[redacted]

[redacted]

4 AUG 28 1952

The Honorable
The Secretary of Commerce,
Washington, D. C.

My dear Mr. Secretary:

This is in reply to the letter of the Acting Secretary of Commerce, dated March 11, 1952, requesting my opinion on certain questions with reference to racial segregation at airports developed with financial assistance under the Federal Airport Act. The specific questions are:

"1. Is the sponsor of a Federal-aid airport project, by virtue of the covenant to make the airport available to the public without 'unjust discrimination' incorporated in the existing form of grant agreement prescribed in the Regulations of the Administrator of Civil Aeronautics (14 C.F.R. 550) under the Federal Airport Act (49 U.S.C. 1101) pursuant to Section 11 of such Act, obligated to make all public facilities on the airport available for common use by both white and colored people, without segregation?

"2. If the answer to the first question is in the negative, does the Administrator of Civil Aeronautics have authority to incorporate in grant agreements under the Federal Airport Act a provision specifically obligating sponsors to make all public facilities on the airport available for common use, without segregation?"

With respect to the first question, the proper construction of the covenant against "unjust discrimination" in the grant agreements entered into pursuant to section 11 of the Federal Airport Act is preeminently a judicial question to which only the courts could give a definitive answer. As you know, under a long-standing departmental policy my predecessors

have repeatedly refused to pass upon judicial questions, since opinions on such questions would not be decisive of the issue, might embarrass the conduct of subsequent litigation, and result in an undesirable conflict of opinion between the Attorney General and the courts. 20 Op. 618, 729; 23 Op. 221; 24 Op. 59; 32 Op. 472; 33 Op. 86; 35 Op. 297; 36 Op. 289; 39 Op. 138; 40 Op. 286 and opinions therein cited.

I feel constrained to adhere to the settled policy in this instance, especially since closely related issues are presently in litigation in a new suit filed on March 25, 1952, in the United States District Court for the District of Columbia by the plaintiff in Henderson v. United States, 339 U.S. 816.

I must, therefore, decline to render the requested opinion on your first question. However, in my judgment, the same considerations and rule do not apply to your second question concerning the scope of the discretionary power committed to the Administrator under the statute. Section 11 of the act provides:

> "As a condition precedent to his approval of a project under this Act, the Administrator shall receive assurances in writing, satisfactory to him, that —
>
> (1) the airport to which the project relates will be available for public use on fair and reasonable terms and without unjust discrimination;
>
> * * * *
>
> To insure compliance with this section, the Administrator shall prescribe such project sponsorship requirements, consistent with the terms of this Act, as he may deem necessary. * * *."

In addition, section 12 provides that the Administrator's offer to participate in the cost of a project for airport development shall be made "upon such terms, and subject to such conditions, as the Administrator may deem necessary to meet the requirements of this Act and the regulations prescribed thereunder."

In view of these provisions it is clear that the Administrator has ample authority to require sponsors of federally-aided airports to enter into specific agreements to forbid racial segregation in the use of public facilities on such airports.

Sincerely,

JAMES P. McGRANERY

Attorney General