Federal Aviation Administration

Memorandum

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Date:

To: Don Bobertz, Attorney, Office of the Regional Counsel, Western Pacific Region, AWP-007

From: Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Dean Griffith, Attorney, Regulations Division, AGC-220

Subject: Legal Interpretation on 14 C.F.R § 61.113(c) - Shared Operating Expenses

This memorandum is in response to your inquiry regarding whether a pilot shared the common purpose with his passengers of traveling to a canoe race thereby enabling him to share operating expenses for a series of flights under 14 C.F.R. § 61.113(c).

The information you provided to us contains the following scenario. A pilot, who holds an airline transport pilot (ATP) certificate, was asked to fly members of a canoe club from Honolulu, Hawaii, to Molokai, Hawaii, for a race. He agreed and arranged to use a four-seat Cessna 172 airplane owned by a person who "is also friends with the Canoe Club." The pilot would fly three club members to the race site, return without passengers, and then pick up another three passengers. These flights would be repeated until the entire team was transported to the race site. The airplane's owner and the pilot discussed the airplane's operating costs and determined that each flight would cost $120-150. They also determined that the pilot and passengers could each pay a pro rata share of each passenger-carrying flight; $100 of the cost of each flight would be divided among the three passengers and the pilot would contribute $35.

The pilot made nine trips to transport the team to the race – four on one day, and five on the next. The total expenses for the flights came to $1,280. To cover the expenses the canoe club paid the pilot $900 (collected from the passengers), representing the cost of transporting the racers, and the pilot contributed $380. The pilot states that he "knew and had socialized and paddled with numerous club members," and contends that he had a common purpose with the canoe racers in attending the event of "furthering the club's cultural interests, its competition record, and the continued development of our teams." *See* Nov. 25, 2008 Letter to Chris J. Collins, Manager, Honolulu Certificate Management Office, and Oct. 4, 2008 Letter to Jon B. Murakami, Aviation Safety Inspector, Honolulu Flight Standards District Office (both letters contained in the materials provided).

Private pilots are prohibited from carrying passengers for compensation or hire with certain exceptions. *See* 14 C.F.R. § 61.113(a)-(d). Section 61.113(c) provides an exception to the

general rule by allowing a private pilot to obtain a pro rata reimbursement from his passengers for fuel, oil, airport expenditures, or rental fees. The FAA has consistently interpreted this exception to require a pilot to share with his passengers a bona fide common purpose for conducting the flight. *See* Legal Interpretation to Guy Mangiamele, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 4, 2009); Legal Interpretation to Peter Bunce, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Nov. 19, 2008); Legal Interpretation to Thomas H. Chero, from John H. Cassady, Assistant Chief Counsel, Regulations and Enforcement Division (Dec. 26, 1985); Legal Interpretation to Bob Von Seggern, from John L. Fitzgerald Jr., ACE-7 (Dec. 19, 1977-81).

Absent a bona fide common purpose for their travel, reimbursement for the pro rata share of operating expenses constitutes compensation and the flights would be considered a commercial operation for which a part 119 certificate is required. *See* Legal Interpretation to Peter Bunce, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Nov. 19, 2008). Whether a bona fide common purpose exists depends upon the facts of the situation at hand. S*ee, e.g.*, *id.* (finding no common purpose when a volunteer pilot transported ill or injured individuals to medical treatment facilities for compensation because the choice of destination was dictated by the passenger and the pilot's only purpose was to provide transportation to the passenger); Legal Interpretation to Thomas H. Chero, from John H. Cassady, Assistant Chief Counsel, Regulations and Enforcement Division (Dec. 26, 1985) (finding no common purpose if the pilot is transporting passengers to a destination where he has no particular business to conduct).

The pilot in this scenario claims that he shared a common purpose with his passengers because the flights were to further the canoe club's cultural interests, its competition record, and the continued development of its teams. The pilot was asked to fly the team to the race by another pilot who previously transported team members. There is nothing to suggest that the pilot intended to attend the race, or to fly to the race site, for any reason other than to transport the team. Furthermore, the pilot needed to conduct a total of nine flights in order to transport the entire team.

Based on these facts, it is clear that the team dictated the destination and the flights were conducted with the purpose of transporting the team to the race. Because the purpose of the flights was to transport the team members from Honolulu to the race site, the § 61.113(c) exception does not apply, and the pilot is prohibited from receiving compensation in the form of the passengers' pro rata share of the operating costs of the flights. *See* 14 C.F.R. § 61.113.

Assuming, however, that the pilot planned to attend the race and conducted the flights with this purpose, his bona fide common purpose with his passengers for making the trip would only extend to the first flight to the race site. This is because following this flight he would be at his destination and able to attend the race. If the pilot had carried any passengers from the race back to Honolulu, then the bona fide common purpose would also extend to the one flight the pilot needed to conduct in order to return home. Subsequent flights would not be necessary for achieving his purpose of attending the race and would therefore be solely for the purposes of transporting the team.

With respect to conducting the flights for compensation, your request notes that the pilot, who holds an ATP certificate, argues that any time logged on these flights should not count as compensation because building general aviation flying time in a Cessna 172 does not advance his career. Generally, accrual of flight time is compensation and the FAA does not enter into a case-by-case analysis to determine whether the logging of flight time is of value to a particular pilot. Legal Interpretation to John W. Harrington, from Donald Byrne, Assistant Chief Counsel (Oct. 23, 1997) [1997-23]. Moreover, this argument does not alter the fact that, as discussed above, the pilot received compensation for the flights from the canoe club members by accepting their pro rata share of the cost of the flights.

Second, as noted above, the pilot holds an ATP certificate which raises the issue of whether the pilot could have conducted these flights for compensation or hire. One privilege conferred upon ATP certificate holders is the ability to act as a pilot in command of an aircraft carrying persons or property for compensation or hire. *See* 14 C.F.R. § 61.167(a), 61.133(a)(1). However, in order to conduct such operations, the ATP certificate holder must also obtain a part 119 operating certificate when operating a civil aircraft as a commercial operator in air commerce. *See* 14 C.F.R. § 119.1(a)(1). A commercial operator is a "person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property." 14 C.F.R. § 1.1. Air commerce is defined as "interstate, overseas, or foreign air commerce . . . or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce." *Id.*

Here, the pilot received compensation from the canoe club members he transported to the race. *See* Legal Interpretation to Peter Bunce, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Nov. 19, 2008) (noting that a pro rata share of operating expenses is compensation). The flights were also conducted in air commerce; the fact that the flights were conducted solely within the state of Hawaii does not except them from the FAA's oversight. *See* Legal Interpretation to Allan W. Read, from John H. Cassady, Assistant Chief Counsel (March 14, 1985) [1985-4] (noting that the FAA's authority has been broadly construed to extend to intrastate flights because of their safety impact on interstate air commerce); *Administrator v. Clifford O. Barrows*, NTSB Order No. EA-3061 (Jan. 3, 1990); *Administrator v. Michael Dan Ferguson*, NTSB Order No. EA-1822 (Aug. 13, 1982); *Administrator v. Mira Slovak*, NTSB Order No. EA-587 (June 5, 1974). Accordingly, the pilot would need a part 119 air operator certificate to conduct these flights for compensation or hire.

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of further assistance.