



U.S. Department of
Transportation

General Counsel

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

MAY 23 1986

Mr. Leslie K. Iczkovitz
Suite 701, Kendall Building
888 Mililani Street
Honolulu, Hawaii 96813

Dear Mr. Iczkovitz:

This is in response to your letter requesting an interpretation of the federal preemption provision of the Federal Aviation Act of 1958, as amended, 49 U.S.C. §1305, as it might apply to the proposal of one of your clients to deliver delayed baggage on behalf of airlines in the Honolulu area.

I am confirming Mr. Horn's preliminary view that section 1305 preempts all state requirements relating to the "rates, routes, or services" of an air carrier having authority under Title IV of the Act. With the exception of Alaska, state certificates of public convenience and necessity are clearly among the requirements preempted. See also 14 C.F.R. Part 399 (Subpart J) and PS-83, 44 F.R. 9951, February 15, 1979.

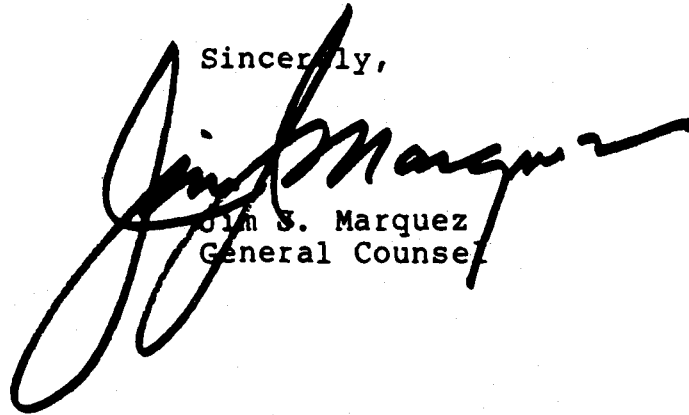
The return of lost or delayed baggage to the passenger is without question an integral part of the transportation "service" rendered by air carriers as part of the ticket price. Preemption in this instance is therefore even clearer than in the case of cargo pickup and delivery services, for which an extra charge could be levied at the carrier's option and which have traditionally been regulated by the CAB (and by the ICC beyond the 35-mile airport zone until 1980) to the exclusion of direct state regulation under federal preemption case law. Pickup and delivery services were regulated as a service "in connection with" air transportation. The return of delayed baggage would appear to be air transportation itself, just as much as the checking and loading/unloading services provided within the airport grounds. The latter services are clearly not subject to state regulation, whether performed by the carriers' own personnel and equipment or performed by a contract agent. Similarly, the return of delayed baggage to passengers outside the airport grounds cannot be regulated directly by states whether performed by the carrier or by a contract agent.

Therefore, while it does not appear that your client, Aero Courier, would itself qualify as an air carrier holding Title IV authority, it would appear to be a contract agent of such air carriers with respect to baggage delivery services. To that extent, section 1305 would apply and direct state regulation would be preempted.

Specifically, the state of Hawaii cannot, in our opinion, require a state certificate of public convenience and necessity for the delivery, directly or through the use of a contract agent, of delayed baggage on behalf of airlines holding Title IV authority.

I hope this information will be helpful to you.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "John S. Marquez". The signature is written over the typed name and title.

John S. Marquez
General Counsel