U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JAN 30 2009

Charles Harris, Esq.
777 Alvarado Road, Suite 720
La Mesa, CA 91941-3656

Dear Mr. Harris:

We received your letter requesting an interpretation of whether your client may accept a fee to scatter cremated human remains from an experimental category aircraft.

You indicate in your letter that your client, a commercially licensed pilot, owns and operates a Seawind 3000 aircraft with an experimental certificate. You state that several people have offered to pay your client to scatter the cremated human remains of their loved ones from the aircraft. You also state that your client would perform these operations without passengers or other crewmen on board.

Your specific questions and our responses follow:

1. Would this operation qualify as an exception to part 135 under the present regulations, as identified in your opinion of July 31, 1992 to Cory Bartholomew?

The Chief Counsel has determined that the disposal of cremated human remains for compensation is an aerial work operation excepted by section 119.1(e) from the requirement that the operator hold a certificate authorizing operations under part 135. *See* July 31, 1992, Letter to Cory Bartholomew from Carey Terasaki, General Attorney; April 3, 1978, Letter to Keith F. Marsh from Edward P. Faberman, Deputy Assistant Chief Counsel, Regulations and Enforcement Division [Interpretation 1978-17].

2. Would such operations be considered "carrying persons or property for compensation or hire" as defined in section 91.319?

Section 91.319(a) specifically prohibits operating an aircraft that has an experimental certificate for other than the purpose for which the certificate was issued, or carrying persons or property for compensation or hire. For our regulatory purposes, the FAA considers carrying cremated human remains on board the aircraft in these circumstances analogous to the carrying of property.[1] This is because the person who gives the pilot the remains to

[1] Although cremated human remains are not considered property, next of kin generally have the right to possess the remains for burial. *Compare Enos v. Snyder*, 63 P. 170, 171 (Cal. 1900) ([I]n the absence of statutory provisions, there is no property in a dead body . . . ."), *and O'Donnell v. Slack*, 55 P. 906, 907 (Cal.

carry on board the aircraft has an interest in seeing that the ashes are properly dispersed by the pilot. Considering this strictly from an aviation safety perspective, the next-of-kin's interest in the proper dispersal of their loved one's ashes is similar to another person's interest in the safe and timely delivery of an item of value. In both cases, the pilot is entrusted with an item of value and must perform the flight operation to a certain standard for it to be judged a success. Therefore, the FAA believes that it would be inconsistent for the purposes of this regulation to consider property such as a books, documents, or tools, differently from cremated human remains.

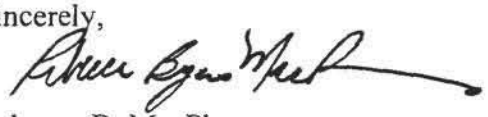
Although the FAA considers carrying cremated remains "carrying persons or property" for purposes of this regulation, such operation would need to be for compensation or hire to be prohibited by the section 91.319(a). It is clear from your letter that your client would be compensated for scattering cremated remains from his aircraft. It is also clear that the cremated remains must be carried in the aircraft so that they can be scattered by the pilot. Accordingly, we interpret the proposed operation to be in violation of section 91.319's prohibition on carrying persons or property for compensation or hire in an aircraft with an experimental certificate.

3. If such operations are considered to be carrying persons or property for compensation or hire, would they be exempt, because they are exempt from part 135?

The fact that aerial work generally does not require a certificate authorizing operations under part 135 does not relieve your client from the prohibition on using an experimentally-certificated aircraft for carrying persons or property for compensation or hire. This is because the aerial work exception is located in part 119 which establishes the operators who must obtain a certificate authorizing operations under part 121, 125, or 135. Although your client need not obtain a part 119 certificate, he is not relieved from the general operating requirements of part 91. Accordingly, section 91.319 still applies to your client's operations in his experimental aircraft and, as discussed above, prohibits your client's proposed operation.

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

Sincerely,



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

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1899) ("The body of one whose estate is in probate unquestionably forms no part of the property of that estate."), *with Perry v. St. Francis Hosp. & Med. Ctr.*, 865 F. Supp. 724, 726 (D. Kan. 1994) ("[T]he next of kin has a personal right to possess the dead body of a relative for purposes of preserving and burying it."), *and Travelers Ins. Co. v. Smith*, 991 S.W.2d 591, 596 (Ark. 1999) ("A quasi-property right in dead bodies vests in the nearest relatives of the deceased, arising out of their duty to bury the dead.").