M e m o r a n d u m

105.0063

To: Mr. Robert Nunes September 3, 1975

From: Glenn L. Rigby

Subject: Sections 6366 and 6366.1

We have now completed our review of the M--- E--- file along with various past letters of the legal staff dealing with the above-referenced sections. Set forth below are the general guidelines that we should use in determining whether the aircraft is being used in common carrier operations.

It should be noted that some of the following guidelines and conclusions will be in conflict with my earlier memo of February 18, 1975 and Don Hennessy's memo of February 26, 1974 to West Los Angeles.

1. It is now our opinion that an air taxi operator is operating under the laws of the United States even in those situations where it is performing sightseeing operations, banner towing, aerial photography, and those other enumerated activities spelled out in Section 135.1(b) of 14 C.F.R. (see pages 2 and 3 of Don Hennessy's memo of February 26, 1974). It should be noted that we are not concluding that banner towing and aerial photography qualify as common carriage of persons or property. All we are concluding is that the operator is operating under the laws of the United States when performing such work.

2. Therefore, the only remaining question is whether the particular person is operating as a common carrier as distinguished from a contract carrier. A common carrier is a person who engages in the business of transporting persons or property for hire or compensation and who offers his services indiscriminately to the public or to some portion of the public. This is a simple definition. However, as you know, applying this definition to particular factual situations has given us nothing but problems. It is our opinion that as a general rule we should look to the person's advertising, be it phone bood, brochures, or other items, to determine whether he is holding himself out to carrier people indiscriminately. After this is established, it is our opinion that if it is proven that he has carried the public in several flights and has also had specific contracts with specific persons to haus them for certain periods of say several weeks to several months that these periods under the specific contract should also be considered as common carriage

when using the principal use test of six months. This is in line with the case of *Alaskan Air Transport v. Alaskan Airplane Charter Co*. We would, however, like to reserve making a final determination in the situation where the carrier buys a particular plane for the specific purpose of entering into a long-term carriage contract with a particular individual or corporation. As of now, we have grave doubts as to whether this could be regarded as common carriage.

We now turn our attention to the M--- A--- problem and the effect of the United States Government contract.

The contracts with the United States Government for carrying persons and property appear to be limited to a maximum of one year with the right of further extension and is also limited to specific days of the week when they will be used. In addition, there is no indication that the particular aircraft was purchased for the government contract. Under these circumstances, it is our opinion that the use under these contracts should be regarded as common carriage. The foregoing conclusion is of course premised on the fact that M--- A--- does hold itself out to the public to carrier persons and/or property indiscriminately.

GLR:lb

cc: Mr. T. P. Putnam
Mr. Gary J. Jugum
Mr. Don Hennessy