



US Department
of Transportation

Federal Aviation
Administration

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Frank L. Polk
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100 Colcord Building
15 N. Robinson Avenue
Oklahoma City, OK 73102

Dear Mr. Polk:

This is in response to your letters of November 25, 1992, and December 7, 1992, requesting our opinion determining the eligibility for recording of non-consensual liens against aircraft engines. As you know, in the past this office has taken the position that non-consensual liens are not authorized to be recorded because they are not executed for "security purposes". After careful review of all the information you provided, including your article, Non-Consensual Liens Under The Federal Aviation Act of 1958 As Amended, we are not persuaded that a change in the current policy is justified.

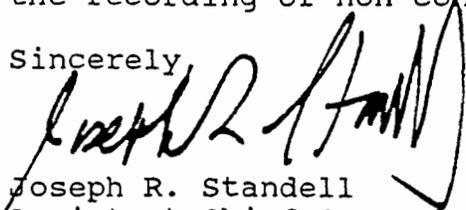
The basic argument in your article relevant to this issue, is that it was the intent of Congress as interpreted by the Supreme Court, that the FA Act should be interpreted broadly to create a central clearing house for the filing of all liens, claims, encumbrances, and other legal interest in aircraft, engines and propellers, including non-consensual liens. Philko v. Shackel, 462 U.S.406, was cited as supportive of this position. Philko concerns Section 503(a)(1) of the Act. We agree with the Court's analysis of the intent of Congress to create a central clearing house for the recording of conveyances concerning aircraft. However, we are not persuaded that Philko sheds any light on Section 503(a)(2) of the Act.

Section 503(a)(2) applies only to selective conveyances. It specifically lists the types of instruments that are eligible for recordation, including "any instrument executed for security purposes". As stated in your article, Polk, supra at 8, it may be argued that the sole purpose for executing the lien is for security purposes. However, we construe "for security purposes" in the traditional manner, i.e. engines pledged as security in a bilateral security agreement. Clearly non-consensual liens do not fall within this construct.

Congress intended that aircraft and engines be treated differently, as evidenced by the different criteria set out for aircraft and aircraft engines. The restrictive language used in reference to aircraft engines requires that we not broaden the intended scope of the Act.

Accordingly, our position remains unchanged. We continue to be of the opinion that Section 503(a)(2) of the Act does not authorize the recording of non-consensual liens on engines or propellers.

Sincerely,



Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center