December 10, 1990

Mr. Daniel E.Ferris

[redacted]

Dear Mr. Ferris:

This is in response to your letter requesting our opinion as to whether certain operations may be conducted under Part 91 of the Federal Aviation Regulations.

Your first question is, if a company were to hire a pilot to fly men and equipment, could the pilot rent the plane for the company, or would the company have to rent the plane?

It is our opinion that if the pilot were to rent the plane, he would then be providing both the plane and pilot services to transport people and property, and, assuming he receives compensation for this, he would be required to hold a Part 135 certificate, since he would be engaging in air transportation for compensation. On the other hand, if the company were to procure a plane, and retain the pilot to transport the company personnel and equipment, this would not require a Part 135 certificate, since the pilot is not the provider of both plane and pilot services.

Your next question concerns whether or not the pilot may sign for the plane's rental receipt upon completion of the rental.

It is our opinion that in order to stay within the realm of Part 91, the company must procure the plane, and the company may not delegate certain acts attendant to the rental agreement to the pilot. Therefore, if the rental of the plane necessarily includes signing the receipt, the company must follow through on that, and not use the pilot as their procurement agent.

In that same vein, with regard to questions number 2 and 3, the company must make the plane's rental arrangements and times of usage, and the company must make the payment of the rental plane directly to the leaser of the plane, who may not be the pilot.

With regard to your question as to whether it is still a Part 91 operation if the owner of the company also holds shares in the FBO

from whom the plane is rented, it is our opinion that this would still constitute a Part 91 operation.

With regard to your question as to whether it would be possible under Part 91 for the pilot to work for the company as a pilot transporting their men and equipment, and still work for the FBO as a flight instructor, it is our opinion that this would be permissible under Part 91 so long as it is the company that still procures the plane, and the pilot is not procuring the plane in addition to providing his pilot services.

With regard to your final question, i.e., whether the pilot may work for more than one company as an employee providing pilot services only, and still be considered a Part 91 operation, it is our opinion that, so long as each respective company procures its plane, and the pilot does not procure the plane, this may be done under Part 91. This opinion is limited to a situation in which the company would not be charging the passengers. If the company were to procure the plane and pilot, and charge passengers any amount for the transportation, then the company would be providing air transportation for compensation, requiring Part 135 certification.

We hope that we have answered your questions. If you have any further questions, please do not hesitate to call or write this office.

Sincerely,

Timothy C. Titus
Assistant Chief
Counsel By:

Signed by:

Mary Ellen
Loftus Attorney