



Pilot Counsel

The shared expense privilege — having a common purpose

BY JOHN S. YODICE (From *AOPA Pilot*, March 1995.)

Carrying passengers on a flight where the passengers pay for the flight, or even give anything of value in exchange for the flight, can be legally troublesome for the pilot. The law on this point is tricky.

In last month's column we told of a commercial pilot who lost his license for forty-five days because he transported passengers in what he thought was a private, Part 91, operation ("[Pilot Counsel: Commercial Privileges](#)," February *Pilot*). He thought it was private because the passengers rented the airplane from its owner and, in a separate transaction, paid the commercial pilot for his services. The Federal Aviation Administration took a different view of the transaction. The FAA felt that the pilot had a little too much to do with putting the arrangement together. The FAA charged that the operation was essentially a commercial one, requiring a Part 135 commercial operator's certificate and the increased regulatory requirements that go along with it.

For many general aviation pilots, the typical situation which raises this kind of problem is the "shared expense" flight. After I wrote last month's column, another case came across my desk which told of two other pilots who got into similar trouble with the FAA for also trying to stretch the FARs beyond what the FAA intended. But this case is most important because it tells us of a very important limitation on the "shared expense" privilege.

Before talking about the case, though, let's review the basic law, which finds its basis in FAR 61.118(b). It is perfectly legal for a private pilot to share the expenses of a flight with his or her passengers. The pilot doesn't have to have a commercial operator's (Part 135) certificate, or even a commercial pilot's certificate. Commercial pilots and holders of ATP certificates have the same privilege — to share expenses with passengers — and do not have to have a Part 135 certificate.

However, there are three very important limitations to this privilege.

One important limitation is that there must be a bona fide sharing of expenses among all of the occupants of the aircraft, including the pilot. In other words, the pilot must pay his or her pro rata share of the expenses of the flight.

The second limitation deals with which expenses may be shared. If it is a rental aircraft, the total rental cost may be shared. No problem. But if it is an owned aircraft, some FAA officials have taken the position that only direct operating costs may be shared, such as gas, oil, and parking and landing fees away from the home base, and the like. What may not be shared, according to the FAA, are the indirect costs such as insurance, tie-down or hangar fees at home base,

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maintenance, reserve for engine overhaul, and the like. I don't agree that such a restrictive interpretation is required — but that is a subject for another column.

The third important limitation is that the pilot must be going on the flight for his or her own purpose. The sole purpose of the flight may not be to provide transportation to the passengers. This has been my interpretation for many years. In recent years, the FAA has been taking a more restrictive view. The FAA says not only must the pilot be going on the flight for his or her own purpose, but the purpose must be "common" with the passengers. This FAA view is illustrated in the legal decision that we will talk about.

The case involved two pilots, one of whom attempted to set up a shared expense flight with a television station. The other pilot was a flight instructor. The station wanted to transport its sports anchorman and a cameraman to a news conference at a distant city. The trip was taken. The aircraft was a twin-engine Piper Seneca which the first pilot, who was working on his multiengine rating, rented from its owner. The pilot received dual instruction from the CFI during the trip.

The flight instructor had no knowledge of the arrangement with the passengers. When he showed up prepared to give multiengine flight instruction to the pilot, he saw the two passengers, both strangers to him, but he didn't ask any questions of them. Nor did he ask the pilot about them or their status in the airplane.

The FAA charged both the pilot and the flight instructor with various violations of FAR Part 135, essentially for transporting passengers "for compensation or hire" without having the necessary authority or credentials. The FAA sought 90-day suspensions for both. The pilots appealed the suspensions to the National Transportation Safety Board. After a hearing, an NTSB administrative law judge found that both pilots had violated the regulations, but found some redundancy in the FAA charges and reduced the pilot's suspension to 30 days and the flight instructor's suspension to 45 days.

The flight instructor appealed the law judge's decision to the full Board. The flight instructor argued that he had no knowledge of the "compensation for hire" arrangement. The Board rejected the appeal. The Board relied heavily on the fact that the flight instructor was pilot in command since he was the only pilot qualified to operate the aircraft. As pilot in command, the Board said, he was responsible for the lawful operation of the aircraft. He either knew or should have known what was going on: "Pilots may not avoid liability simply by not asking any questions. They have a reasonable duty to inquire into the status of the flight and the passengers," said the Board.

With respect to the shared expense privilege, the Board said: "Expenses may be shared only where the pilot and the passengers share a common purpose in the flight." The Board said that even giving the pilots the benefit of the doubt — one pilot's intent to receive flight instruction and the other to give it — "the TV crew's intent was to get to Memphis as quickly as possible to attend a press conference." That was not the purpose of the pilots. So, the requirement for a "common purpose" is now the law.

The Board cited to another case which illustrates this limitation. The Board found in that case that there was no common purpose in a pilot's sharing expenses with passengers when the pilot's purpose was to gain flight time and the passengers' purpose was to skydive.

It is clear now that a pilot may not share the expenses of a private flight with his passengers if his purpose is to merely build flight time or get flight instruction, unless that is the passenger's purpose, too. Otherwise, the shared expense

privilege is alive and well, and available to pilots willing and able to abide by the limitations.

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