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

**Office of the Chief Counsel**

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

DEC 13 2013

Mr. Jeffrey J. Reich
Aviation Consultant
Elevon Consulting LLC
PO Box 638
Wildwood, MO 63040

Dear Mr. Reich:

This letter is provided in response to your request for a legal interpretation sent to the St. Louis Flight Standards District Office on April 25, 2013. In your request for a legal interpretation, you question the applicability of part 91 to operations conducted by a not-for-profit corporate entity for another not-for-profit entity for no charge.

In your request, you explain that an individual who currently owns a light twin engine aircraft wishes to create a not-for-profit entity that could collect donations for the sole purpose of supplying flights "sourced by itself or other not-for-profit organizations." You expect expenses to be paid from the donated funding. These expenses may include aircraft ownership, maintenance and operations; administrative equipment and supplies; and pilots' or other volunteers' expenses incurred as a result of the operation. You further state that staff may be employed and paid by the "charity flight operation." Although it is not specifically stated in your request, based on your November 25, 2013 conversation with Sara Mikolop, for purposes of this legal interpretation we assume that the operations you describe involve point-to point transportation of persons or property.

As explained in more detail below, the not-for-profit entity you describe is precluded from conducting operations with its light twin engine aircraft under the operating rules of part 91. The operations described above require a part 119 certificate because, based on the facts you presented, the entity would receive compensation for those operations.

In general, when a flight involves the carriage of persons or property for compensation or hire, the operator must hold a part 119 air carrier or commercial operator certificate and operate these flights under part 121 or 135 rules. *See* Legal Interpretation to Robert P. Silverberg from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (July 2, 2013) (citing Legal Interpretation to Gregory S. Winton from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (Feb. 14, 2013)). Only those persons conducting one of the specific operations described in § 119.1(e) may conduct an operation that would otherwise require a part 119 certificate under part 91 rules. The operations in the scenario you present do not meet the description of any of the operations identified in § 119.1(e).

Regarding the definition of compensation, the FAA has continually maintained a long-standing policy that defines compensation in very broad terms. *See* Legal Interpretation to Robert P. Silverberg from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (July 2, 2013) (citing Legal Interpretation to Alan M. Dias from Rebecca B. Macpherson, Assistant Chief Counsel for Regulations (Dec. 19, 2011) and Legal Interpretation to Joseph A. Kirwan from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 27, 2005)). It does not require profit, a profit motive, or the actual payment of funds. *See* id. Instead, compensation under the FAA's view is the receipt of anything of value. *See* Legal Interpretation to Joseph A. Kirwan from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 27, 2005) (finding that a charitable organization that proposed to provide free flights for medical patients, using volunteer pilots, and an aircraft that was either co-owned with or dry leased from a separate company, required a part 119 certificate because flight expenses paid by donors to the organization and pilots' accrual of flight hours at the organization's expense constituted compensation). In the scenario you provided, compensation for the flights would exist in the form of donations used to offset the costs of operating the aircraft owned by the not-for-profit (e.g., aircraft ownership, maintenance, operation and expenses incurred as a result of the operation and pilots' expenses incurred as a result of operations). Therefore, a part 119 certificate is required for the scenario you presented and the flights could not be conducted under part 91.

Further, § 61.113(a) prohibits a private pilot from acting as PIC for compensation or hire and prohibits a private pilot from acting as PIC of an aircraft carrying passengers or property for compensation or hire. Section 61.113(c), however, allows a private pilot to receive a pro rata reimbursement from his passengers for fuel, oil, airport expenditures, or rental fees, so long as the pilot and his passengers share a bona fide common purpose for conducting the flight. *See* Legal Interpretation to Don Bobertz from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 18, 2009) and Legal Interpretation to Guy Mangiamele from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 4, 2009). There is no common purpose when a pilot is flying to a destination where he or she has no particular business to conduct. *See* id. In the scenario you describe, the only purpose the pilot has in making the flight is to provide point-to-point transportation. The pilot does not share a common purpose with the passengers and thus could not accept a pro rata reimbursement for the operation from his passengers.

As this office has previously stated, humanitarian efforts of many individuals in the aviation community are laudable and we recognize the value of these services to the public. Yet, when money is exchanged for transportation, the public expects, and the FAA demands, a higher level of safety for the flying public. *See* Legal Interpretation to Peter Bunce from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (November 19, 2008) and Legal Interpretation to Joseph A. Kirwan from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 27, 2005). We note, however, that the FAA may consider a petition for exemption from § 61.113 (applicable to pilots) for humanitarian flights that may allow for the reimbursement of a pilot's fuel expenses subject to certain conditions and

limitations. The procedures for submitting a petition for exemption are included in 14 C.F.R. part 11.

This response was prepared by Sara Mikolop, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of the Flight Standards Service. If you have any additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.[1]

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law,
Legislation and Regulations, AGC-200

[1] The legal interpretations referenced in this letter can be found at http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/Interpretations/ and exemptions can be found at http://aes.faa.gov/