April 15, 1993

TO: SEAN R. ATKINSON

[redacted]

Dear Mr. Atkinson:

This letter is written in response to your letter of April 1, 1993, in which you requested a legal interpretation regarding various flights that you have piloted with employees of National Medical Resources, Inc., and Cascade Medical Services, Inc.

In your letter of April 1, 1993, you indicate that you have been flying employees of the two above mentioned companies on trips required by the business of the companies; the companies have been paying by check for the rental of the subject aircraft; you are a commercial rated pilot, and that the compensation that you receive on the subject flights is limited to flight time and expenses incurred while on the trips.

In addition, Ms. Laura Atkinson, Administrator & Office Manager of Cascade Medical Services, Inc., indicated in a telephone conversation with the undersigned on April 7, 1993, the following: the company has assumed that it is the operator of the subjects flights, and as such, assumes all legal liability for the operation of the flights, eg. tort liability, violations of FARs, etc.; the company has verified through the aircraft renter that insurance coverage has been in place for the subject flights; the company pays by check for the rental of the aircraft; the company directs you as pilot to arrange for the rental of the aircraft; the company pays for the rental of the aircraft by check made payable to the aircraft renter; the company has compensated you as pilot only for the expenses that you have incurred on each trip, eg. hotel, per diem, etc.; the company has not offered transportation to any individuals other than employees of the company; the company has assumed responsibility for all expenses associated with the operation of the aircraft (eg. fuel, landing/takeoff fees, etc.), and the company has made direct payment to suppliers, etc., for any expenses incurred pertaining to the operation of the subject aircraft.

In your letter you inquire whether the activities that you reference fall within the rubric of Part 91 or Part 135 operations. Part 135 applies to operations involving the carriage in air commerce of persons and property for compensation or hire as a commercial operator by virtue of section 135.1(a)(3). The piloting of flights conducted under FAR 61.139(a) are subject to the requirements of Part 135, whereas, the piloting of flights conducted under FAR 61.139(b)

are not subject to the requirements of Part 135.

The operative word that distinguishes FAR 61.139(b) from both FAR 61.139(a) and FAR 135.1(a)(3) is the word "carriage." Hence, a commercial pilot can act as pilot in command of an aircraft for compensation or hire, as long as persons or property are not "carried" in the strict legal sense. A pilot is deemed to have carried passengers or property for hire when he or she has assumed operational control of the flight. See Administrator v. Perkins, 2 NTSB 2383, 2385 (1976).

Operational control must be determined from the totality of all circumstances in each case. Based upon the circumstances that you have presented, it appears that you are not engaging in the "carriage" of passengers, and the flights are not subject to the requirements of Part 135. This determination is based upon the specific facts that you have presented. It should be noted here that the case that is presented here is indeed a close one. The slightest departure from the activities referenced herein could shift the totality of the circumstances to the extent that the operation would be subject to the requirements of Part 135.

If you should have any additional questions in this regard, please do not hesitate to contact me at (206) 227-2106.

With best regards,

PHILIP G . POMPILIO
Staff Attorney