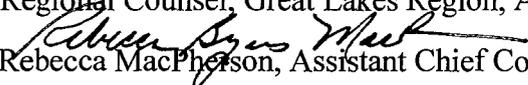




# Federal Aviation Administration

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## Memorandum

Date: JUL 21 2010  
To: Gary Baxter, AGL-230D  
Thru: Regional Counsel, Great Lakes Region, AGL-7  
From:  Rebecca MacPherson, Assistant Chief Counsel for Regulations, AGC-200  
Subject: Charitable donation funding of public aircraft operations

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We were forwarded a request for interpretation from Eileen Wilson of your office dated December 17, 2009. The request originated in the DuPage County Flight Standards District Office (FSDO) and contains an analysis by FSDO personnel of certain law enforcement operations. The questions concern two Illinois law enforcement agencies and whether they are conducting public aircraft operations. The 2009 FSDO memo is based on an unsigned 2005 memo from AGL-200 to AFS-800 requesting an interpretation of public aircraft operations funded by charitable donations. There is no indication that AGL-200 received a response from AFS-800.

We would like to caution everyone that the current FAA guidance concerning public aircraft operations is confusing, and in some instances does not reflect current agency policy or legal interpretation. While those materials are being updated, my office is considering public aircraft operation determinations on a case-by-case basis starting with the terms of the current statute, 49 USC §§ 40102(a)(41) and 40125.

The considerable analysis that originated in the DuPage FSDO attempts to make a generalized finding of public aircraft operation for two entities. We emphasize that determinations of public aircraft operation are made on a flight by flight basis. We do not give advisory opinions on operations in general since the circumstances of each flight – including the purpose of a flight and the personnel on board -- may change the legal determination.

The 2005 AGL memo draws certain conclusions based on the limited set of circumstances it contains. After finding that the contributing charity is a 501(c)(3) organization (Section 501(c)(3) of the Internal Revenue Code describes certain charitable organizations), the memo describes an aircraft “operated solely to meet the 501(c)(3) mission” that is both funded by 501(c)(3) funds and under the operational control of the

501(c)(3) entity.” We agree with the conclusion that this cannot qualify as a public aircraft operation.

The memo’s second set of circumstances describes a “Countryside Police Department mission” funded solely by department resources with the Police Department having operational control, and concludes that “public use aircraft status” can be claimed. We caution that this conclusion may be faulty since the statute requires consideration of both the purpose of the flight and the status of the personnel on board under the statute. Simply having an aircraft funded by and under the operational control of the Countryside Police Department does not render any flight the Department makes a public aircraft operation.

We have re-framed the first question presented in the 2009 memo as follows: Does the acceptance of charitable contributions for aircraft operation funding alone change the status of an otherwise valid public aircraft operation conducted by a law enforcement agency?

We do not find that it does. As a matter of public policy, the supplemental funding of a law enforcement aviation operation that otherwise meets the terms of the statute for public aircraft operation should not affect that status. We caution, however, that these circumstances are limited to flight operations that meet all of the statutory requirements, including a governmental purpose and the presence of only crew and qualified non-crewmembers. It would not include, for example, flights to carry donors or members of the charitable organization, regardless of compensation, flights to carry persons or property on behalf of a donor or organization, or the funding of any operation that was not allowable law enforcement activity under the statute. Any activity or persons on board that would take the operation outside the scope of 49 USC 40125 would be prohibited, as it would be whether charitable donations were involved or not. As a consequence, any funds received from charitable donors must be given without restriction for their use in flight operations. We understand that these circumstances could get complicated quickly, and it is up to any governmental organization accepting such funds to maintain proper records of the circumstances of their flights if they are claiming public aircraft operation status.

The third situation addressed in the 2005 memo concerns the status of certain personnel on board. The records of the charitable organization involved “indicate that local law enforcement tactical officers will be used for support operations.” The memo goes on to note that it is not clear if the tactical officers are part of the Countrywide Police Department or of another law enforcement entity. The memo concludes that if they act as “staff to meet the 501(c)(3) mission, they are serving solely as volunteers” with no law enforcement powers or authority. It also states that the operational control and personnel issues are not clear enough for the FAA to make any finding regarding public aircraft operation status.

We agree that there are not enough facts concerning the relevant circumstances of the operations to make a determination. We are also unclear how the finding that the tactical officers are 'volunteers' leads to a public aircraft determination. As stated previously, we find that any operation that involves a charitable organization (except for unrestricted donations to funding) does not qualify as a public aircraft operation.

The fourth question presented in the 2009 FSDO analysis was not addressed in the 2005 memo and is framed as follows: May a law enforcement organization in one state conduct operations in another state and still retain public aircraft operation status for an individual flight?

Under certain conditions, we find that it may. Central to this analysis is whether the operating law enforcement entity is seeking reimbursement for operations from the second state. The only circumstances under which such payments can be made and retain public aircraft operation status is contained in the statutory definition of commercial purpose in §40125 (a)(1). Under that definition, commercial purpose does not include reimbursement "by one government on behalf of another government under a cost reimbursement agreement if the government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator is reasonably available to meet the threat."

This situation is considerably limited by its terms. A law enforcement organization may not routinely carry out an operation on behalf of another jurisdiction and seek reimbursement unless it is conducting valid civil operations. Routine operations would be a commercial purpose under §40125. The fact that one government is in a different state is not relevant; the circumstances of the operation and the reimbursement are the relevant conditions that must be met under the terms of the statute, which does not limit the location of the jurisdictions.

This response was prepared by Karen Petronis, Senior Attorney for Regulations in my office, and was coordinated with AFS-830, the General Aviation Operations Branch of the Flight Standards Service. If you have questions about this interpretation, please contact my office at 202-267-3073.