April 19, 1996

Debra S. Fagan, Esq.
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555 Seventeenth Street
Denver, Colorado 80202-3979

RE: Request for Legal Interpretation of FAR 91.501

Dear Ms. Fagan:

This is in response to your April 16, 1996, letter, asking three questions requiring our legal interpretation of Section 91.501 of the Federal Aviation Regulations. The operative facts as stated by you are as follows:

> The registered owner of a large aircraft will lease the aircraft to co-leasees Corporation A and Corporation B. Corporation A is a diversified business not formed for the purpose of owning and operating the aircraft. Corporation B is formed solely for holding the co-leasehold interest in the large aircraft. Corporation A and not Corporation B will at all times retain operational control over the large aircraft. Corporation A will also have sole responsibility for hiring the pilots and maintaining the large aircraft. Corporation A and B will each pay a percentage of the aircraft rent, taxes and insurance premiums, based on the percentage of their use of the large aircraft. The use of the aircraft by Corporation B will relate solely to personal use by Individual X, a majority shareholder, officer and director of Corporation A, and the sole stockholder, director and officer of Corporation B. Corporation B will not charge Individual X for his use of the large aircraft. No common carriage will be involved.

Your three questions and my responses are as follows:

Question 1: May Corporation B be formed for the purpose of co-leasing the aircraft for Individual X's personal use, without Corporation B being required to hold an operating certificate under Part 135 of the Federal Aviation Regulations?

Answer: Yes, since you have stipulated that Corporation A will at all times retain operational control over the aircraft, and that Individual X will not be charged by Corporation B for his use of the aircraft.

Question 2: Under the provisions of FARs 91.501(b)(6) and 91.501(c)(1), may the large aircraft be operated under a time-sharing agreement, under the stated facts, with only those charges specified in FAR 91.505(d) being charged by Corporation A to Corporation B?

Answer: No. FAR 91.501(c)(1) limits time-sharing agreements to arrangements wherein one person leases his airplane, with flight crew, to another person. Under the facts you have stated, Corporation A and Corporation B are co-lessees of the aircraft from the lesser registered owner, rather than Corporation A being the leaser and Corporation B being the lessee. Furthermore, under your stated facts, Corporation B would be paying a percentage of the general rental fees, taxes, and insurance associated with the master aircraft lease, based on Corporation B's overall percentage use of the aircraft. These expenses are not the "expenses of a specific flight" specified by FAR 91.501(d).

Question 3: Under the provisions of FARs 91.501(b)(6) and 91.501(c)(3), may the large aircraft be operated under a joint-ownership agreement, under the stated facts, providing for payment of fixed costs (maintenance, taxes, pilot salaries, hanger and related fees, etc.) based on the percentage of aircraft use by Corporation A and Corporation B.

Answer: No. As you have noted, FAR 91.501(c)(3) limits joint-ownership agreements to arrangements whereby one registered joint-owner employs and furnishes the flight crew for a large aircraft to another registered joint-owner. Since under your stated facts neither Corporation A, nor Corporation B, is a registered owner of the large aircraft, this Regulation would not permit the arrangement you have inquired about.

Although the regulatory history of FAR 91.501 may indicate, as you suggest, that the purpose of the Regulation was to eliminate unnecessary restrictions on the operators of large aircraft, which are not related to safety considerations, we simply cannot ignore the plain meaning of the Regulation, which does not permit joint-ownership agreements between co-lessees of a large aircraft. If you believe that you can establish that your proposal would provide a level of safety equal to that provided by the Regulations in question, and would otherwise be in the public interest, you may file a Petition for Exemption, in accordance with the provisions of Section 11.25 of the Federal Aviation Regulations.

Sincerely,

Karl B. Lewis, FAA Attorney