



THE ATTORNEY GENERAL

OF TEXAS

AUSTIN 11, TEXAS

Modifies MS-104
due to submission
of additional
facts.

JOHN BEN SHEPPERD
ATTORNEY GENERAL

November 6, 1953

Hon. H. D. Dodgen
Executive Secretary
Game and Fish Commission
Austin, Texas

Letter Opinion No. MS-107
Re: Legality of operation
of airplanes by the Game
and Fish Commission.

Dear Mr. Dodgen:

As a consequence of our letter Opinion No. MS-104 you have supplied some additional data concerning the two airplanes operated by your department and have asked the following:

"1. Are the above mentioned airplanes, owned by this department, considered to be 'designed for passenger transportation,' and

"2. If not, can the airplanes mentioned above be legally operated by the Game and Fish Commission under the general appropriation act (Ch. 81, Acts, 53rd Legislature)?"

Your attention is called to the fact that the Section 9 limitations are directed only to "the maintenance or operation of any State-owned passenger car or airplane designed for passenger transportation." Sec. 9a, Art. VI, Ch. 81, Acts 53rd Leg., 1953, p. 127 at p. 348. (Emphasis added.) We think the underlined language requires the conclusion that airplanes not designed for passenger transportation were not intended to be affected by Section 9.

In our opinion a ship that is "designed for passenger transportation" within the meaning of Section 9 is one that is reasonably adapted, structurally, for carrying passengers. This question is not determined by any particular use to which the ship is devoted. Though its principal use may be for law enforcement or other worthy state purposes, if it is reasonably capable of carrying passengers we think the Legislature intended Section 9 to apply.

Whether a given airplane is or is not "designed for passenger transportation" can be determined only after a complete study of the particular features of its present design. In our opinion an original design "for passenger transportation" is not

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conclusive of the question. All subsequent modifications affecting the present design of the ship are pertinent considerations, because in many cases subsequent modification may substantially lessen or preclude altogether the possibility that it might be used to carry passengers.

Among other information furnished, you state that the Game and Fish Commission owns two airplanes; that both are Model 170b Cessnas originally designed as four-place airplanes; that when purchased installations were made of two-way radio equipment, operating on the frequency assigned to this Commission, thereby reducing the carrying capacity of the airplanes; that the original seating arrangement was unsatisfactory and was changed by the Department by removing the back seat to make space for radio equipment, emergency kits, life saver and other equipment when needed for law enforcement or game management work; and that "both airplanes now have seating space for only the pilot and one observer."

In view of the above, we have concluded that these two ships are no longer reasonably adapted for carrying passengers, hence that they are no longer "designed for passenger transportation" within the meaning of Section 9. Accordingly, it is the opinion of this office that these two ships may be operated and maintained with moneys appropriated in the current general appropriation act.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
Phillip Robinson
Assistant

PR:wb