WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

December 17, 1976

FILE NO. S-1192

REGULATED INDUSTRIES:
Power of Illinois Aeronautics
Board to Regulate Interstate
Air Carriers.

Mr. Melvin L. Rosenbloom
Chairman, Illinois
Aeronautics Board
P.O. Box 218
Springfield, Illinois 62705

Dear Mr. Rosenbloom:

This responds to your letter requesting my opinion as to the power of the Illinois Aeronautics Board under the Illinois Air Carriers Act (Ill. Rev. Stat. 1975, ch. 15 1/2, pars. 501 et seq.) to regulate certain air carriers operating from a point outside Illinois to a point within the State. The particular carrier you describe is Brower Airways, a scheduled air carrier based in Fort Madison, Iowa, which

plans to transport persons and property for hire between Fort Madison, Macomb, Illinois and St. Louis, Missouri. As I understand it, Brower Airways is not certified by the Civil Aeronautics Board but rather comes under an exemption provided by the Civil Aeronautics Board for so-called air taxis.

Section 6 of the Illinois Air Carriers Act (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 506) provides in part that:

> "No scheduled air carrier shall operate as such, after the effective date of this Act, without having first obtained from the Board a certificate of public convenience and necessity pursuant to a determination by the Board that its proposed service is in compliance with the Board's rules and regulations, the provisions of this Act and the regulations and laws of the United States or any authorized agency thereof and in the interest of the public convenience and necessity; * * *" (emphasis added.)

"Air carrier" is defined by section 2 of the Act (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 502) to be:

> "* * * [A]ny scheduled air carrier or charter air carrier which conducts all or part of its operation in the State of Illinois. However, the term 'air carrier' as used in this Act shall not include and this Act shall not apply to, any air carrier operating within the State of Illinois pursuant to the provisions of a certificate of public convenience and necessity issued by the Civil Aeronautics Board under the Federal Aviation Act of 1958, as now or hereafter amended." (emphasis added.)

The question you raise is whether the Illinois Aeronautics Board has the authority to require a carrier such as Brower to obtain a certificate of public convenience and necessity under the Illinois Air Carriers Act. In my opinion, it does not.

Section 2 of the Illinois Air Carriers Act quoted above defines an "air carrier" to be any scheduled carrier which conducts "all or any part of its operation" in Illinois. Although at first glance this language appears to be clear and unambiguous, it my opinion it is not. On the one hand, it could be argued that any interstate carrier, such as Brower Airways, which makes one stop in this State, conducts part of its operation in Illinois. On the other hand, the "all or any part" language of section 2 could be read to refer to those carriers which operate intrastate routes only or which have <u>both</u> intrastate and interstate routes. Under this construction of section 2, a carrier operating a strictly intrastate route or routes, in addition to an interstate route or routes, would be conducting "part" of its business in Illinois. The latter construction would exclude, however,

strictly interstate carriers, whether certified or exempted from the certification requirement by the Civil Aeronautics Board, from the jurisdiction of the Illinois Aeronautics Board. In my opinion this latter construction is the correct one.

As a general rule, a statute should be construed as a whole and the legislative intent gathered from the entire statute rather than from any one part read in isolation. (Carrigan v. Illinois Liquor Control Com., 19 Ill. 2d 230.) Applying this approach to the Illinois Air Carriers Act it is evident, in my opinion, that the General Assembly meant to give the Illinois Aeronautics Board jurisdiction only over strictly intrastate air routes.

Section 6 of the Act, quoted above, requires all carriers as defined in section 2 of the Act to obtain a certificate of public convenience and necessity. Section 7 of the Act (Ill. Rev. Stat. 1975, ch. 15 1/2, par. 507) sets forth the standards the Illinois Aeronautics Board is to apply in determining whether or not to grant such a certificate. It provides in pertinent part that:

> "In determining the existence of the public convenience and necessity as required pursuant to this Act, the Board shall consider the encouragement and development of an intrastate air transportation system properly adapted to the present and future needs of the State of Illinois, * * *" (emphasis added.)

Were section 2 of the Act construed to include strictly interstate carriers such as Brower Airways, this provision would be rendered, to a certain extent, meaningless. Consideration relating to the intrastate air transportation needs of Illinois would be irrelevant in determining whether an interstate carrier with only one stop in Illinois would be granted a certificate of public convenience and necessity. Thus, reading sections 2 and 7 of the Act together, it appears that the jurisdiction of the Illinois Aeronautics Board was not meant to extend to purely interstate carriers such as Brower Airways.

Furthermore, I am of the opinion that construing section 2 of the Act to include strictly interstate carriers would run afoul of the Commerce Clause (U.S. CONST., art. I, § 8, cl. 3) and the Supremacy Clause (U.S. CONST., art. VI, § 2), of the United States Constitution.

The Federal Aviation Act of 1959 (49 U.S.C., §§ 1301 et seq.), gives the Civil Aeronautics Board exclusive authority and responsibility for the economic regulation of interstate and international air transportation. An important part of the authority granted the Civil Aeronautics Board by Congress, is the power to regulate entry into the air transportation industry by requiring each interstate carrier to obtain from the board a certificate of public convenience and necessity. (49 U.S.C., § 1371.) Were Brower Airways in possession of such a certificate, there could be no doubt that the Supremacy Clause would preclude the imposition by Illinois of its own State certification requirements. (See, Island Airlines, Inc. v. C.A.B., 325 F. 2d 735 (CA 9, 1965).) This fact is reflected in section 2 of the Illinois Air Carriers Act where it is provided that the Act does not apply to any carrier operating in Illinois pursuant to a certificate granted by the Civil Aeronautics Board.

The question you raise is different, however. You ask in effect whether the exemption granted air taxis from the requirements of § 401 of the Federal Aviation Act of 1958,

removes such carriers from federal jurisdiction and places them within the jurisdiction of the Illinois Aeronautics Board. In my opinion, it does not.

Section 416(b)(1) of the Federal Aviation Act of 1958 (49 U.S.C., § 1386(b)(1)) provides that:

> "The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this subchapter or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this subchapter or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest."

Pursuant to this provision, the Civil Aeronautics Board has exempted so-called air taxis from the certification requirements of the Act. 14 C.F.R. §§ 298.1 et seq.

The reasons behind the grant of this exemption are discussed at length in Hughes Air Corp. v. C.A.B., 492 F. 2d 561 (CA D.C., 1973) and Airline Pilots Ass'n. Int'l. v. C.A.B., 494 F. 2d 1118, at 1121-1122 (CA D.C., 1974). Briefly put, this exemption was the board's response to the growing problem

of providing adequate air transportation over short-haul, low-density routes. According to the information set forth in the above mentioned cases, the routes are characterized by rapid fluctuations in demand and small profit margins for the carriers involved. Based on these factors, the Board concluded that its normal certification proceedings are too costly for the air taxi carriers. Furthermore, the certification requirement impairs the flexibility necessary to respond to rapid market fluctuations. As a result, the Board found the certification requirement to be an "undue burden" contrary to the public interest within the meaning of section 416(b)(1).

The language of section 416(b)(1) and the reasons behind the air taxi exemption demonstrate, in my opinion, that this exemption, made by the Civil Aeronautics Board pursuant to its statutory powers, is as much a part of the over-all federal regulatory scheme as the normal certification requirement. Furthermore, it seems unlikely that the same Board that sought to relieve air taxis from the burdens of the Federal certification process, intended by so doing to submit these carriers to comparable proceedings in the several

states. This being true, it is my opinion that federal pre-exemption in the area of the regulation of interstate air transportation extends to those carriers, otherwise subject to the certification requirements of the Federal Aviation Act, which come within the air taxi exemption.

Based on the above considerations, I am therefore of the opinion that the Illinois Aeronautics Board may not require carriers such as Brower Airways to obtain a certificate of public convenience and necessity under the Illinois Air Carriers Act.

Very truly yours,

ATTORNEY GENERAL