether the lessee is the equitable owner for registration purposes. You state that the contract is within either of the definitions of "conditional sale" in sec. 101(19) of the Federal Aviation Act (49 U.S.C. 1301(19)), that the transaction is a retail installment sale under applicable state law, and that a bankruptcy court might disagree with this Administration's evaluation of the lease. Finally, you ask for a form for registration of the aircraft in the name of the lessor, if we do not change our conclusion that the lessee is not the owner in equity.

The Act authorizes registration only in the name of the "owner." That has always been construed as meaning the holder of the legal title, except for the case of the vendee under a conditional sale that makes him the equitable or beneficial owner of the property, with the vendor retaining title for security purposes only (O'Connor - Registration of Aircraft, 1 C.A.A. 5 (1939)). As we indicated in our previous correspondence, we cannot evaluate your contract as a qualifying conditional sale.

While we recognize that the transaction is a retail installment sale under the consumer protection provisions of Ohio and Pennsylvania law, which you cite, these provisions permit security arrangements to which Ohio Code § 1309.13, Pennsylvania Statutes § 9-202, apply. The "Comment" by the National Conference of Commissioners

Uniform State Laws, printed in these editions following these sections, states that this law "in no way determines which line of interpretation (title theory v. lien theory or retained title v. conveyed title) should be followed in cases where the applicability of some other rule of law depends upon who has title." We therefore do not see how your citation of these laws can alter our views in connection with the registration of the aircraft.

With reference to the rights of the parties in the case of bankruptcy of the vendee, it would be presumptuous on our part to try to prejudge the holding of a bankruptcy court. In any event, FAA must make its administrative determination of ownership of an aircraft, for registration purposes only, according to its best judgment. That determination is immaterial in title litigation (49 U.S.C. 1401(f)).

Finally, there is no difficulty in registering the aircraft in the name of your corporation as owner, or in recording the lease, for the protection of the lessee, under 49 U.S.C. 1403 and the implementing regulation, 14 CFR Part 49. We have requested that the FAA Registry should grant another 30-day extension for temporary operation of the aircraft on the basis of the pending application under 14 CFR 47.31(b), and you will receive a copy of the Aircraft Registration Application Form in the mail.

Sincerely,

Original signed by
Clark H. Onstad

Clark H. Onstad
Chief Counsel

[redacted]

Dear Mr. [redacted]

Registration of Aircraft
[redacted] in Name of Lessee

I have reviewed your letter of January 5, together with the accompanying documentation concerning the eligibility for registration of Falcon Aircraft FAA Reg. No. [redacted] by the lessee of that aircraft.

The documentation accompanying your letter indicates that the lease arrangement contains provisions for a "Purchase Option" which must be exercised thirty days prior to the end of a lease term simultaneously with the payment of $750,000. Schedule B of the lease recites the cash sale price of the aircraft as being in the amount of $2,484,770. The total rent required by the lease is recited as $3,467,500. The "deferred payment price" is $4,217,500, namely, the cash sale price of $2,484,770 plus a finance charge of $1,732,730. The $750,000 apparently is the balance between the required rent and the deferred payment price.

In order for the lessee of the aircraft to qualify for registration of the aircraft, the lease with purchase option must qualify as a "Conditional sale" under the definition of that term in the Federal Aviation Act of 1958, as amended, (sec. 101(19)(b), 49 U.S.C. 1301(19)(b)). A lease with purchase option amounts to a conditional sale only if the payments required under the lease and to be credited to the value of the aircraft are substantially equivalent to that value, so that any additional payment required with the exercise of the option is so small that exercise of the

option is a foregone conclusion. (Burroughs Corp. v. Barry, 380 F. 2d 427, 430 (C.A. 8, 1967)). Based on the documentation you have provided me I have concluded that the "value" of the aircraft is the agreed cash sale price, i.e., $2,484,770. The payment of $750,000, due with the option if exercised is approximately 31% of this value. Such a payment is by far too large a final payment to qualify this lease arrangement as being within the generally accepted arrangements for "Conditional sale" contracts which would qualify the lessee for registration under the Federal Aviation Act.

Based on the foregoing, it is my conclusion that the Federal Aviation Aircraft Registry is correct in refusing registration in the name of the lessee.

Sincerely,

/s/ CLARK H. ONSTAD
Chief Counsel

Clark H. Onstad
Chief Counsel