



U.S. Department
of Transportation

General Counsel

1200 New Jersey Ave., S.E.
Washington, D.C. 20590

Office of the Secretary
of Transportation

MAY 01 2019

Dow Constantine
King County Executive
401 Fifth Avenue, Suite 800
Seattle, Washington 98104

Re: King County International Airport—Restrictions on Certain Air Carrier Services

Dear Mr. Constantine:

It has come to my attention that on April 23, 2019, your office issued an executive order (the Order) relating to King County International Airport (the Airport), a publicly owned and federally funded airfield located in Seattle, Washington. The Order (a copy of which is attached to this letter) purports to require the Airport to restrict or prevent licensed air carriers from providing specified air transportation services to the United States. The U.S. Department of Transportation is responsible for administering Federal laws relating to the operation of air carriers and airports. I am writing today to alert you to the requirements of Federal law and to seek your cooperation in ensuring that the County and the Airport comply with all applicable Federal legal obligations.

A central provision of the Order appears to direct the Airport to take actions that would prohibit air carriers and other entities from “providing aeronautical or non-aeronautical services to enterprises engaged in the business of deporting immigration detainees.” Federal law expressly prohibits the enforcement of any such directive. Through the Airline Deregulation Act of 1978 (the ADA), Congress has foreclosed State and local governments from regulating the types of services that may be provided by licensed air carriers. The ADA contains an express preemption provision declaring that subject to certain narrow exceptions not relevant here, no State or local government may enact or enforce any “law, regulation, or other provision having the force and effect of law related to a price, route or service of an air carrier.” 49 U.S.C. § 41713(b)(1). The Supreme Court has affirmed that this provision “express[es] a broad pre-emptive purpose” and forecloses all State and local edicts that purport to place restrictions on a price, route, or service of an air carrier, even if such effect “is only indirect.” *Morales v. Trans World Airlines*, 504 U.S. 374, 383, 386 (1992). Section 41713(b)(1) specifically bars local governments from prohibiting or restricting particular types of air transportation. *Arapahoe Cty. Pub. Auth. v. FAA*, 242 F.3d 1213, 1222 (10th Cir. 2001) (applying Section 41713(b)(1) to strike down a local ban on scheduled passenger air service).

In addition, airports that receive Federal grant funding from the Federal Aviation Administration (the FAA) must comply with several enumerated grant obligations that are binding on the grantee airports as a matter of Federal law. As you know, the Airport has received more than

\$21 million in Federal Airport Improvement Program grants from the FAA since 2012, including more than \$2.5 million in Fiscal Year 2018 alone. *See* https://www.faa.gov/airports/aip/grant_histories/media/FY2018-AIP-grants.pdf. Like all other grant-obligated airports, the Airport must be available for public use on reasonable conditions and without unjust economic discrimination. 49 U.S.C. § 47107(a)(1); FAA Grant Assurance 22.a. Similarly, as a recipient of Federal grants, the Airport must “make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times.” *See* 49 U.S.C. § 47107(a)(11); 41 CFR § 102-33.20; FAA Grant Assurance 27. Failure to abide by these and other Federal grant obligations may result in the withholding of Federal AIP funding from the Airport. *See* 49 U.S.C. §§ 47106 and 47111.

I note that the Order contains the important caveat that the Airport and other municipal officials should only take actions “consistent with the County’s federal obligations” and “to the maximum extent permitted by applicable law.” As described above, central provisions of the Order appear to be prohibited by 49 U.S.C. § 41713(b)(1) and could cause the Airport to violate its obligations as a Federal grantee. Therefore, I encourage you to revisit the Order to ensure that the County and the Airport remain in compliance with Federal law.

Thank you for your prompt attention to these issues.

Very truly yours,



Steven G. Bradbury
General Counsel
U.S. Department of Transportation

Attachment

cc: John Parrott, Director, King County International Airport