March 8, 1993

The Honorable Phil Gramm

This is in further response to your letter on behalf of your constituent Mr. Robert Bean concerning the Federal Aviation Administration (FAA) and the National Transportation Safety Board (NTSB) interpretation of Section 61.118 of the Federal Aviation Regulations (FAR).

Section 61.118 states, in pertinent part, that a private pilot may not act as a pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may a private pilot, for compensation or hire, act as pilot in command of an aircraft, even when the transportation of passengers or property is not involved. The NTSB has held that compensation or hire exists where a private pilot receives reimbursement of expenses or takes a tax deduction for voluntarily carrying persons or property on flights. The NTSB ruled such flights to be in violation of Section 61.118. The FAA argued for this interpretation and agrees with the NTSB decision.

Private pilots making volunteer air flights involving the carriage of persons or property are in violation of Section 61.118 if they receive any reimbursement of expenses or take any tax deductions for those flights. In addition, if the operator of the aircraft does not have an FAA operating certificate, carriage of persons or property for compensation or hire is also a violation of Part 121 or 135 of the FAR. On the other hand, if the flights conducted by Angel Flight do not involve compensation or hire, as that phrase has been interpreted by the FAA and the NTSB, then neither Angel Flight nor the pilots involved would be in violation of Section 61.118, Part 121, or Part 135.

In the past, the FAA has issued exemptions from Section 61.118 to allow for reimbursement of fuel, oil, and maintenance costs when incurred in the performance of official search activities. Under these exemptions, official search activities cannot include the carriage of persons or property, which would require an exemption from Part 121 or 135. Angel Flight may qualify for an exemption from Section 61.118, and thus its members could be reimbursed for fuel, oil, and maintenance costs for official search activities.

Such an exemption would not permit the transportation of persons or property for compensation or hire, since Angel

Flight would have to have the appropriate air carrier operating certificate or commercial operating certificate. Parts 135 and 121 govern the transportation of persons or property for compensation or hire. People or entities that hold themselves out to the public to provide transportation by air of persons or property for compensation or hire are considered "air carriers." If they do not advertise or otherwise hold themselves out to the public, they are considered commercial operators. It has never been the policy of the FAA to allow people to act as air carriers or commercial operators without an FAA air carrier operating certificate or FAA commercial operating certificate. In order to obtain such a certificate, one must meet the additional safety requirements in Parts 121 or 135.

I hope the above information will assist you in responding to your constituent.

Sincerely,

John H. Cassady

Acting Chief Counsel