NATIONAL HEADQUARTERS
CIVIL AIR PATROL
500 FIFTH AVENUE
NEW YORK 18, NEW YORK

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SUBJECT: Discussion of Liability in connection with Operation of Army aircraft.

TO:

1. Due to various questions which have arisen as to the liability of CAP personnel in connection with the operation of Army aircraft assigned for recruiting purposes an opinion has been secured which, it is believed, indicates rather conclusively that the possibilities of a claim being established against an individual CAP member are very slim, unless such member engages in reckless and wanton conduct which is in direct and complete violation of the rules and regulations under which the planes will be operated. Specifically, the Air Judge Advocate has said:

a. "Generally speaking CAP personnel (including CAP pilots, operations officers, maintenance personnel and others) are civilly liable for their wrongful or tortious acts which cause personnel injury or property damage. Government control or direction would not protect such personnel from the legal consequences of their own misconduct. A definite opinion of general application covering the legal liability of the several classes of personnel specified, in all cases, cannot be given, for in each case liability is primarily dependent upon the the circumstances giving rise to the claim, and the applicable laws of the state in which the accident occurred."

2. The Air Judge Advocate has further said that the Government would not hold a CAP member liable for loss or damage to the planes themselves even where simple negligence on the part of such member was involved. Specifically, the Air Judge Advocate has said:

a. "Under CAP operations's directive #40, 1 Dec 43, a CAP Wing Commander is a gratuitous bailee of Government aircraft for the benefit of the bailor and as such would be expected to exercise only reasonable care for the property bailed to him. It normally would be the policy of the War Department not to assert any claim for loss, damage, or destruction of Government airplanes bailed to CAP personnel under the circumstances provided in CAP Operation's Directive #40 unless more than simple negligence were involved. (The Office of The Judge Advocate General, Lt. Col Roy A. Deal, informally has concurred)

b. "The liability of a CAP operations officer would be no greater than that of a Wing Commander.

c. "The liability of a CAP pilot would be no greater than that of a Wing Commander."

3. The Air Judge Advocate has pointed out that the proposition of law which has been states with regard to the liability of CAP personnel is generally applicable to military personnel and Government employees, but that in spite of such fact liability claims are rarely if ever asserted against Army personnel. Furthermore, Army personnel do not carry insurance against such liability. Specifically the Air Judge Advocate has said:

a. "Army pilots, operations officers, and Commanding Officers are not entitled to Government immunity for their wrongful or tortuous acts while engaged in non-combat activities.

b. "Such liability claims are not frequently asserted against military personnel. Mr. Wm. M. Reading of this office has been an employee of the War Department for more than 25 years (during practically all of which period he processed aircraft claims), and he has stated that there has never come to his attention any instance in which such liability was asserted against military personnel. Insurance is not carried."

4. It should be noted that <u>liability suits will normally be defended by the U.S. Attorney General</u>. The Air Judge Advocate General has said:

a. "Under normal circumstances suits of this nature would be defended by the United States Attorney General upon appropriate request. (The Office of The United States Attorney General, Mr. George Foley, informally has concurred in this statement)"

5. Third parties who are injured or have suffered property damage as a result of the operation of the Army aircraft may present claims against the Government for such injury or damage. This fact would of course limit the possibilities of such parties also asserting a claim against any CAP member. The Air Judge Advocate has said:

a. "Attention is invited to Public Law 112, 78th Congress, and AR 25-25, under which the Government has assumed liability to any one claimant up to $1,000.00 ($500.00 in peace time) for certain damage incident to non-combat activities of the War Department or the Army.

b. "Regulations prescribing the investigation and settlement of such claims are contained in AR 25-20 and AR 25-25. Claims arising from the operation of the airplanes in reference by CAP personnel would fall within the terms of the Act cited and may be settled under the provisions of the regulations named.

c. "The fact that the claimant might have certain rights against the Government should tend to limit the number of suits brought against CAP personnel individually because of the liberal and expeditious processing of Government claims, the solvency of the Government, and the psychological handicap necessarily attendant upon the prosecution of a volunteer engaged in an activity for the war effort."

6. Several Wing Commanders have in the past indicated that it was their feeling that liability insurance whould be secured to protect CAP personnel against claims arising out of the operation of CAP aircraft. Such Wing Commanders and others who may be concerned with the possibility of such suits must determine for themselves the advisability of securing such insurance in the light of the opinions of the Air Judge Advocate quoted above. The cost of such insurance must be weighed against:

a. The possibility of injury or loss being caused to third parties through the operation of the Army planes.

b. The fact that military personnel and Government employees who are also generally liable for their wrongful or tortuous acts do not carry insurance and yet claims are rarely if ever filed against them personally.

c. The fact that suits filed against CAP personnel would normally be defended by the Attorney General.

d. The fact that any injured person might quite likely choose to file a claim against the Government rather than to undertake a law suit.

7. Such ~~insurance cannot~~ be secured at present through National Headquarters but can be obtained by Wing Commanders directly from the Insurance Underwriters. Premiums must be paid from private funds since Government funds are not presently available therefor. National Headquarters is attempting to work out an arrangement whereby the cost of such insurance may be paid by the Government but such arrangements do not presently appear feasible and operations, therefore will be conducted without regard to such possibility.

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By Direction of National Commander JOHNSON:

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