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

Office of the Chief Counsel

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

SEP 10 2010

Maria F. Weybrecht
Kids in Flight, Inc.
P.O. Box 5234
Willowick, OH 44095-5234

Dear Ms. Weybrecht:

This letter is in response to your December 23, 2009 request for interpretation regarding whether Kids in Flight, Inc.'s proposed flights, provided to seriously ill children and their families, would be considered a charitable event, community event, or non-profit event, under 14 C.F.R. § 91.146.

In your letter you describe your proposed operations as follows. Kids in Flight currently provides free flights in general aviation aircraft to seriously ill children, under the provisions of § 91.146, at an annual event called Wings of Wonder. You propose to institute a program that would provide individual flights for seriously ill children and their families throughout the year, rather than at the annual Wings of Wonder event. The flights would be conducted by pilots who volunteer their time and aircraft and are not compensated in any form by Kids in Flight. Kids in Flight would continue to hold the annual Wings of Wonder event to reunite the children with the pilots and provide food and entertainment, but would not provide flights at the event. Your letter indicates that all funds raised by Kids in Flight are used for programmatic and administrative costs of the organization. In a phone conversation with a member of my staff, you stated that the donations are not accepted or solicited at the Wings of Wonder event.

Certain passenger carrying flights that benefit a charitable, non-profit, or community event may be operated under the part 91 operating rules although they are conducted for compensation or hire. *See* §§ 91.146(a), (b). These operations would otherwise be subject to the certification requirements of part 119. *See* § 91.146(b). Among the restrictions established by this rule is that pilots and sponsors of events under this section are limited to no more than four events per calendar year. *See* § 91.146(d).

A "charitable event" is "an event that raises funds for the benefit of a charitable organization recognized by the Department of the Treasury whose donors may deduct contributions under

section 170 of the Internal Revenue Code." See § 91.146(a).[1] Inherent in the definition of charitable event is the use of a flight as a means of raising money for the charity. In a previous legal interpretation, the FAA noted that the § 91.146 exception applies to "flights conducted by private pilots and offered to the public by a charitable organization in exchange for donations . . . ." *See* Legal Interpretation to Joseph A. Kirwan, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (May 27, 2005). When promulgating this rule, the Agency gave the example of a charitable event as "a pancake breakfast at which passengers make a contribution to an organization, such as the American Cancer Society, in exchange for breakfast and a flight over their town." *See* 72 Fed. Reg. 6884, 6895 (Feb. 13, 2007) (National Air Tour Safety Standards Final Rule). Likewise, the Agency noted that if a passenger receives a "free" aircraft ride in exchange for paying an attendance fee or in return for donating money then the event is considered for compensation or hire and would fall under the provisions of § 91.146. *Id.*

Based on the facts in your letter it appears that the individuals who are being given airplane rides are not receiving the rides because they are donating money to your charity. Likewise, your letter notes that the families whose children receive the flights participate in the program at no cost. It is reasonable to assume that families who participate in this program may also contribute money to Kids in Flight. However, it appears that a child's participation in the program is not overtly, or tacitly, conditioned upon a donation from that child's family or others, either before or after a flight. Accordingly, based on the facts presented in your letter, the proposed flights would not be considered a charitable event for purposes of § 91.146.

We caution you that the FAA takes a broad view of compensation and that this interpretation is based solely on the facts as we understand them which are outlined above. If Kids in Flight is, in fact, obtaining donations at any time in exchange for providing flights, or if the pilots performing the operations receive compensation from Kids in Flight, such as fuel or operating expense reimbursement, or from the passengers, then these flights would need to be conducted under § 91.146 or under a part 119 operating certificate. *See, e.g.*, Legal Interpretation to Guy Mangiamele, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 4, 2009) (finding proceeds from a sight-seeing flight auctioned for charity is compensation); Legal Interpretation to Michael Goldman, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (June 14, 2006) (stating that compensation includes the receipt of anything of value, including valuable good will); Legal Interpretation to Kirwan (logging flight time at charity's expense is compensation).

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[1] According to its website, www.kidsinflight.org, Kids in Flight is a 26 U.S.C. § 501(c)(3) charitable organization recognized by the U.S. Department of the Treasury. Accordingly, this interpretation only discusses the applicability of the "charitable event" which applies to such charitable organizations. *See* 14 C.F.R. § 91.146(a). We note that the analysis would be similar for community and non-profit events.

This response was prepared by Dean Griffith, Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Air Transportation Division of Flight Standards Service. 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