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

Office of the Chief Counsel

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

NOV 14 2011

Andre B. Aman
Deputy Director and Legal Counsel
Nebraska Department of Aeronautics
P.O. Box 82088
Lincoln, NE 68501

Dear Ms. Aman:

Your letter of July 25, 2011 to David Kessler of the Federal Aviation Administration's (FAA) regional office in Kansas City was forwarded to my office for a reply.

In your letter, you ask whether it is permissible under Part 91 to accept reimbursement from an FAA Airport improvement Program (AIP) grant for air travel expenses "incurred by our engineers in our state owned aircraft."

Your question contains several factors that require different analysis. Your characterization of the flights by state employees in "state owned aircraft" could be read as indicating that the flights in question were intended to be operated as public aircraft operations under 49 USC §§ 40102(a)(41)(C) and 40125. If that is the case, no reimbursement may be accepted. The law prohibits any kind of commercial purpose for a public aircraft operation (§40125(b)). We interpret this as meaning there can be no reimbursement for such operations except in one very limited instance noted in §40125(a)(1) of the statute. Please note that public aircraft operations are not conducted under part 91, but remain subject to certain regulations in part 91 that apply to all aircraft operating in the national airspace system.

In the alternative, if you consider your aircraft to be operating not as a public aircraft but as a civil aircraft under Part 91, the question becomes whether reimbursement is acceptable under 14 C.F.R. § 91.501. This analysis presumes the aircraft meets the applicability requirements of §91.501(a). "The FAA generally prohibits aircraft operators from seeking reimbursement for the costs associated with flights conducted under" Part 91. Letter to Mr. Mike Nichols from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Dec. 30, 2010). However, "[c]ertain exceptions to this prohibition may be found in 14 C.F.R. § 91.501." *Id.* "One such exception provides for the limited reimbursement for the 'carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or subsidiary of that parent, when the carriage is within the scope of, and incidental to, the business of the company ... and no charge, assessment or fee is made

for the carriage in excess of the cost of owning, operating and maintaining the airplane.'" *Id.* (quoting 14 C.F.R. 91.501(b)(5)).

In your letter, you assert that state-employed engineers will use state-owned aircraft to travel for an AIP project, and you would like for those engineers to be reimbursed for their travel expenses. From an operational perspective, to be able to obtain reimbursement under part 91, the primary purpose of the engineers' travel would need to be within the scope of and incidental to the AIP project on which they are working. If the engineers' travel does not meet these conditions, the flight would need to be operated under part 121 or part 135 for the engineers to be reimbursed for their travel expenses.

We have also consulted the airports attorneys in our office, who requested input from the office responsible for AIP programs. We were advised of the following:

An airport sponsor may, under very limited circumstances, be allowed to collect reimbursement for work or expenses incurred by their employees. However, in order to be eligible for reimbursement, the airport sponsor must have an Administrative Cost Plan that outlines those anticipated expenses, they have to be directly linked to the grant project, they have to be reasonable, etc. Under 49 USC §47110(b), a cost is allowable only if it is "necessarily is incurred in carrying out the project"

Therefore, the engineers would have to be under contract with the airport to perform a specific task that is required for the AIP project. General inspection or job visits are not considered required since AIP funding reimburses 100% for inspection by the consultant as the airport's representative.

If you need further assistance with any of these issues, please contact my office and we will direct you to the appropriate program office based on the topic. This interpretation was prepared by Karen Petronis, Senior Attorney for Regulations in my office, by Alex Zektser of the Operations Law branch of my office, and coordinated with the Airports Law Branch of the Office of the Chief Counsel, who consulted with the AIP program office.

Sincerely,

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