Federal Aviation Administration

Memorandum

Date: NOV 2 1 2011

To: Eugene P. McCoy, Manager, Allentown FSDO

Cc: Lawrence Fields, Manager, Flight Standards Division, AEA-200

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

Prepared by: Nancy Sanchez, Attorney, AGC-220

Subject: 14 CFR 91.321 Carriage of candidates in elections

The following memo is in response to a request for a legal interpretation submitted by Eugene P. McCoy, Manager, Allentown Flight Standards District Office (FSDO). In your request, you posed several questions regarding 14 CFR § 91.321 Carriage of candidates in elections. Specifically, you asked several questions about the definition of a candidate and election cycle, who may act as an agent or person travelling on behalf of a candidate, and the amount of compensation required for carriage of candidates in elections. Background information and responses to your questions follow below.

§ 91.321 allows an aircraft operator to receive payment for carrying a candidate, agent of a candidate, or person travelling on behalf of a candidate, running for Federal, State or local election without having to comply with parts 121, 125, or 135, so long as several conditions are met.[1]

You asked several questions about the definition of a candidate, when a candidate "begin(s) and end(s) their campaign," who is an "agent or person travelling on behalf of a candidate," and the time frame of an election cycle. It is unclear from your inquiry whether you are referring to a federal, state or local candidate. § 91.321(b) explains that

[1] First, the primary business of the aircraft operator may not be as an air carrier or commercial operator. Second, the aircraft operator must carry the candidate, agent or person travelling on behalf of the candidate under part 91 rules. Third, the aircraft operator may only receive payment for carrying the candidate, agent, or person travelling on behalf of a candidate if required by federal, state or local law and that amount may not exceed the amount required by the applicable law. 14 CFR § 91.321(a)

for federal elections, the terms candidate and election are set forth in the regulations of the Federal Election Commission (FEC) and for state or local elections, the terms are defined in the applicable state or local law. FEC regulations define the terms candidate and election cycle in 11 CFR § 100.3. Furthermore, 11 CFR § 100.93(a): Travel by aircraft or by other means of transportation, defines the scope of this section as applying to all campaign travelers who use non-commercial travel.[2]

Additionally, you ask whether the compensation required is "based on a standard amount or does it vary in accordance with aircraft type utilized?" Compensation is determined by the applicable federal, state or local election law, depending on the whether the candidate is running for federal, state or local election. See 11 CFR § 100.93(c) for candidates for federal elections.

The FAA issued § 91.321 to resolve a conflict between FEC regulations and FAA regulations.[3] FEC regulations require candidates and campaign travelers to reimburse aircraft operators without operating certificates when travelling on their aircraft.[4] § 91.321 provides an exception for these aircraft operators to receive compensation from candidates in an election without being in violation of FAA regulations. However, the general guidelines for travel by candidates and campaign travelers, including how much compensation they are required to pay aircraft operators, are governed by FEC regulations or applicable state and local election laws. It is important to note that these regulations are subject to change.[5] Candidates and campaign travelers are responsible for applying the appropriate regulations concerning travel by aircraft and should therefore contact appropriate federal, state and local election entities for further guidance and to ensure compliance with their regulations.

In addition to your normal enforcement procedures, if your office or regional counsel has any additional concerns in relation to an aircraft operator inappropriately receiving payment under § 91.321, our office may provide additional guidance.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division of Flight Standards. Please contact us at (202) 267-3073 if we can be of further assistance.

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[2] Campaign traveler means any candidate traveling in connection with an election for Federal office or any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee or any member of the news media traveling with a candidate. *See* 11 CFR § 100.93(a)(3)(i).

[3] *See* 45 Fed. Reg. 43160

[4] For background information on a recent FEC rulemaking concerning campaign travel, see 74. Fed. Reg. 63951. A copy can be found online at http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-27.pdf.

[5] For example, the Honest Leadership and Open Government Act of 2007 amended the Federal Election Campaign Act to prohibit Senate and Presidential candidates, and their authorized committees, from spending campaign funds for travel on non-commercial aircraft, unless they pay the charter rate. Previously, candidates had been allowed to pay the first-class or coach airfare for the city pair flown.