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Transporting Politicians on Company Aircraft

Board Members must be vigilant to avoid pitfalls. Attorney Chris Younger identifies areas for careful consideration.

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Although 2013 is an "off" year for most federal and state elections in the USA, the political campaign "season" has become a non-stop affair. Potential candidates, including current officeholders, are always in campaign mode in preparation for the next contest, whether it be one, two or three years away. In addition, many corporate executives maintain professional and personal friendships with elected officials and candidates. In many instances, these executives want to travel with their politician friends on board company aircraft. A company executive may also

be considering his or her own election bid.

Many governmental agencies and legislative bodies, 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 to candidates and elected officials. A company's failure to comply with these rules can result in unintended and serious violations of the law with possible criminal and/or civil sanctions for both the company and the politician. It is therefore imperative that Board Members understand all of the applicable regulations before allowing a candidate or officeholder to use the company aircraft. >



THEY NEED TO BE SOMEWHERE FAST, BUT DON'T BE SO QUICK TO SKIP OVER THE REGULATORY ISSUES OF TRANSPORTING POLITICIANS

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What the Boardroom needs to know about Business Aviation



KNOW BEFORE YOU GO

The Honest Leadership and Open Government Act of 2007 (Act) tightened rules that were already in place relating to the carriage of candidates for federal elected office. The current FEC rules prohibit or restrict federal candidates and certain individuals traveling on behalf of such candidates from utilizing non-commercial air travel.

The FEC rules distinguish between candidates for the U.S. House of Representatives, for the U.S. Senate, and for the offices of Vice President and President. Under the FEC rules, candidates for the U.S. House of Representatives and individuals working on their campaigns are prohibited from utilizing non-commercial air transportation in connection with the campaign activities of that candidate. However, in certain very limited circumstances, the FEC rules permit individuals associated with such campaigns to utilize non-commercial air transportation where the purpose of the flight is not connected with the candidate's campaign.

Candidates for the U.S. Senate, Vice President and President are permitted to utilize non-commercial air transportation under the FEC rules provided that they timely reimburse the provider of the flight in an amount equal to what it would cost the candidate to charter a comparable aircraft for the same trip.

Where multiple individuals are passengers on a particular flight and they represent multiple candidates' election campaigns, the FEC rules specify how to allocate the reimbursement amount between each such candidate. Press and government personnel who accompany a candidate may reimburse the service provider directly. The method for making such allocations on a pro-rata portion is based on the number of individuals on such flight who represent a particular candidate.

EXCEPTIONS

The FEC rules contain two important exceptions to the foregoing requirements (which are also available

to House candidates). These "carve-outs" permit candidates to accept non-commercial air transportation using government-provided aircraft as well as using aircraft owned by the candidate, or his or her immediate family members.

Where a candidate utilizes aircraft owned personally or by his or her family members, the candidate's campaign must reimburse the aircraft owner for the costs of operating the flight in question. Also, if the candidate is using a fractional or "time-share" aircraft, such use may not exceed the time allocated to the candidate or his or her family pursuant to such arrangement. If the use does exceed the allowable flight hours allocated to such candidate or his or her family, the FEC rules relating to non-family owned aircraft apply as if the aircraft were not owned by the candidate or his or her family member(s).

Board Members should note that a permissible payment for a particular flight must be made in advance of the flight; otherwise, the flight could be considered a campaign contribution that could violate Federal election law. Furthermore, the FEC rules also contain specific recordkeeping requirements that must be followed by both the candidate and the provider of non-commercial air transportation to such candidate.

Finally, Board Members must consider rules in addition to those imposed by the FEC. These include IRS and FAA requirements, rules of the U.S. House of Representatives and Senate, and requirements of various state and local authorities.

Note: This article should not be construed as legal advice or legal opinion on any specific facts or circumstances. The reader is urged to consult legal counsel or other advisors concerning his/her own situation and specific legal questions.

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