May 20, 1993

Mr. Cliff Runge
Executive Vice-President
Aspen Base Operation
198 W. Airport Road
Aspen, Colorado 81611

Re: Legal Interpretation

Dear Mr. Runge:

This is in reply to your letter of April 26, 1993, in which you have asked a number of questions regarding ownership and operation of aircraft by a limited partnership. The primary intent in your posing these questions, as we understand it, is to determine whether turbojet aircraft can be operated by a limited partnership, for its partners and guests, under Part 91 of the Federal Aviation Regulations.

We must first determine whether the operation you propose would be for compensation or hire, since that will dictate whether certification under Part 135 or Part 121 would be required. Since under your proposal the partnership would be getting reimbursed for the operating expenses of the aircraft, an operating certificate would be required, unless some other regulation permits operation without such a certificate.

The primary regulatory provision permitting compensated operations under Part 91 is Subpart F of Part 91. That Subpart, formerly designated as Subpart D, was adopted by the Agency primarily to upgrade safety standards for the operation of large and turbojet-powered airplanes used in private carriage. The intent was to eliminate the economic factor in setting safety standards, so that safety requirements for large and turbojet-powered airplanes operated under Part 91 of the Federal Aviation Regulations would be commensurate with those required for airplanes operated under Parts 121, 125, 129, 135, and 137 of the Federal Aviation Regulations. The new Subpart D (now Subpart F) of Part 91, specifically Section 91.501, was also intended to provide for the more efficient use of corporate airplanes by permitting the reimbursement of the costs of owning and operating an airplane when the airplane is used in the carriage of company officials, employees, guests, and property and when that carriage is within the scope of, and incidental to, the business of that company and when that business is other than transportation by air. The rule also permits reimbursement to the company owner of specified costs of operating its airplane under a time-sharing agreement, as defined in Section 91.501 of Subpart F. Unless the operation of a large or turbojet powered airplane falls within the requirements set forth in Section 91.501, the operator may not receive any compensation for that operation.

Turning to your specific questions, in your letter and in our recent telephone conversation you have indicated that the primary purpose of the proposed limited partnership is to provide transportation by air to the limited partners. However, the intent of Subpart F, insofar as it permits limited compensation for the operation of corporate airplanes, was to permit increased utilization of corporate airplanes beyond the usage those airplanes received on company business. We have consistently taken the position that a company created solely, or primarily, to increase the utilization of an airplane; that is, to provide transportation by air, does not qualify for the exceptions in Section 91.501. For example, Section 91.501(b)(5) permits a company to receive compensation for a flight conducted "within the scope of, and incidental to, the business of the company (other than transportation by air)," and Section 91.501(b)(7) permits compensation for the carriage of property "on an airplane operated by a person in the furtherance of a business or employment (other than transportation by air)." We must therefore conclude that the operation that you propose does not fall under Section 91.501 and would have to be conducted under Part 135 of the Federal Aviation Regulations.

While the regulations do not address partnerships, Section 91.501(b)(6) does permit reimbursement of operating expenses between joint owners. We have previously interpreted that section to limit the joint ownership to two owners. In that case, both owners must be registered owners of the airplane, and a joint ownership agreement must be created, specifying the charges to be shared.

Since most of your questions assume that a limited partnership may operate an airplane and receive compensation therefore, our opinion is dispositive. You have also asked to what extent an airplane operated by Aspen Base Operation under Part 135, may be operated under Part 91. The only permissible Part 91 operation would be the carriage of the owner and his guests aboard that airplane. For the reasons given above, any other operation would need to be conducted under Part 135.

We hope that this answers your questions. If you have any further questions, feel free to write or call me at (206) 227-2759.

Sincerely,

GEORGE L. THOMPSON
Assistant Chief Counsel

By: PETER R. LAYLIN
Attorney ANM-7B