



U.S. Department of
Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

November 16, 1987

The Honorable Timothy E. Wirth
United States Senate
Washington, DC 20510

Dear Senator Wirth:

Thank you for your recent letter on behalf of the City of Pueblo regarding the possibility of the city's subsidizing scheduled air service to the city. Specifically, you asked whether, if the city provided a subsidy to one air carrier, it would be obligated to provide it to other carriers offering the same service.

The only laws of which we are aware that might impinge upon the city's proposal are Section 105 of the Federal Aviation Act (49 USC 1305) and Section 511 of the Airport and Airway Improvement Act of 1982 (49 USC App. 2210). In pertinent part, section 105 provides:

"(a)(1) [N]o State or political subdivision thereof . . . shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under title IV of this Act to provide air transportation.

* * *

"(b) Nothing in subsection (a) of this section shall be construed to limit the authority of any State or political subdivision thereof . . . as the owner or operator of an airport served by an air carrier certificated by the [Civil Aeronautics] Board to exercise its proprietary powers and rights."

Section 511 contains prohibitions on certain types of discrimination among airport users at any airport, such as Pueblo's, that receives Federal funds.

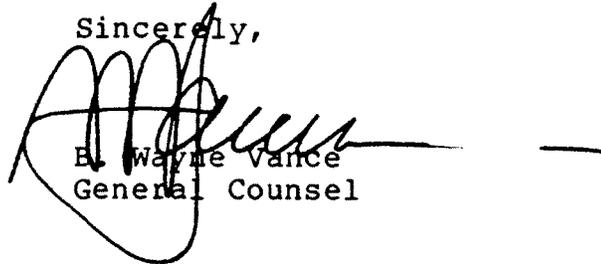
We do not mean to indicate that we believe that either of these statutes does apply. However, since a subsidy would affect the subsidized air carrier's profit or loss in serving the city, it might affect the rate charged passengers by the air carrier. Furthermore, depending on whether the subsidy were provided for service only to one city, it might affect the carrier's routes or services. Also, the specific procedure or mechanism used by the

city to provide the subsidy might have the force and effect of law. Finally, we understand that the city is the operator of the airport serving the city.

Determining whether these or other laws would, in fact, be invoked by the city's proposal requires more facts than we have been given and, perhaps, an examination of State and city law, matters not within our expertise.

Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Wayne Vance', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

B. Wayne Vance
General Counsel