July 20, 1995

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

Re: Management Services for Turbojet Aircraft Under FAR Part 91

Dear Mr. Narodick:

This refers to your letter of July 10, 1995, to Mr. John J. Callahan in which you request our advice concerning whether a proposed aircraft operation may be conducted under the provisions of Part 91 of the Federal Aviation Regulations (FAR).

In your letter, you have stated that under the proposed operation, an aircraft (a turbojet executive aircraft having a gross weight in excess of 12,500 pounds) is owned by and will be the sole asset of a corporation (Owner). Owner desires to enter into a contract with an aircraft management company (Manager), under which Manager will provide all management services, maintenance, fuel, pilots, hangar, and insurance, and will operate the aircraft "for the exclusive benefit of Owner." You then state, perhaps inconsistently, that Manager "will operate the aircraft exclusively for the two shareholders of Owner."

These two concepts of "exclusive" operation of the aircraft by Manager are further modified by a statement by you that Owner will, "from time to time," enter into a "wet lease" agreement with a FAR Part 135 certificate holder for use of the aircraft in operations under its FAR Part 135 certificate. When doing so, the certificate holder will comply with all requirements of FAR Part 135 relating to maintenance and use of the aircraft and use of the pilots in its operations.

You then indicate that the two shareholders of Owner will "capitalize" Owner, and Owner will pay Manager for its

services in the aircraft operation. The FAR Part 135 certificate holder will pay Owner a per flight hour charge for its use of the aircraft under the wet lease.

Based on these facts, you express your belief that neither Owner nor Manager would be considered to have been compensated for transportation for hire for these operations, and they could be conducted under FAR Part 91, and would not require FAR Part 135 certification. You have requested our review and concurrence in your opinion regarding this matter.

Under the facts presented by you, it is our opinion that the "wet lease" operation of the aircraft by the FAR Part 135 certificate holder could be properly conducted under its certificate. This would be true so long as it was, in fact, the "operator" of the aircraft and continued to meet all pertinent requirements of the FAR, including those relating to aircraft and pilots. In that case, neither the Owner nor Manager would require FAR Part 135 certification.

The operation of the aircraft by Manager "exclusively" for the two shareholders of Owner presents an entirely different circumstance. It is our opinion that under the facts you have presented operation of the aircraft for the two shareholders would be considered an operation for compensation or hire, and would require certification under FAR Part 135. The only issue regarding that proposed operation would be whether Owner, or potentially Manager, would require FAR Part 135 certification, not if certification would be required.

Regardless of whether the payments made by the two shareholders are characterized as "capitalization" of Owner, or otherwise, they would appear to amount to the same thing. They represent payments for transportation services being provided to them by another.

The sole asset of Owner is the aircraft, and, apart from the wet lease to the FAR Part 135 certificate holder, its only source of income is derived from the operation of that aircraft in providing transportation services to its two shareholders. This would clearly represent operation of an aircraft for compensation or hire, and would make Owner a commercial operator.

The proposed involvement by Manager confuses the analysis to the extent that its operation of the aircraft, stated as being "exclusively for the two shareholders of Owner," may, in fact, represent an operation by Manager rather than Owner for compensation or hire. However, it is unclear from the facts presented whether this would be the case. A determination of this issue could only be made based upon a review of the contracts between the parties which implements the arrangement, as well as a review of the facts surrounding the actual operation being conducted.

I hope that the foregoing is helpful to you. If you have further questions, do not hesitate to contact us.

Leland S. Edwards
Attorney

Leland S. Edwards Jr.