

STATE BOARD OF ELECTIONS
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GARY O. BARTLETT
Director

June 21, 2004

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Mr. John R. Wallace
Wallace, Creech & 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. § 163-27.23 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 instance, 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) 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 such use which are granted per anum.

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 approved 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 \$4000.00 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 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 operation 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
Executive Director

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