October 26, 1993

Ryan S. Green
[redacted]

Dear Mr. Green:

This is in response to your letter dated September 29, 1993. You ask whether the following circumstances would constitute operations in Part 91 of the Federal Aviation Regulations or Part 135 of the Federal Aviation Regulations.

A company engaged in the purchase and sale of vehicles needs to transport its employees--commercial drivers--to remote locations to pick up vehicles that the company has purchased, and to drive the vehicles back to the company's lot to be sold. The company would hire you, a commercial pilot, to fly these drivers to remote pickup sites, in an aircraft that it would rent from a local flight school. The transportation would be provided to the drivers at no cost to them.

Generally, a commercial operating certificate under Part 135 is required to engage in the carriage in air commerce of persons or property for compensation or hire. Under the circumstances you describe, it would appear that the carriage of persons is not for compensation or hire, since there is no payment made to the company or compensation received by it for transporting its employees. I also note that the company's transportation of its own employees, by air, would be merely incidental to the company's principal business of vehicle sales.

I would caution you against allowing this arrangement to evolve into a de facto operation of private carriage for hire. This would occur if you, in fact, put together the transportation package consisting of aircraft and pilot services and received payment for the operation of the flights, even if the clientele was limited to one customer. This would require a commercial operator certificate.

The distinction between the two operations is that in the first scenario the company would be deemed the operator of the flights, for its own employees, with you hired merely as a commercial pilot; whereas in the second scenario, you would be considered the operator of the flight receiving compensation for the transportation of another company's employees. Under the first scenario, the company as well as you, are responsible for the operation of the aircraft. Prior to beginning the operation, you should ensure that the company accepts its role as the operator of the flights and recognizes that it is responsible for accidents or violations which occur as a result of the operation.

If you have any further questions, please feel free to call me at (206) 227-2007.

Sincerely,

George L. Thompson
Assistant Chief Counsel