



STATE BOARD OF ELECTIONS
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GARY O. WARTLETT
Director

June 21, 2004

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Mr. John R. Wallace
Wallace, Crech & Sarda, LLP
P.O. Box 12065
Raleigh, NC 27605

Re: North Carolina Democratic Party's Request for Advisory Opinion pursuant to N.C. Gen. Stat. § 163-278.23 on Use of Private Aircraft

Dear Mr. Wallace:

You have requested a written opinion pursuant to N.C. Gen. Stat. § 163-278.23 on the application of the reporting requirements and contribution limits of Article 22A of Chapter 163 of the North Carolina General Statutes to the use of private aircraft by the North Carolina Democratic Party and its nominees. You anticipate that representatives and nominees of the Party, particularly statewide candidates, will travel extensively this election year and may use private aircraft at times. Private individuals have on occasion offered to the Party's representatives, including nominees, the use of private aircraft in which they have an ownership interest. You request guidance on several specific questions that may arise with the respect to the use of private aircraft.

There are several means by which a candidate or party political committee may obtain the use of aircraft. A political committee may purchase a ticket on commercial aircraft or may contract with a charter airline service in an arms-length transaction. In both instances, the actual expenditure for the ticket or the charter service should be reported.

Contributions may not exceed \$4,000 per primary or election and must be made by an individual, G.S. 163-278.13. Aircraft may be owned by an individual or may be owned by a corporation or other business entity. If the aircraft is individually owned and its use is donated to a candidate or political committee, the fair market value of the donated use should be reported as an in-kind contribution by the recipient committee under G.S. 163-278.6(6) and -278.8.

The use of an aircraft owned by a corporation or business entity, however, may not be donated to a candidate, party or political committee, G.S. 163-278.19(a). However, in the instance in which a corporate executive is allotted a certain and finite use of a corporate aircraft in compensation for and in consideration of employment, the individual may upon prior approval of the campaign reporting office, donate his or her right to use such aircraft. In the event such donation is intended, the prospective donee must advise the State Board Campaign Reporting Office five (5)

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business days prior to the intended use of the corporate aircraft providing the State Board of the following matters: (1) a description of the plane to be used including manufacturer, model number and weight; (2) the intended flight path and distance; (3) whether the crew members are volunteers or are to be provided by the corporation along with the use of the aircraft; (4) expected terminal and related charges; and (5) whether the executive is provided with unlimited or limited usage of the corporate aircraft and if limited, the number of hours or miles of such use which are granted per annum.

Upon review of the submission, the State Board may determine that the proposed usage is acceptable and upon such determination, such usage shall constitute an in-kind contribution by the individual donor, the value of which shall be established in accordance with the subsequent paragraphs of the instant advisory opinion. However, the State Board of Elections Campaign Reporting Office may determine that the proposed flight will constitute a contribution by a corporation or business entity not otherwise permitted to contribute and may decline to approve the contribution. In any event, with respect to any approved flight, usage of the aircraft may only be provided where the access and usage to the aircraft is part of an employee's compensation package and is reported to state and federal tax and other regulatory authorities. Furthermore, the employee may only donate the use of his or her share of such aircraft to a candidate or committee in an amount not to exceed \$4,000.00 per primary or general election.

A more difficult question is how to value fairly the donation of the use of aircraft. I have been unable to locate any established, controlling legal or accounting standard for ascertaining the value of the use of a donated aircraft; however, there is information publicly available that should permit political committees to ascertain a fair valuation of donated aircraft and crew. David Roy Blackwell, a licensed pilot and Special Deputy Attorney General in the Attorney General's Office, has identified multiple, publicly available sources for assessing the costs of owning and operating private aircraft. See Memorandum from D. Blackwell to G. Bartlett (6 May 2004)(copy attached).

In calculating the donated use, or in evaluating how much compensation is owed for the use of a private aircraft that is not donated, the first step is to determine the average cost per flight hour of the make and model aircraft. The average cost per flight hour may be determined from one of the web sites listed in Mr. Blackwell's letter. Once the average cost per flight hour is determined, it should be multiplied by the number of flight hours fairly attributable to the political committee's use. These hours would include flight time necessary to reposition the aircraft.

Some of the average cost per hour data includes the average cost of the appropriate crew for the aircraft. If so, you do not need to separately determine the crew costs per flight hour. If the crew costs are not included, you must first determine if the pilot is a volunteer. Sometimes pilots who own their own aircraft will volunteer flight time to a candidate or political committee. Volunteer services are not included in the definition of a contribution. G.S. 163-278.6(6). If the pilot or pilots services are not voluntarily given, then Mr. Blackwell has surveyed the current costs and

they range per hour from \$30 per flight hour for a single engine pilot with a three-hour minimum to \$90 per flight hour with a \$300 per day minimum for a turboprop or light jet twin-engine aircraft. Any time associated with the trip that the pilot or crew must spend in addition to actual flight time, and travel expenses they charge in addition to their other compensation, should be added to the estimated value of the contribution if it is paid by someone other than the committee. If the pilot costs are paid by the committee, then they would be reported as expenditures.

In sum, if a political committee wishes to accept the donated use of an aircraft or its crew, it is essential that the committee report that use as an in-kind contribution. Information is available by which a committee may assign a reasonable value to the donation. In auditing reports listing contributions or expenditures for the use of aircraft, this office will use the above principles and information to evaluate the reasonableness of the value assigned. The committee should specifically disclose the type of aircraft used, the number of hours it was used, and the number of crew members who were compensated for the use. The committee should be prepared to explain the assumptions it used in calculating the costs associated with committee's use of the aircraft. Finally, the total contributions of an individual donor should not exceed \$4,000. This office will be happy to answer any questions that may arise as a committee determines the value of a particular contribution of the use of an aircraft.

This opinion is based upon the facts as stated in your letter dated February 19, 2004. If those facts should change, you should evaluate whether this opinion is still applicable and binding. In addition, changes in statutes or case law may affect this opinion and you should evaluate their applicability. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

Gary O. Bartlett

Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules
Kelly L. Loving, Robinson Bradshaw & Hinson



State of North Carolina

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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.