



U.S. Department of
Transportation

General Counsel

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

January 20, 1988

James E. Landry
Senior Vice President &
General Counsel
Air Transport Association of America
1709 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Landry:

This responds to your letter requesting an opinion on whether the preemption section of the Federal Aviation Act precludes the state of California under its recent smoking ban from regulating smoking aboard air carriers operating within the state. 1/

I conclude that the California smoking prohibition is preempted by the Federal preemption section of the Federal Aviation Act, section 105, for all air carriers holding federal operating authority under Title IV of the Act, whether they are operating between California points or interstate.

Section 105 forbids state regulation of a federally authorized carrier's rates, routes, or services. 2/ The language of, legislative history behind, regulations surrounding, and case law involving the section make clear that it applies to the covered carriers on the basis of their federal operating authority and not due to the territorial location of their flights, and that it covers the services of the carriers to include the regulation of smoking. 3/

Federal jurisdiction over smoking aboard airline flights is made even clearer by language in the recently passed Public Law 100-202

1/ §25949 of Ch. 10.8 of Division 20 of the Health and Safety Code, State of California.

2/ "[No] State...shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to the rates, routes, or services of any air carrier having authority under title IV of the Act to provide air transportation." 49 U.S.C. app. 1305(a)(1).

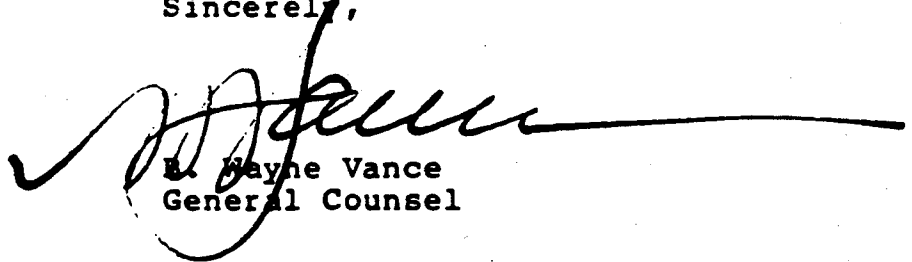
3/ 49 U.S.C. app 1305(a)(1); 124 CONG. REC. S 5890 (daily ed. April 19, 1978), H 5239-41 (daily ed. June 8, 1978), S 18799 (daily ed. October 14, 1978); H.R. REP. NO. 98-793, 98th Cong., 2d Sess. 4 (1984); Civil Aeronautics Board Regulation PS-83 at 8, 44 Fed. Reg. 9948; 14 CFR §§399.110, 399.111; Hughes Air Corp. v. California Pub. Util. Comm'n, 644 F.2d 1334 (9th Cir. 1981).

which bans smoking in the passenger cabins or lavatories of all scheduled airline flights of 2 hours or less, whether in intrastate, interstate, or overseas air transportation. 4/

We note that while the airlines thus cannot be required by any state law to halt smoking aboard flights whatever their itinerary, it is also clear that the federal smoking provisions do not require the airlines to permit smoking aboard aircraft. 14 CFR 252.1. Airlines are free to impose smoking bans on any flights at any time.

I trust my response answers your question. Please let me know if I can provide any further information on this matter.

Sincerely,



E. Wayne Vance
General Counsel

4/ Pub. L. No. 100-202, §328, December 22, 1987, amending §404 of the Federal Aviation Act of 1958.