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

Office of the Chief Counsel

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

OCT - 8 2010

Mr. Mike Sommer
[redacted]

Dear Mr. Sommer:

This is in response to your inquiry requesting clarification under 14 C.F.R. Part 61 of the privileges of a private pilot with a balloon rating regarding what constitutes flying for compensation or hire, and whether the specific cost-sharing arrangements amount to less than a pro-rata share of contributions.

Your letter raises three issues. One, whether the free dinner constitutes compensation or hire in violation of §61.113(a), which prohibits private pilots from carrying passengers or property for compensation or hire, or acting as pilot-in-command of an aircraft for compensation or hire, with certain exceptions. Issue two, whether flying a balloon with a logo violates the same provision as discussed above. Issue three, whether the cost-sharing arrangements between the pilots and the owner constitute less than a pro-rata share of contributions in violation of §61.113(c).

The first issue raised by your letter is whether the balloon owner's offer of free dinner to the pilots and crew constitutes compensation or hire in violation of 14 C.F.R. §61.113(a). The rule states that, "no person who holds a private pilot certificate may ... for compensation or hire, act as pilot in command of an aircraft." There are two specified exceptions to this rule; one, if the pilot is flying an aircraft in connection with a business or employment, but only if the flight is incidental to that business or employment; and, two, if the aircraft does not carry passengers or property for compensation or hire. The situation you describe in your letter does not meet either exception.

The FAA construes the terms "compensation or hire" very broadly. It does not require a profit, profit motive, or the actual payment of funds. Instead, the FAA views compensation as the receipt of anything of value. In an interpretation letter to John W. Harrington, from Donald Byrne, Assistant Chief Counsel, October 23, 1997, it is stated that, "any reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), if conditioned upon the pilot operating the aircraft, would constitute compensation." You schedule your flights so as to take advantage of the offer of a free dinner. We presume the owner would not provide you and your crew a free dinner if you did not fly the balloon. Thus, the offer of a free dinner in return for flying the balloon therefore constitutes compensation, and it would violate §61.113(a).

The second issue raised by your letter is whether flying a balloon with a logo constitutes flight for compensation or hire under the same provision cited above. We have already discussed that the offer of a free dinner in return for flying the balloon is a form of compensation. We assume that the restaurant owner is deriving the benefit of advertising from the balloon flights. Such dinner-for-advertising exchange would be enough to establish a beneficial economic relationship between your group of pilots and the owner, accordingly, such an exchange would establish a commercial operation which would require the pilot to hold a commercial flight certificate, and would §61.113(a).

Your letter raises a third issue, whether the cost-sharing arrangement described in your letter constitutes a less than pro-rata share of contributions in violation of §61.113(c). This section states that, "a private pilot may not pay less that the pro-rata share of the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees." This provision has been interpreted to allow the pilot to seek reimbursement for expenses only from his or her passengers, not a third party. See Guy Mangiamele, from Rebecca B. MacPherson, Assistant Chief Counsel, March 4, 2009. In your letter, you state that the private pilot has always paid his share of the propane (fuel), as well as shares of other expenses not covered by §61.113(c). This arrangement would not violate the rule, however, you go on to state that the balloon owner has begun paying some of the expenses related to propane. Unless the owner is also a passenger on the flights for which he pays his share of the propane, such an arrangement would constitute reimbursement by a third party. This type of arrangement would violate §61.113(c).

In conclusion, the issues raised in your letter with regards to the private pilot flying the balloon are violations of 14 C.F.R. §61.113(a) and §61.113(c). We hope this response is helpful to you. If you have any additional questions regarding this matter, please contact my staff at (202) 267-3073. This response was prepared by Neal O'Hara, an Attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Certification and General Aviation Operations Branch of the Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200

Enclosure