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

Office of the Chief Counsel

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

FEB 22 2010

Jackye C. Bertucci
Attorney at Law
[redacted]

Dear Ms. Bertucci,

This is in response to your request for a legal interpretation submitted on October 5, 2009. You ask two related questions: first, regarding the necessity of a lease or contracts for flight services between companies that are commonly owned; and second, whether such operations may be conducted under 14 C.F.R. part 91 due to your client's sole ownership of the companies involved, or whether they must be conducted under 14 C.F.R. part 135.

You note that Plane Quest, LLC (Plane Quest), which is solely owned by your client, owns a Cessna 401B. Plane Quest leases this aircraft to Quest Aviation Services, Inc. (Quest Aviation), also a corporation solely owned by your client. Quest Aviation in turn seeks to provide flight services, using the Cessna 401B, to commonly-owned limited liability companies and corporations that are also solely owned by your client. You do not specify the type of business in which any of the above entities are engaged, however, our records indicate that Quest Aviation holds a part 135 operating certificate.

First, in regards to whether the operations you describe may be conducted under part 91, we will consider whether the provisions of 14 C.F.R. § 91.501 apply. Section 91.501(a) applies to large airplanes, turbojet-powered multiengine civil airplanes, and fractional ownership program aircraft. Although the FAA has broadly interpreted what may constitute a "large airplane," in this case, an airplane such as the Cessna 401B would not be considered a "large airplane." However, even if the aircraft used in these operations did meet the applicability requirements of § 91.501(a), for the following reasons, the scenario you present does not appear to meet the criteria of §91.501(b), and thus the operations you present must be conducted under the standards of 14 C.F.R. part 135.

Section 91.501(b) states, in pertinent part, that

> Operations that may be conducted under the rules in this subpart [Subpart F, governing large airplanes of U.S. registry, turbojet-powered multiengine airplanes, and fractional ownership program aircraft] instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—
>
> (5) Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than

> transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company, when the carriage is not within the scope of, and incidental to, the business of that company[.]

The threshold inquiry here is whether the carriage of any personnel employed by your client's business entities on flights operated by Quest Aviation would be within the scope, and incidental to, the business of Quest Aviation.

As noted above, your letter does not specify the scope of the business of Quest Aviation. However, based on our knowledge that Quest Aviation does in fact hold a part 135 operating certificate, and Quest Aviation will be providing the flight services to the other entities, it appears that Quest Aviation was formed for the purpose of providing "transportation by air." Accordingly, § 91.501(b)(5) would not apply and the appropriate operating certificate under part 119 would be required. *See* Legal Interpretation to Elizabeth Wadsworth, from Rebecca P. MacPherson, Assistant Chief Counsel for Regulations (Jan. 27, 2006) ("[A] corporation created solely to provide transportation by air must possess a commercial operator or air carrier certificate."); John Craig Weller, from Donald P. Byrne, Acting Assistant Chief Counsel (Aug. 8, 1989) (reviewing § 91.501's predecessor regulation, § 91.181); Legal Interpretation to D. P. Carmichael, from Hays V. Hettinger, Associate Regional Counsel (April 4, 1975) (same).

We note, however, that if Quest Aviation was not formed for the purpose of providing "transportation by air," in order to be able to charge flight expenses from other than Quest Aviation entities for flights under § 91.501(b)(5), the carriage of personnel from these entities would have to be within the scope of business of Quest Aviation (other than transportation by air). *See* Legal Interpretation to BSTC Corporation, from Rebecca P. MacPherson, Assistant Chief Counsel for Regulations (June 22, 2009) (noting transportation of mining employees and guests appears to be incidental to and within scope of operator's geological business); Legal Interpretation to Scott C. Burgess (Nov. 25, 2008) (noting transportation of automotive dealership employees and guests must be incidental to and within scope of operator's real estate development business). Whether such expenses are to be arranged through contracts, leases, or some other mechanism is irrelevant under § 91.501(b), so long as no charge is made in excess of the cost of owning, operating, and maintaining the airplane for within-scope flights. *See* Legal Interpretation to BSTC Corporation (describing the expenses that may be acceptable for reimbursement).

We appreciate your patience and trust that the above responds to your concerns. If you require further assistance, please contact my staff at (202) 267-3073. This response was prepared by David Pardo, attorney for 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
Assistance Chief Counsel for Regulations, AGC-200