

Giving An Election Campaign Some Extra Lift ?



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If you are thinking of offering your aircraft to aid the election campaign of a preferred election candidate, be careful. Board Members must stay abreast of rules and regulations governing flights for candidates and elected officials to avoid unintended violations of the law, notes attorney Chris Younger.

Federal and state election campaigns have moved into high gear in anticipation of upcoming primaries this winter and spring and the general election this fall. Perhaps your company has considered giving its favorite candidate a "lift" by providing the use of the company's aircraft in connection with his or her campaign travel.

Many governmental entities, including the Federal Aviation Administration (FAA), the Federal Election Commission (FEC), the Internal Revenue Service

(IRS), the U.S. Senate, the U.S. House of Representatives and the state counterparts to these agencies and legislative bodies have enacted rules and regulations governing air transportation to candidates and elected officials. In particular, the FEC issued updated rules regarding such transportation (FEC rules) that became effective January 6, 2010.

Failure to comply with these rules can have unintended and often serious consequences for both individual candidates and, more importantly, business aircraft owners and operators. Therefore, it >



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is imperative that Directors understand the FEC rules before allowing a candidate for elected office to use the company aircraft.

The Honest Leadership and Open Government Act of 2007 (Act) addressed the carriage of candidates for federal elected office and tightened the rules already in place relating to such carriage. The current FEC rules prohibit or restrict federal candidates and certain individuals traveling on behalf of such candidates from utilizing non-commercial air travel.

DIFFERENT CANDIDATES, DIFFERING RULES

The FEC rules distinguish between candidates for the U.S. House of Representatives and candidates for the U.S. Senate, as well as the offices of Vice President and President.

Under the FEC rules, candidates for the U.S. House of Representatives and individuals working on their campaigns are prohibited from utilizing non-commercial air transportation in connection with the campaign activities of that candidate. However, in certain very limited circumstances, the FEC rules permit individuals associated with such campaigns to utilize non-commercial air transportation where the purpose of the flight is not connected with the candidate's campaign.

Candidates for the U.S. Senate, Vice President and President are permitted to utilize non-commercial air transportation under the FEC rules provided that they timely reimburse the provider of such flight for the transportation provided in accordance with the terms of the rules. Under the FEC rules the reimbursement amount must be equal to the amount that it would cost the candidate to charter a comparable aircraft for the same trip.

Where multiple individuals are passengers on a particular flight and they represent multiple candidates' election campaigns, the FEC rules specify how to allocate the reimbursement amount between each such candidate. Press and government personnel who accompany a candidate may reimburse the service provider directly. Specifically, the method for making such allocations based on a pro-rata portion of the reimbursement amount as determined, is based on the number of individuals on such flight who represent a particular candidate.

The FEC rules contain two important exceptions to the foregoing requirements (which are also available to House candidates). These exceptions create "carve-outs" that permit candidates to accept non-commercial air transportation using government-provided aircraft and using aircraft owned by the candidate, or his or her immediate family members.

Where a candidate utilizes aircraft owned by such candidate or his or her family members, the FEC rules provide that the candidate's campaign must reimburse the candidate or the family member for the costs of operating the flight in question. Also, if the candidate is using a fractional or "time-share"



aircraft, such use may not exceed the time allocated to the candidate or his or her family pursuant to such arrangement. If the use does exceed the allowable flight hours allocated to such candidate or his or her family, the FEC rules relating to non-family owned aircraft apply as if the aircraft were not owned by the candidate or his or her family member(s).

Directors should note that a permissible payment for a particular flight must be made in advance of the flight; otherwise, the flight could be considered a campaign contribution that could violate Federal election law. Furthermore, the FEC rules also contain specific record-keeping requirements that must be followed by both the candidate for federal office and the provider of non-commercial air transportation to such candidate.

Finally, Directors must also consider rules in addition to the FEC rules that a company must follow when providing non-commercial air transportation to candidates for Federal office. These include IRS and FAA requirements, rules of the U.S. House of Representatives and Senate, along with the requirements of various state and local authorities.

Please keep in mind that this article serves as a general and broad overview of the FEC rules and does not constitute legal advice or a legal opinion. Therefore, it is always advisable to consult with qualified aviation counsel when considering whether to provide such transportation to a candidate for elective office.

Do you have any questions or opinions on the above topic? Get it answered/published in World Aircraft Sales Magazine. Email feedback to: Jack@avbuyer.com