February 4, 1992

Mr. Robert W. Knee

[redacted]

Dear Mr. Knee

This letter is written is response to your letter of January 22, 1992, in which you have requested a legal opinion on seven inquiries you identified pertaining to 14 CFR Section 61.118. Each of your inquiries is addressed separately below.

Acquisition of Passengers

Under the Federal Aviation Act of 1958, and FAA Advisory Circular 120-12A, a private pilot may not hold him or herself out to the public to provide air transportation. Any scheme whereby the private pilot offers a service to the general public in which any individual seeking a ride may partake in the offer is prohibited.

Allowable Expenses

The operating expenses which may be shared are the direct costs associated with the subject flight. More specifically, these expenses include any cost which would not have been incurred by the private pilot, "but for" the occurrence of the subject flight. Direct expenses typically include such items as fuel and oil consumed on the flight, landing or customs fees, ramp or tie down fees at the destination airport only, and non-routine maintenance costs, i.e., emergency maintenance. Direct or nonrecurring expenses exclude such items as insurance, routine maintenance or capital costs.

Further, in this regard, operating expenses may also include rental costs, provided that all costs associated with the rental are evenly distributed among all occupants of the airplane, including the pilot.

Hypothetical Number 1

This situation is permitted under the regulation.

Hypothetical Number 2

This situation is permitted under the regulation, provided that the member who provided the information to *you* is not an agent whose function or purpose was to procure passenger traffic from the general public.

Hypothetical Number 3

This situation is not permitted under the regulation. The "club-organization service" in which you refer to in your letter is an agency with a stated purpose of procuring passenger traffic from the general public and collecting them into groups to be carried by the private pilot. This type of conduct constitutes "holding out" under advisory circular 120-12A. Although the group members are a sub-group of the general public, the service is offered to any member who desires to partake in any proposed flight.

In addition, where a private pilot develops a reputation that he or she is willing to serve anyone from the general public, then the actions or conduct utilized by the individual to develop this reputation would constitute "holding out." Actions or conduct which rise to this level would be prohibited solicitation, and hence, operating expense sharing would be inappropriate.

We hope that the above information adequately addresses your concerns.

With Best Regards,

Philip G.Pompilio
Staff Attorney