



**David Cain**  
Texas House of Representatives  
District 107

4310 Gaston Avenue | Post Office Box 2910  
Dallas, Texas 75246 | Austin, Texas 78769  
214/826-0160 | 512/463-0476

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The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Capitol Station  
Austin, Tx 78711-2548

Attention: Madeleine Johnson

RO-632

**RE: Request for Attorney General's Opinion**

Dear General Morales,

I have been informed by Federal Express that it is considering establishing a sorting hub at the Alliance Airport near Fort Worth as part of its national and international integrated air-ground express delivery system. One of its concerns in establishing a sorting hub in Texas, however, is the degree of regulation that the State of Texas is authorized to impose on Federal Express' trucking operations within Texas that are part of its system.

Currently, almost all packages moved by Federal Express with origins and destinations in Texas have an aircraft leg or move across state lines before final delivery, and are, thus, in interstate commerce and not subject to regulation by the Texas Railroad Commission. If a sorting hub is established at Alliance, Federal Express will transport packages with Texas origins and destinations entirely on the ground and entirely within the state.

Similarly, United Parcel Service and its affiliates ("UPS"), Roadway Package Systems and its affiliates ("RPS") and others also provide integrated air-ground express delivery service. For example, UPS currently maintains an extensive air-ground sorting hub at Dallas-Fort Worth Airport. Likewise, RPS maintains an extensive air-ground sorting hub in Arlington, Texas, close to the Dallas-Fort Worth Airport. In connection with these facilities, UPS and RPS both transport packages between origins and destinations entirely on the ground and entirely within Texas.

In connection with this matter, I seek an opinion from the Attorney General on the following issue:

Does 49 U.S.C. App. §1305(a)(1) preempt Article 911b, Vernon's Texas Civil Statutes, the Texas Railroad Commission's regulations on motor transportation promulgated pursuant to Article 911b (Chapter 5, Title 16, Texas Administrative Code), and any other Texas statute or regulation economically regulating the intrastate ground transportation of packages by Federal Express, UPS, RPS, and similarly situated carriers?

The relevant text of 49 U.S.C. App. §1305(a)(1), which was part of the Airline Deregulation Act of 1978, provides:

[N]o State or political subdivision thereof, and no interstate agency or other political agency of two or more states 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 subchapter IV of this chapter to provide air transportation.

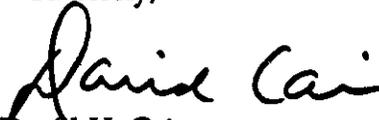
In addition, two of the stated policies of the Airline Deregulation Act of 1978 are the "encouragement and development of an expedited all-cargo air service system, provided by private enterprise, responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense" and the "encouragement and development of an integrated transportation system relying upon competitive market forces to determine the extent, variety, quality, and price of such services." 49 U.S.C. App. §1302(b).

Based on the language of Section 1305(a)(1), the stated purposes of the Airline Deregulation Act of 1978 and the recent opinions of the United States Supreme Court, *Morales v. Trans World Airlines, Inc.* \_\_\_ U.S. \_\_\_, 112 S. Ct. 2031, 2037 (1992), and the United States Court of Appeals for the Ninth Circuit, *Federal Express Corporation v. California Public Utilities Commission*, 936 F.2d 1075, 1078 (9th Cir. 1975), *cert. denied*, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2956 (1992), it is clear to me that the Texas Railroad Commission is precluded from economically regulating the intrastate ground transportation operations of Federal Express, UPS, RPS, and similarly situated integrated carriers in Texas, including any all-ground transportation of packages within Texas, due to the preemptive effect of Section 1305(a)(1).

The scope of the preemption would appear to cover most of Article 911b, Vernon's Texas Civil Statutes, and the Texas Railroad Commission's transportation regulations (Chapter 5 of Title 16 of the Texas Administrative Code), excluding safety regulations.

Thank you in advance for your prompt attention to this matter.

Sincerely,



David H. Cain  
State Representative

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