July 27, 1990

Mr. Melvin J. Huber
[redacted]

Dear Mr. Huber:

Re: Request for Legal Opinion

The St. Louis Flight Standards District Office (FSDO) forwarded your request for a rule interpretation to this office. You frame your inquiry in very general terms, which necessitates a like reply.

In the fact situation you have presented, Corporation A owns an aircraft, which it leases back to an FBO, which in turn uses it as a Part 135 aircraft. You state that Corporation B proposes leasing this aircraft for business purposes, providing its own pilot. You say the pilot is qualified to fly commercially for Part 91 operations. The lease would be on an as-needed basis, with the owner and local FBO retaining control of the aircraft.

You ask if the above may be conducted under FAR Part 91 rules without infringing on Part 135 operations. Also, you ask if the lease would be from the owner or the FBO.

For purposes of this opinion, we must assume that Corporation B's use of this airplane on an as-needed basis is closely related to any hourly type rental. Corporation B rents this plane and provides an employee/pilot to fly it for corporate purposes. Corporation B's use of the plane with its staff pilot for corporate purposes is a Part 91 operation.

You were, however, unclear as to the actual status of the pilot provided by Corporation B. If, as assumed above, the pilot is a corporate employee, we clearly have a Part 91 operation. We also have a 91 operation if B hires a commercially certificated pilot on an as-needed basis from a third party source.

The line between Part 91 and Part 135 is crossed, however, if the

pilot also comes from the same source as the airplane. Renting or leasing a plane and pilot constitutes a 135 operation on the part of the lessor and pilot. Even if the parties couch the arrangement in terms such as a separate rental of plane and pilot, the 135 line is crossed. To remain squarely within Part 91 rules under your example, the pilot must either be a corporate employee or an independent contractor from a source removed from the lessor of the airplane.

We cannot address your second question on whether the lease is from the actual owner of the plane or the FBO. The answer to that will vary depending on the terms of the lease or rental agreement, the leaseback arrangement between the owner and FBO and perhaps the operations specifications for the 135 operation at the FBO; to name a few variables. Issues of this nature are best handled by your personal attorney as they may affect civil liability.

Thank you for the opportunity to address this question. If you desire further clarification you may present more detailed facts to your local FSDO.

Sincerely,

Timothy C. Titus Assistant Chief Counsel