U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Chief Counsel

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

MAY 21 2014

Andy Dobis
[redacted]

Dear Mr. Dobis:

This letter is in response to your request for a legal interpretation concerning flights conducted under 14 CFR § 91. You state that a company (described in your letter as a "501.c.3" charitable organization) operates an aircraft. This aircraft had either been donated to the company, or funds were donated to the company for the acquisition and operation of the aircraft by the company.

You then posed several questions about the operation of this aircraft and whether these operations could be conducted under part 91 operating rules. Your questions and our responses follow below.

Questions:

1. Can the company use donated funds to compensate pilots (ATP certified) of the aircraft for their piloting services?

Yes. Pilots that hold an ATP or commercial certificate may act as a pilot in command of an aircraft carrying persons or property for compensation or hire.[1] *See* 14 CFR §§ 61.123 & 61.167; *see also* Legal Interpretation to Don Bobertz from Rebecca B. McPherson, Assistant Chief Counsel for Regulations (May 18, 2009). The FAA has continually maintained a long-standing policy that defines compensation in very broad terms. Thus, compensation under the FAA's view is the receipt of anything of value, including the receipt and use of donated funds as compensation for piloting services. *See* Legal Interpretation to Joseph A. Kirwan from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (May 27, 2005).

It is important to note, however, that the privileges and limitations conferred upon pilots are a separate and distinct issue from whether these flights would be considered a commercial operation for which a part 119 air carrier or commercial operator certificate if required. This issue is discussed further in answers to your questions below.

2. If the pilot is employed or compensated by the company, what would prevent the company from operating the aircraft under part 91?

The FAA generally prohibits aircraft operators from seeking reimbursement for the costs associated with flights conducted under part 91. *See* Legal Interpretation to Mike Nichols from

[1] The FAA assumes, for the purposes of this legal interpretation, that you only employ airline transport pilots (ATPs).

Rebecca B. McPherson, Assistant Chief Counsel for Regulations (Dec. 30, 2010). Certain exceptions to this general prohibition may be found in Subpart F of Part 91.[2] 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). A commercial operator is a "person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property." 14 C.F.R. § 1.1. Without further information, the FAA cannot determine whether your specific operation would require a part 119 certificate to operate flights under part 121 or 135 rules.[3]

3. May the company, under part 91 rules, transport children involved in a "make-a-wish type program" if no money is exchanged between the company and the other make-a-wish organization? How about if the make-a-wish organization gives money to the company as reimbursement of operating expenses for the flights?

If money is given to the company for reimbursement of the operating expenses for the flights transporting the children, the company is precluded from conducting these operations under part 91. *See* Legal Interpretation to Jeffery J. Reich from Mark W. Bury, Assistant Chief for International Law, Legislations, and Regulations (Dec. 13, 2013). Additionally, this operation would not fall in the 14 CFR § 91.146 exception for charitable flights. *See* Legal Interpretation to Maria F. Weybrecht from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations Sept. 10, 2010); *see also* 14 CFR § 91.146 for additional restrictions on passenger-carrying flights for the benefit of a charitable, nonprofit, or community event.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Nancy Sanchez, an attorney in the International Law, Legislation, and 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.

Sincerely,

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

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[2] *See generally* 14 CFR Part 91, Subpart F for operating rules governing the operation of large airplanes, turbojet-powered multiengine civil airplanes, and fractional ownership program aircraft. If an aircraft does not fit into one of these categories, the only way it can operate under Subpart F is pursuant to an FAA-issued exemption. Exemption No. 7897 permits members of the National Business Aviation Association, Inc. (NBAA) to operate their aircraft under Subpart F subject to certain conditions listed in the exemption. *See* Legal Interpretation to Frank Fiorillo from Rebecca B. McPherson, Assistant Chief Counsel for Regulations (Sept. 26, 2011).

[3] Additionally, persons conducting 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 scenarios you present below do not appear to meet the description of any of the operations identified in § 119.1(e).