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

Office of the Chief Counsel

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

MAR 4 2009

Mr. Guy Mangiamele
[redacted]

Dear Mr. Mangiamele,

This is in response to your request for legal interpretation submitted to the FAA Western Pacific Regional Counsel. You seek interpretation of the applicability of FAA regulations under two different scenarios.

In the first scenario you present, you question whether you must have the 500 hours of flight time required under 14 C.F.R. § 91.146(b)(9) to conduct a flight for a community or charitable event if you do not personally receive compensation for the flight. You note that you would like to offer a sight-seeing flight to be auctioned off during an upcoming fundraising event sponsored by your local school's PTA, which is a 501(c)(3) non-profit organization. You also state that you will not receive any compensation for the flight or seek reimbursement for the operating costs of the flight, but that all proceeds from the auctioned flight will directly benefit the PTA.

Section 91.146 governs these types of flights. This final rule, issued on February 13, 2007, was designed to allow pilots to conduct charitable or community flights, such as the one you described, under part 91 rather than part 135, provided additional conditions are met. Although you note that you are not being paid to conduct this flight, the sponsor of the event auctioning the flight will receive compensation in the form of the auction proceeds. In the preamble to the final rule, the FAA recognized this as compensation, but in the interest of the public good and charity, stated these flights should be permitted to "operate outside of part 135 requirements" provided the other requirements of § 91.146 are met, including the requirement that the pilot in command of the flight must have 500 hours of flight time. 72 Fed. Reg. 6884, 6895-99 (Feb. 13, 2007); *see* Legal Interpretation dated Sept. 22, 2008, Letter from Rebecca MacPherson, Assistant Chief Counsel for Regulations, to Timothy Metzinger. Thus, in order to conduct the flight as you propose, you must have logged 500 hours of flight time prior to the time of the flight. *See* 14 C.F.R. § 91.146(b)(9).

In the second scenario, you state that you are the Director of Vehicle Testing for a company whose business is not related to air transportation, and that on occasion, you use your airplane, a Bellanca Super Viking, for transportation to business meetings. You question if

you may, and to what extent you may, be reimbursed for the cost of this transportation under 14 C.F.R. § 61.113. Further, you question to what extent you may be reimbursed if you also transport fellow coworkers to these business meetings.

First, the FAA notes that based on the type of aircraft you propose to fly in these scenarios, the provisions of 14 C.F.R. § 91.501 do not apply. *See* 14 C.F.R. 91.501(a) (limiting application of subpart F to the "operation of large airplanes of U.S. registry, turbojet-powered multiengine civil airplanes of U.S. registry, and fractional ownership program aircraft of U.S. registry that are operating under subpart K of this part in operations not involving common carriage"). Rather, the scenarios you present are subject to the limitations set forth in 14 C.F.R. § 61.113, which establishes the privileges and limitations of the holder of a private pilot certificate.

Section 61.113(a) states, in pertinent part, that a private pilot may not, for compensation or hire, act as pilot in command of an aircraft. An exception to that section states that a private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if the flight is only incidental to that business or employment and if the aircraft does not carry passengers or property for compensation or hire. Thus, in this scenario, where you are only transporting yourself to the business meeting, you may be compensated for the expense of the flight. *See* 14 C.F.R. § 61.113(b).

In regard to whether you may seek reimbursement from your employer for transporting your colleagues, since you are transporting people to the meeting, the allowance for the flight to be conducted for compensation or hire (i.e., reimbursement) under 61.113(b) does not apply. The exception in paragraph (b) allows you to use your private pilot certificate only for compensation or hire *if* the operation is incidental to your employment and you are not transporting other passengers or property. Thus, because you are transporting people to the meeting, you may not seek reimbursement from your employer for this flight under 14 C.F.R. § 61.113(b).

You also question, in regard to this scenario, whether § 61.113(c) would allow for you to seek the same expense reimbursement from your employer that you sought in the first scenario. It is important to note that section § 61.113(c) allows a private pilot to seek reimbursement only from his or her fellow passengers, not a third party, such as your employer. As noted in the preamble of the final rule, the FAA determined that a private pilot may not pay less than the pro rata share of operating expenses for the flight because "if pilots pay less, they would not just be sharing expenses but would actually be flying for compensation or hire." 62 Fed. Reg. 16220, 16263 (Apr. 4, 1997). Further, the FAA has consistently interpreted § 61.113(c) to allow for "share-the-cost operations" for only those operations which are "bona fide, i.e., joint ventures for a common purpose." *See* Legal Interpretation 1985-26, Letter from John H. Cassady, Assistant Chief Counsel, Regulations and Enforcement Division, to Thomas H. Chero (Dec. 26, 1985) (recognizing there is no common purpose if the pilot is flying and transporting passengers to a destination where he or she has no particular business to conduct."); *see also* Legal Interpretation dated Nov. 19, 2008, Letter from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, to Peter Bunce. Thus, in the second scenario, you may only seek reimbursement for the

operating expenses of the flight from your passengers, provided you pay your own pro rata share of the operating expenses, and you all share a common purpose, such as attending the business meeting.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Anne Bechdolt, Acting Manager of the Operations Law Branch of the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service.

Sincerely,

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