Federal Aviation Administration

Memorandum

Date: MAR 25 2010

To: George David Cawthra, Manager, Salt Lake City Flight Standards District Office

Thru: Sean Howe, Attorney, Office of Regional Counsel, ANM-7

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

Subject: Public Aircraft Operations by Utah Valley University Aviation Department

My office received email correspondence you sent to ANM-230 regarding certain aircraft operations conducted by the Utah Valley University (UVU) Aviation Department. Your request was forwarded to the Office of the Regional Counsel, ANM-7, and from them to this office.

The correspondence includes an email from the UVU Aviation Director of Academic Support, and includes input from the FAA (Dennis Seals) regarding whether UVU can charge for transporting the Utah Commissioner of Higher Education and foreign nationals visiting the university. Mr. Seals's reply to UVU is the earlier item in the memo sent to us; the incoming request to Mr. Seals was not included. Mr. Seals indicated that you told him:

If the person requesting the flight & the university flight department were operating out of a common treasury the flight would be considered a "Public Use" flight and one department could reimburse the other as long as passengers were employees of the University and the flight was conducted in accordance with Part 91.

We are of the opinion that the UVU may not qualify as an entity eligible to conduct public aircraft operations (please note that we no longer use the term "Public Use"). The applicable language of the statute defining public aircraft (49 USC 40102 (a) (41)) is as follows:

> [P]ublic aircraft means any of the following:
>
> (C) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of those governments, except as provided in section 40125(b).

We do not automatically presume that a university is part of the government of a state or is a 'political subdivision' of the government of any state. We are open to individual states making determinations that certain of its universities are considered part of the state government or are some qualifying political subdivision as that term is used in the statute. Given the differences between states regarding university organization, governance and funding, however, we will not presume that any university qualifies without other information.

Even if we presume that the state of Utah considers UVU to be a part of the state government or is a political subdivision, the described operations would also fail to qualify as public aircraft operations under the statute. In the citation above there is reference to an exception in §40125(b). That section states:

> ***Aircraft owned by governments.***—*An aircraft described in [40102(a)(41)(C)] does not qualify as a public aircraft under such section when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or qualified non-crewmember.*

The description provided by UVU indicates that they are providing air transportation, which would be considered a commercial purpose under section §40125(a). Even if the commercial purpose were absent, the persons described in the email are not qualified non-crewmembers. A qualified non-crewmember is an individual aboard an aircraft "whose presence is required to perform, or is associated with the performance of, a governmental function." Providing air transportation, even for state government officials, is not considered a governmental function under §40125(a)(2), and passengers are not qualified non-crewmembers. While the list provided in the statute is not exclusive, air transportation cannot be read as included, especially considering the lengths to which it is specifically described and excluded by separate definition and reference in §40125.

Accordingly, we have no reason to conclude that the operations being conducted by UVU Aviation Department, as described, qualify as a public aircraft operation under the statute.

Given the findings here and the dearth of information in the emails from UVU, including the type of aircraft they are operating, we are not addressing any questions they might have regarding §91.501(b) on common carriage.

We caution all FAA employees that questions of public aircraft operation often turn on the facts of an individual flight and are made on a case-by-case basis. We also caution staff that the current agency guidance is outdated and should be consulted with caution; new guidance is in coordination at headquarters. As this memo indicates, there are myriad concepts and considerations involved in determining public aircraft operation status.

If you have any further questions, please contact my staff at 202-267-3073. This response was prepared by Karen Petronis, Senior Attorney for Regulations, in my office. Any questions regarding this opinion may be directed to her.