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

Office of the Chief Counsel

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

OCT 15 2012

Sergeant Brian Barrett
Commanding Officer
Suffolk County Police Aviation Section
2175 Smithtown Avenue,
Ronkonkoma, NY 11779

Dear Sergeant Barrett:

Thank you for your emails dating back to September 2011 and your request for clarification of your county's flights for air trauma transport. On June 19, 2012, you requested by email that we send a written opinion on the public aircraft status of these flights. Your email stated:

> The only issue that I would need to be clarified, in writing, is that if we, the Suffolk County Police Department, perform an air trauma transport of a civilian victim from either a trauma scene, (such as a motor vehicle crash), or an inter-hospital air trauma transport, that the transport falls within the operating scope of a Public Aircraft. Once again the Suffolk County Police Department does not charge for this service, it is fully funded by the County.

The statutory section relevant to your situation is 49 USC §40125, which states:

***(b) Aircraft Owned by Governments.***— *An aircraft described in subparagraph (A), (B), (C), or (D) of section 40102(a)(41) 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 a qualified non-crewmember.*

This analysis presumes that a state government entity qualifies to operate a public aircraft operation under 49 USC § 40102(a)(41)(C) or (D). Your question concerns whether the carriage of trauma victims on board a county helicopter for the purposes of rescue remains a public aircraft under the statutory language. We presume that your issue is whether the persons being transported are viewed as someone other than a qualified non-crewmember that causes the flight to lose its public aircraft status.

The statutory provision that defines a qualified non-crewmember for this instance is §40125 (a)(3)(B):

***(3) Qualified non-crewmember.***— *The term "qualified non-crewmember" means an individual, other than a member of the crew, aboard an aircraft— ...*
***(B)*** *whose presence is required to perform, or is associated with the performance of, a governmental function.*

The FAA interprets the public aircraft statute to include helicopter emergency medical operations as a type of search and rescue, a governmental function listed in §40125(a)(2). In turn, the patient being transported becomes a qualified non-crewmember since the rescue is the governmental function, and the patient being transported is the reason for the operation.

The significant limitation in this operation is that the government entity is not allowed to charge the rescued individual for any portion of the operation as a civil operator would. As we indicated in previous interpretations, collecting any sort of fee would be considered compensation under §40125(a)(1), and the flight would have a commercial purpose (See: letter to Ray Barrato from Rebecca MacPherson, July 11, 2011; letter to Margaret Kearney from Rebecca MacPherson, July 27, 2012). The service would no longer be viewed as being provided by a government entity as a public aircraft operation, but by a commercial vendor that would be subject to the civil regulations of 14 CFR Part 135 to conduct helicopter emergency medical operations.

Of greater significance, your last email included the phrase "transport of a civilian victim from either a trauma scene, (such as a motor vehicle crash), or an inter-hospital air trauma transport." We would caution that the latter operation, inter-hospital air trauma transport, does not appear to be a category of search and rescue operation and thus would not qualify as a public aircraft operation under the statute. While we understand that the circumstances of individual operations vary, we are not able to say that such operations qualify in the abstract as a governmental function, and the operation would instead be one of civil transport subject to the applicable regulations in 14 CFR.

We trust that this information responds to your inquiry. If need further assistance, please contact my staff at 202-267-3073. This response was prepared by Karen Petronis, Senior Attorney of my staff, and was coordinated with the General Aviation and Commercial Division and the Air Carrier Operations Branch of the Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for International
Law, Legislation and Regulations, AGC-200