



State of North Carolina

ROY COOPER
ATTORNEY GENERAL

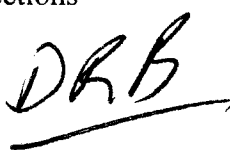
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MEMORANDUM

ATTORNEY CLIENT PRIVILEGED COMMUNICATION

TO: Gary O. Bartlett, Executive Director
North Carolina State Board of Elections

FROM: David Roy Blackwell
Special Deputy Attorney General 

DATE: 6 May 2004

SUBJECT: Accounting for Use of Private Aircraft Under North Carolina's
Campaign Finance Statutes.

Special Deputy Attorney General Susan Nichols forwarded your request to me. I have been active in aviation for many years, and currently hold a private pilot's license with an instrument rating. For the past three years, I have owned and operated a Beechcraft Bonanza.

I have reviewed John R. Wallace's 19 February 2004 letter to and request for opinion from you concerning the appropriate rate, under Article 22A of Chapter 163, for reimbursement or, in the alternative, reporting as an in-kind contribution, of private aircraft use by state political candidates. I have also reviewed Kelly L. Loving's 18 November 2003 letter requesting a ruling from you concerning how the state candidates should value the donated use of a private aircraft under North Carolina's campaign finance statutes. The following information should be of some assistance.

I have located no established legal or accounting standard for ascertaining the value of such services. It appears that you have the discretion to establish a method of evaluation for purposes of Chapter 22A. Some suggestions have been made that the State Board should utilize charter rates as the valuation. Use of charter rates would require a separate determination for each city pair flown. Charter rates vary greatly depending upon the specific equipment utilized; aircraft position and availability; and the general market. Furthermore, charter rates do not necessarily reflect operating costs of privately operated aircraft.

The most uniform and easily administered method to determine the value of a donated flight in a private aircraft is to determine the average cost per flight hour of that make and model aircraft (including the crew) and multiply that dollar figure by the number of flight hours fairly attributable to the candidate's use. Flight hours required to reposition an aircraft to transport the candidate are attributable to the candidate's use. Thus, if four (4) hours of flight time are attributed to the candidate and the aircraft, including the crew, costs \$500 per flight hour, the value of the flight for purposes of Article 22A (whether reimbursed or treated as an in-kind contribution) is \$2000.

I have located no established legal or accounting standard for ascertaining the cost per flight hour of an aircraft. Different analyses include different components. Aircraft fixed costs, regardless of the type of aircraft, are substantial. The owner incurs such costs whether the aircraft flies one hour or 1000 hours. The number of hours flown also varies from operator to operator, and a particular operator may face extraordinary costs in a particular accounting period. Thus, the hourly cost in a particular accounting period will vary from operator to operator depending upon the number of hours flown and any extraordinary costs incurred.

Numerous organizations within the general aviation industry provide private aircraft selection, purchase, sale and management services to prospective owners and operators. Other organizations survey owners and operators of private aircraft concerning their operational expenses. These organizations thoroughly assess the discrete cost components; compile data from the manufacturers, owners and operators of each of the many different aircraft types including the typical yearly usage; and determine an average cost per hour for a particular make and model aircraft based upon these data. Much of this information is generally available on the web. For turbine powered aircraft, see <http://www.southeastjet.com> and <http://www.omnijet.com>. Some organizations also provide single and twin engine piston aircraft average cost and utilization information. See, for example, <http://www.planequest.com>. Additionally, the Aircraft Owners and Pilot's Association offers, for its members, an operating cost calculator for general categories of piston powered single and twin engine aircraft, although not with the specificity of [planequest](http://www.planequest.com).

Accounting for crew costs raises a special issue. Typically, piston singles and light twins may be owner flown. Some heavier piston twins, some turboprop singles, some turboprop twins, and a few of the light turbofan aircraft may be owner flown. The likelihood of a professional crew increases with the complexity of the aircraft. Additionally, the more complex aircraft usually operate with a two person crew.

The recommended turbine (both turbofan and turboprop) aircraft cost analysis includes crew costs. For piston singles and twins, a crew cost should be added.

An individual with a pilot's license may donate his or her time to the campaign. In defining the terms "contribute" or "contribution," N.C.G.S. § 163-278.6(6) provides, in part:

Notwithstanding the foregoing meanings of "contribution," the word shall not be

construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee.

As such, and for purposes of Article 22A, piloting an aircraft is no different from stuffing envelopes.

A survey of several organizations providing pilot services within North Carolina produced a number of different methods by which the operators calculate crew compensation. However, these different arrangements produce a somewhat uniform rate for air crews. On average, the pilot in command of turboprop or light jet twins generally receives \$90 per flight hour with a \$300 per day minimum; the first officer receives \$70 per flight hour with a \$150 per day minimum. The same would be true for turbine singles. For piston twins, the pilot in command receives \$85 per flight hour with a \$250 minimum per day. Piston twin first officers, if required or requested, receive \$50 per flight hour with a minimum of \$125 per day. The trend is to operate piston twins with a two person crew. Single engine crews (whether one or two person but normally one) generally receive \$30 per flight hour per person with a three hour minimum.

Attached is the operating cost analysis for common turbine aircraft (including crew costs) from <http://www.southeastjet.com> as well as piston powered aircraft cost figures from <http://www.planequest.com>. The average operating cost data compiled by these organizations appears reasonable. For the turbine aircraft, use the hourly costs for no depreciation. For the piston cost figures, add the appropriate crew costs as set forth above. For aircraft not listed, please contact me and I can assist you in determining appropriate dollar figures. Should you require any additional information, please contact me.

SAMPLE DONOR LETTER

Date

Name
Address

Re: In Kind Contributions

Dear _____:

Thank you for your willingness to assist the North Carolina Democratic Party (hereinafter the "Party") by your offer of use of the _____ (describe aircraft) in connection with _____'s (representative or candidate) travels. We greatly appreciate your offer.

It is our understanding that the _____ (aircraft) is owned by _____ (name of corporation or L.L.C.) and further, that as a _____ (shareholder or member), you have the right to use such aircraft from time to time. It is our further understanding that the _____ (corporation or L.L.C.) will accept the rates established by the State Department of Commerce for its use of the same or similar aircraft.

It is our understanding and expectation that upon the use of the _____ (aircraft) by the Party, you will advise us of the charges incurred at the State Department of Commerce rate and will reimburse such charges to the (corporation or L.L.C.). The Party then will, in accordance with applicable law, report as an in kind contribution such charges. Such charges must be reimbursed by you to _____ in full so as to avoid the receipt by the Party of any contribution which may be in violation of applicable law.

Thank you for your kind assistance in this regard.

With best regards, I remain

Sincerely,
