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

Office of the Chief Counsel

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

SEP 13 2010

Robin Johnson
HR Director
Lake County Sheriff's Office
360 West Ruby Street
Tavares, FL 32778

Dear Ms. Johnson:

Your letter of April 10, 2010, to Nicole Jackson of the Federal Aviation Administration's (FAA) Southern Region was forwarded to my office for a response.

You indicated that you had been a pilot who was used by the county when "special surveillance was needed in fixed wing aircraft," and included your pilot ratings. In your letter, you noted that you do this on a volunteer basis, getting no extra pay, and that it occurs perhaps six or eight times per year. You also stated that "[T]he Sheriff's Office does pay for the rent of the aircraft."

Your letter was forwarded to my office because it appeared to involve issues of public aircraft operation.

In 49 USC §40102(a)(41), a public aircraft is defined as:

> (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 these governments, except as provided in section 40125(b).
>
> (D) An aircraft exclusively leased for at least 90 continuous days 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 these governments, except as provided in section 40125(b).

From the few facts presented in your letter, we are unable to determine whether the aircraft in question fits either of these categories. Your statement that the Sheriff's office is paying rent for the aircraft suggests that the aircraft is neither owned and operated by some entity of the state government pursuant to paragraph (C) cited above, nor exclusively leased for 90 days as required by paragraph (D). If these conditions are true, the operation of a rented aircraft by the Sheriff's Department on an occasional basis would not qualify as a public aircraft operation under the statute, regardless of the purpose of the operation. Any such

aircraft and the pilots operating it would be subject to all of the applicable requirements in Title 14 of the Code of Federal Regulations.

If the aircraft in question meets one of the definitions, it is only the first step in determining whether a particular operation qualifies as a public aircraft operation.
Since your letter is not a request from the Lake County Sheriff's Office requesting a determination of operating status for the particular flights, we do not have enough information to make that determination for any flight.

As far as your ability to serve as a pilot, nothing in the public aircraft statute speaks to the status of a pilot for public aircraft operations. Section 61.113 states, in relevant part, "no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire," or act as pilot in command of an aircraft for compensation or hire. This section also contains limited exceptions to the general rule, which may be relevant to your question, including acting as pilot in command for compensation or hire in connection with any business or employment provided the flight is incidental to that business or employment, and the aircraft does not carry passengers or property for compensation or hire. 14 CFR § 61.113(b).

Your letter does not provide enough details to definitively determine whether these operations comply with § 61.113. It appears that you are piloting these flights on a voluntary basis without consideration, and the Sheriff's Office is not compensating or reimbursing you for the cost of the aircraft. Based on these assumptions, there may be no compensation involved, and therefore no implication of the general prohibition in § 61.113. However, the FAA broadly defines compensation, which includes reimbursement of expenses and accumulation of flight time. Legal Interpretation to John W. Harrington (Oct. 23, 1997); *see also* Legal Interpretation to Ronald L. Lamb (Mar. 1, 2010). If you received compensation for a flight, you might be able to use the exception in § 61.133(b). Based on the facts presented, the FAA likely would consider the special surveillance flights to be incidental to the Sheriff's Office business and to your employment. However, the interpretation request did not state whether this flight involves carrying passengers or property. If the aircraft carries person or property for compensation or hire, the exception in § 61.113(b) would not apply.

If you have any questions concerning this interpretation, please contact my staff at 202-267-3073. This interpretation was prepared by Karen Petronis, Senior Attorney for Regulations, and by Robert Hawks, Attorney, Regulations Division, Office of the Chief Counsel.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations

cc: Nicole Jackson, ASO-007