

Giving An Election Campaign Some Extra Lift ?



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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.

As we discussed in last month's issue, 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. 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 provided to candidates and elected officials.

We reviewed the FEC rules regarding provision of such transportation in last month's *Business Aviation*

and the Boardroom. This month, we will review FAA and IRS rules and regulations and additional issues that Board Members must consider when determining whether to provide the use of a company aircraft to a candidate and his/her campaign.

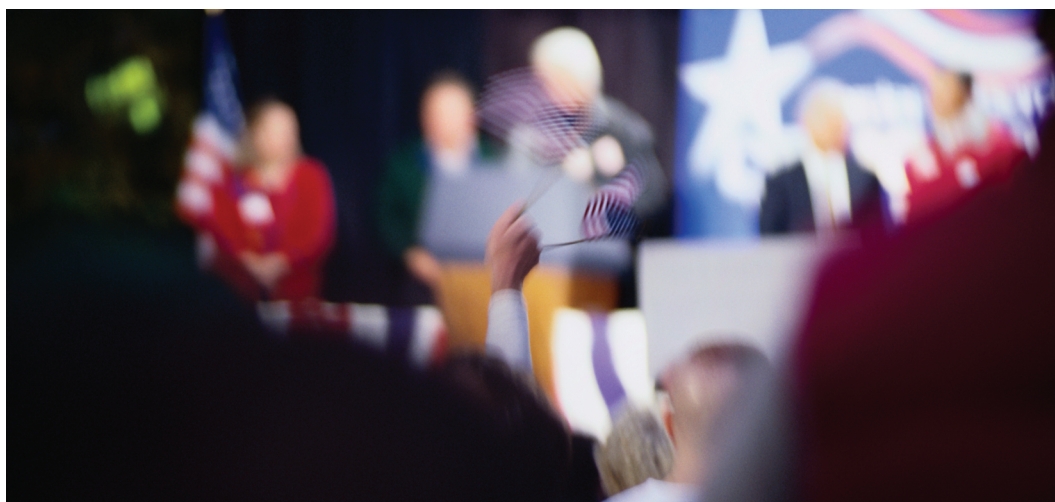
Failure to comply with these rules can have unintended and often serious consequences for individual candidates and, more importantly, business aircraft owners and operators.

FAA REGULATIONS

Board Members must be cognizant of FAA regulations affecting flight operations connected with carriage of candidates. Principle among these are >



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the regulations contained in 14 CFR Part 91 ("Part 91") and 14 CFR Part 135 ("Part 135"). Part 91 provides the general operating rules applicable to all aircraft operations. Part 135 provides an additional layer of regulation governing commuter and on-demand charter operations for compensation or hire.

When a flight is operated under Part 135, there are no FAA restrictions on the ability of the aircraft operator to charge and collect fees from the candidate. Conversely, for flights operated solely under Part 91 and not operated under Part 135, aircraft operators are generally prohibited from accepting any compensation for such flights, but there are certain limited exceptions to such prohibition.

One such exception is set forth in 14 CFR Section 91.321, Carriage of Candidates in Federal Elections. Pursuant to Section 91.321, aircraft operators flying under Part 91 are permitted to receive payment for transporting candidates for Federal, State or local offices, as well as agents of, and persons traveling on behalf of such candidates, provided the primary business of the aircraft operator is not as an air carrier or commercial operator, and applicable Federal, State or local election law requires that the aircraft operator receive payment for carrying the candidate, agent, or person traveling on behalf of the candidate.

For Federal elections, the payment received by the aircraft operator may not exceed the amount calculated under the FEC regulations (discussed last month). For state and local elections, the payment received by the aircraft operator may not exceed the amount calculated under applicable state and/or local laws and regulations.

TAX RULES

Board Members must also be aware of tax issues that arise as a result of the carriage of candidates on board a company aircraft. For example, a Federal excise tax generally applies to all flights for a particular candidate on board an aircraft with a maximum certified takeoff weight of 6,000 pounds or more. The tax is equal to 7.5% of the amounts paid by, or on behalf of

the candidate plus a segment fee (currently \$3.70 per passenger) for each flight segment flown in connection with the carriage of the candidate.

A company must keep careful records of such flights including specific passenger information, collect all applicable Federal excise tax from the person paying the company for the flight and file all required Federal excise tax returns and remit to the IRS all applicable excise tax owed with respect to such flights.

Furthermore, from a Federal income tax perspective, carriage of a candidate may limit the availability and amount of deductions for the company's direct costs of operating such flight and an allocable portion of the indirect costs of owning and operating the aircraft. Additionally, amounts received from a candidate are likely includible in the recipient's taxable income.

ADDITIONAL ISSUES

Board Members should have all aircraft insurance policies reviewed to ensure that coverage applies to the types of flights being provided for a candidate. Aircraft owners should also notify their insurance carriers in writing that such flights will be operated.

Furthermore, Board Members must ensure that such flights do not violate prohibitions or restrictions on particular types of aircraft operations contained in aircraft loan and lease documents before providing such flights to a candidate. A failure to do so could result in a default under such documents if they prohibit such flight activities.

Please keep in mind that this article serves as a general and broad overview of the rules described above 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