



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

Mike Monroney
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VIA FACSIMILE #(954)763-4240 and Regular Mail

Rick Asper, Esq.
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Dear Mr. Asper:

Court Ordered FAA Registration
Absent Foreign Deregistration

This responds to your letter of January 2, 2003.

Your questions involve the sale of a Cuban registered Antonov AN2 aircraft pursuant to an "appropriate Florida court order." Basically, you want to know FAA's position re registration of the aircraft when sold to a person eligible to register, except for the fact, that the aircraft will remain on the Cuban aircraft register.

As you know, except in very limited circumstances which we discussed telephonically and which are not applicable here, FAA will not register if an aircraft is still on a foreign registry. (49 U.S.C. 44102(a)(1) and Article 18 of the Chicago Convention) That would seem to be the rule to be applied concerning the AN2.

With respect to IAL v. FAA, as you correctly point out, the 11th Circuit Court of Appeals decision was withdrawn because IAL sold the aircraft pending appeal.

Hypothetically, if the initial court decision were precedent in the 11th Circuit, we would take into consideration the following factors with respect to the AN2.

- Whether the "appropriate Florida order" found Cuban registration to be invalid or ended after hearing competent testimony about Cuban law. (e.g. Dade County Court in IAL);

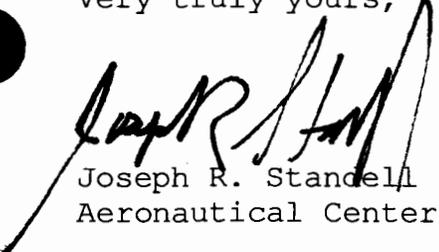
- Whether the FAA Aircraft Registry had been directed to register the AN2 by a court of competent jurisdiction;
- Advice from the Department of Justice.

Incident to the above factors, as you know, many persons in FAA and Justice believe IAL was decided wrongly because, inter alia, the decision appears contrary to Chicago and the Transportation Code, and fails to defer to FAA's longtime and consistent interpretation of 14 C.F.R. 47.37(b)(2) that only a court in the country in which an aircraft is registered can determine registration is invalid.

Nevertheless, with the advice of Justice, FAA would not knowingly defy a direct Federal court order to register an aircraft. (That's about as far as I wish to go in discussing hypotheticals.)

As we discussed, an NPRM has been issued (and we expect the final rule later this year) which will amend 14 C.F.R. 47.37(b)(2) to make clear that the "court of competent jurisdiction" must be located in the country in which the aircraft is registered.

Very truly yours,



Joseph R. Standell
Aeronautical Center Counsel

cc:

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