July 22, 1994

Forest Bennett
President, Aurora
Aviation 22775
Airport Road N.E.
P.O. Box 127
Aurora, OR 97002

Dear Mr. Bennett:

This is in response to your letter of July 11, 1994, requesting a legal opinion from this office. You state that Aurora Aviation is a Part 135 Air Taxi Operator which has been approached by a local businessman who would like to place his aircraft on your company's rental list. The aircraft complies with Part 91 maintenance standards but not Part 135 maintenance standards. You state that several of your company's current charter customers would like to rent out this aircraft, and provide their own pilots. The complicating factor is that these pilots also work for Aurora Aviation on a regular basis.

I appreciate your concern for not entering into a relationship which might jeopardize your Air Taxi certificate. The arrangement you have described is one which the FAA not uncommonly encounters in an enforcement context. While I do not doubt your company's desire to comply with all Part 135 requirements--hence your letter to us--I must advise that the scenario you describe is also characteristic of a classic pretext for avoidance of Part 135 responsibilities in aircraft maintenance and crewmember qualifications, e.g., an operator attempts to avoid certification responsibility by making a pretext of separating the various elements of the air transportation, such as the aircraft from the provision of pilot services, and then claims that the aircraft "renter" is the "operator" of the aircraft under Part 91, rather than the entity which provided the aircraft and pilots.

The FAA, on the other hand, would look to the substance of the operation to determine whether air transportation is being provided. If the FAA found that the same entity is providing, in fact, both aircraft and pilots, and compensation is exchanged, it would assume that the entity is providing air transportation and would require compliance with Part 135. This would be particularly true if the entity advertised air transportation services to the general public.

Your company does hold out to the public (legitimately, I might add) that it provides commercial air transportation. Your company, under this scenario, would be providing the aircraft. Your company's pilots would be flying the aircraft. Your company would receive payment in connection with the flights. In my view, the FAA would consider these flights to be conducted by your company and would require that all applicable provisions of Part 135 be complied with.

Sincerely,

George L. Thompson

Assistant Chief Counsel