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Shared expense flights

General aviation pilots are interested to know, or be refreshed, about who and what they may legally carry on their personal and business flights, where "compensation" could arguably be involved. The FAA very broadly applies the term. To mention an extreme, the FAA has long held that transporting someone to where he/she wants to go, for the purpose of logging flight time, is compensation. So, too, obtaining something as amorphous as "goodwill," where no money or anything else of value is given, is interpreted by the FAA to be compensation. Pilots are better served by avoiding an argument about whether compensation is involved, and concentrate on the FAA rules that allow flights even if they arguably involve compensation.

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Last month I reported an FAA chief counsel interpretation dealing with a private pilot conducting a flight incidental to his/her business or employment ("Pilot Counsel: Private Versus Commercial Operations," November 2011 *AOPA Pilot*). The FAA interpretation correctly concluded that a private pilot may transport him/herself incidental to a business or employment, and be compensated for the flight by the employer. But the interpretation went on to say that the pilot may not be compensated by his employer for the expenses of the flight if the pilot carries fellow employees or business associates even if incidental to that same business or employment. The interpretation has not been well received.

Coincidentally, as last month's column was hitting the streets, I received another FAA chief counsel's interpretation on the privileges and limitations of a private pilot (and, by implication, an ATP and commercial pilot exercising private privileges)—an interpretation that in some respects seems to be more liberal and may be better received. It dealt with the "shared-expense" privilege. Part 61 of the FARs generally prohibits private pilots (similarly sport and recreational pilots) from carrying passengers for compensation or hire. It contains several exceptions, such as the "incidental to business or employment" one discussed last month. This new interpretation deals with the exception that allows a private pilot to receive a pro rata reimbursement from his/her passengers for fuel, oil, airport expenses, or rental fees, so long as the pilot and his/her passengers share a "bona fide common purpose" for conducting the flight. This is the so-called "shared expense" exception.

The common purpose required by the rule is critical. Without it, reimbursement for even just the passengers' share of operating expenses constitutes compensation for the flights.

A pilot and his wife are flying from Raleigh, North Carolina, to Long Island, New York, in their Piper Arrow to attend a wedding. The pilot asks the FAA whether he may advertise on Facebook the specific time and date of travel in order to carry two additional passengers to share expenses. The pilot receives a response from two friends who want to go along to attend a baseball game. Is attending a baseball game a common purpose? There has been confusion in the general aviation community, with some believing that the common purpose must be the same purpose. The good news is that the FAA is more liberal in this interpretation. The interpretation says that the common purpose does not necessarily need to be the same purpose, but the purpose must not be merely to transport the passengers. "The existence of a bona fide common purpose is determined on a case-by-case basis. Based on these facts there appears to be a bona fide common purpose, as the destination was dictated by the pilot, not the passengers, and both you and your passengers have personal business to conduct on Long Island. The purpose of this flight is not merely to transport your passengers to Long Island."

The next problem dealt with was the advertising on Facebook. Could this be a "holding out to the public" so as to constitute "common carriage" that is not allowed under the "shared expense" exception? "Holding out" is commonly understood to be a communication to the public, or a segment of the public, that transportation services are indiscriminately available to any person with whom contact is made. So, the Facebook ad could be "holding out," says the interpretation, if the ad "expresses a willingness to provide transportation for all within this class or segment to the extent of its capacity." The interpretation does not say that an ad on Facebook is absolutely barred. It seems to suggest that an ad on Facebook could be OK if it is somehow limited to less than a whole class or segment of the class, or as in this case, to "friends/family/acquaintances," that takes it out of offering transportation to all comers.

The pilot also asks whether he may post the same information on an FBO's bulletin board. The interpretation cautions that this type of advertising, too, may be construed as holding out. But it does not outright prohibit posting on an FBO's bulletin board. The pilot then asks about receiving the passengers' pro rata share through PayPal that extracts a 3-percent commission. Ordinarily, a pilot is allowed to seek prorata reimbursement only from his passengers, not from a third party. But, says the interpretation, payment through an online payment system, by itself, has no bearing on the legality of this situation.

Thanks to the FAA chief counsel for this more liberal interpretation that reminds us that shared expense flights can be a good way to reduce the expense of flying, and offering a little guidance and some important caveats. AOPA