August 25, 1995

Bogle & Gates
Kit G. Narodick, Esq.
Two Union Square
601 Union Street
Seattle, WA 98101-2346

Re: Operation of a Turbojet Aircraft
under FAR Part 91

Dear Mr. Narodick:

This refers to your August 7, 1995, letter in which you have presented a further amendment to the hypothetical set of facts contained in your July 10, and July 26, 1995, letters, and request our review and advice as to whether this amendment would change our conclusions regarding the nature of the operation to be conducted. This will further confirm our telephone conversation on August 10, 1995, regarding the same subject.

Under the facts set forth in your July 26th letter, the aircraft in question was to be owned by Owner and rented to Owner's stockholders in much the same manner that a fixed based operator rents aircraft to qualified owners. The renters did not intend to conduct operations for compensation or hire, and would be responsible for providing pilots to operate the aircraft, which they intended to do through a separate entity, Flying Service.

Our general conclusion was that this arrangement did not appear to be an operation which would require certification under Part 135 of the Federal Aviation Regulations (FAR).

Under your amended version of the proposed operation, Owner (now perhaps a misnomer) would no longer own the subject aircraft; Flying Service would be the aircraft owner. The aircraft would then be the subject of a "long term dry lease" from Flying Service to Owner. No mention is made of responsibility for aircraft maintenance, insurance, required approval of flight crews, or other matters relating to the use and operational control of the aircraft.

It is our opinion that the amended facts presented by you represent a significant change which would appear to necessitate a different conclusion regarding the rules under which the operation must be conducted.

As proposed in the amended version, what would exist, in essence, is an operation where Flying Service is providing an aircraft, which it owns, as well as the crew to operate it, to the shareholders/renters, albeit the aircraft takes a diversion through Owner on its way to the shareholders/renters.

In our view, the close, interlocking nature of this proposed arrangement would make it appear as though the use of Owner was merely designed to obscure an attempt by Flying Service to provide transportation by air for compensation or hire without proper certification under FAR Part 135. Consequently, it is our opinion that under this proposal Flying Service would need to hold a FAR Part 135 certificate to conduct the proposed operation.

As stated in our earlier correspondence, the views expressed herein are based upon our review of a hypothetical set of facts. Whether any given operation may require certification under FAR Part 135 is a determination which ultimately can only be made after a review of all the pertinent facts and circumstances surrounding the actual operation which may be conducted.

Very truly yours,

Leland S. Edwards, Jr.
Attorney