January 28, 2003

Gary J. Kauffman
Managing Member
Vortex Aviation Services, LLC
1946 Joe Crosson Drive
El Cajon, California 92020

Mr. Kauffmann;

This responds to your telephone inquiry regarding the transferability of the existing air tour operator status under the National Park Air Tour Management Act (the Act).

As we understand it, you would like to purchase an existing air tour operator and thus obtain existing air tour operator status over a national park. You have not informed us as to the name of this other operator, its legal status, or the national park over which it has operated.

It is the opinion of our office that whether you could purchase an existing operator that had earned the right to fly over a national park and obtain the right to fly over that park would depend 1) on the legal status of the initial operator earning the status of existing operator; and 2) on the nature of the business entity once the purchase was complete.

First, a corporation is recognized by law as a person. Thus, if the operator you wish to purchase was incorporated under the laws of a state of the United States during the relevant time period preceding the enactment of the Act, then the existing operator status belongs to the corporation and would follow the corporation if ownership of that corporation was transferred. Businesses organized as partnerships, or sole proprietorships, however, do not survive as the same legal entities when they are dissolved. Thus the existing operator status would be extinguished upon the dissolution of the business and the existing operator status could not be transferred.

If the operator you wish to purchase is a corporation, then the corporation would retain its existing operator status in the event of a transfer of ownership only if the corporation continued to exist as its own legal person. The Act does not permit an existing operator

to transfer its existing operator status to another person. Thus only if you purchase the entire corporation and have that corporation continue to operate air tours in the park would you as the owner of the corporation be able to take advantage of its existing operator status. Once the corporation that earned the existing operator status ceases to exist, the existing operator status would also cease to exist.

Please note that if you do purchase another carrier, please notify your Principal Operations Inspector so that the appropriate amendments, if any, can be made to the part 119 certificate to operate under part 135, or to the operations specifications.

This opinion has been coordinated with the Office of Flight Standards, AFS-200. I hope this opinion clarifies this issue for you. If you have any questions, please call me at at 202-267-8893.

Sincerely,

Carol Moors Toth
Attorney Advisor,
Air Space and Operations Law Branch
Office of the Chief Counsel
Federal Aviation Administration