

Flying Political Candidates Under Part 91

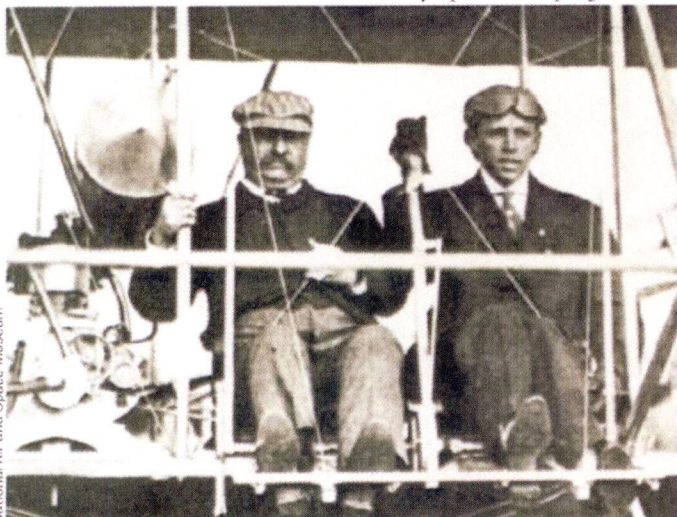
Vote early and vote often, but don't ignore the Federal Election Commission's revised regs.

THE FEDERAL ELECTION COMMISSION HAS NOW REVISED ITS regulations to interpret and explain the "Honest Leadership and Open Government Act of 2007." Title VI of that law is ominously entitled "Prohibited Use of Private Aircraft." The new regulations, which interpret the three-year-old law, just became effective this year.

If your company wants to give a senator a ride on the corporate jet, the first step is to review FAR Part 91.321, Carriage of Candidates in Elections. For many years, this regulation only allowed you to fly federal candidates, but it was finally amended in 2005 to allow you to take federal, state or local candidates and/or campaign staffs wherever they need to go, and accept whatever payment that the candidate is required to pay under federal or state law. However, the rule will not allow you to fly candidates under Part 91 if your "primary business" is to be an air carrier or commercial operator.

The statute translates "private aircraft" to mean "non-commercial aircraft." The FEC's prior regulations distinguished between commercial and non-commercial air travel based on the FARs, specifically referencing Part 135. The new definition of "commercial travel" follows the new statutory language: Travel aboard an aircraft "operated by an air carrier or commercial operator certificated by the FAA if the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority if the flight is required to be conducted under air carrier safety rules." Meanwhile, "non-commercial travel" is anything not covered in the definition of "commercial travel."

Presidential and Senate candidates: The new law's rates and conditions under which candidates may spend campaign funds



On Oct. 11, 1910, Arch Hoxsey, a member of the Wright exhibition team, took President Theodore Roosevelt for his first airplane ride.



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for aircraft travel differ depending on the office sought. The statute states that presidential and Senate candidates may pay for their pro rata share of the fair market value of a flight. That is determined by dividing the fair market value of the charter cost for a comparable airplane by the number of candidates on board the airplane. When candidates travel with their entourage, the cost of the flight is split among candidates based on the number of campaign travelers flying on behalf of each candidate, rather than split evenly among the candidates as previously proposed.

The new rules also permit members of the news media and government-provided security personnel traveling with a candidate to reimburse the political committee or to pay the corporation providing the aircraft directly for their pro rata share of the travel.

House of Representative candidates: U.S. House candidates and their Political Action Committee personnel are generally prohibited from using any campaign funds to pay for non-commercial flights, except for flights on their own aircraft or aircraft operated by a federal or state government entity.

Aircraft owned or leased by presidential, Senate or House candidates: Aircraft owned by such candidates or their immediate family members are exempt from the non-commercial aircraft prohibitions and rate requirements described above.

Fortunately, an aircraft "owned or leased" by a candidate can include an aircraft owned by an entity that is not a public corporation in which the candidate or an immediate family member of the candidate has an ownership interest.

The new owned or leased aircraft exception does not relieve candidates of the obligation to reimburse the service providers (candidates, members of their family or entities in which either owns an interest) to avoid receiving an in-kind contribution for the use of the aircraft. Even though a candidate for federal office may make an unlimited amount of contributions to his or her own campaign, those contributions must be reported. Contributions by all other persons, including immediate family members, are subject to both amount limits and source prohibitions.

If a candidate shares his or her own airplane with another candidate, then the "hitchhiker" candidate must pay the aircraft owner candidate half of the cost of the normal and usual charter rate for a comparable aircraft.

The statutes and regulations governing the FEC are available at www.fec.gov. Bear in mind that flying a candidate has consequences beyond the requirements imposed by the FAA and the FEC. Make sure that your insurance coverage would not be affected by accepting compensation from a candidate, and do consider the state and federal tax implications of receiving a payment for air transportation. **BCA**