

THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 00-005
November 15, 2000

Syllabus by the Committee:

Upon separation from the General Assembly, members and employees of the General Assembly may retain all frequent flyer miles accrued while travelling on state business

Jurisdiction and Question Presented

Pursuant to sections 101.34 and 102.08 of the Revised Code that direct the Joint Legislative Ethics Committee to act as an advisory body to the members and employees of the General Assembly on questions relating to ethics, conflicts of interest, and financial disclosure, the Joint Legislative Ethics Committee advises the members and employees of the General Assembly on the following question: Upon separation from the General Assembly, can a member retain and personally use the balance of frequent flyer miles accumulated while travelling on state business?

Background

The Committee has previously discussed the allowable usage of frequent flyer miles accrued in connection with a member's official duties in Advisory Opinion 97-007. Generally, the Committee held in the opinion that a member could not use, for personal use, any benefit accrued from frequent flyer miles earned from state travel. The Syllabus of the opinion stated:

(1) R.C. 102.03(D) and (E) prohibit a member or employee of the General Assembly from accepting, soliciting, or using the authority or influence of his or her position to secure for personal travel, a free or discounted frequent flyer airline ticket or other benefit from

an airline if the member or employee has obtained the ticket or other benefit from the purchase of airline tickets by the General Assembly for use in official travel;

(2) R.C. 2921.42(A)(4) prohibits a member or employee of the General Assembly from receiving any personal profit or benefit, including free or discounted frequent flyer tickets, where the profit or benefit is from the purchase of a ticket by the General Assembly for state travel;

(3) R.C. 2921.43(A) prohibits a member or employee of the General Assembly from accepting, for personal use, free or discounted airline tickets or other benefits received from frequent flyer miles accrued while engaged in state travel.

As noted in Opinion 97-007, most of the major airlines offer some type of incentive program for those persons who fly frequently on the airline. Generally, passengers accrue frequent flyer miles for travel on a particular airline, and are able to use those accrued miles for free, upgraded, or discounted tickets, or other benefits offered by the airline. Ordinarily, airline tickets are purchased in the name of the person flying; therefore, all frequent flyer miles are accumulated in the name of the person who is flying, not in the name of the person or entity that actually paid for the ticket.

Pursuant to Advisory Opinion 97-007, a member or employee cannot personally use any frequent flyer miles while they are still a member or employee of the General Assembly. However, for many members and employees who leave the General Assembly, the member or employee will have unused miles at the time of separation.

Consideration of the Issues

As a general rule, state property cannot be used for personal use; however the nature of the frequent flyer miles necessitates a deviation from that general standard. In most cases, a member or employee, upon separation from the General Assembly, would turn in all state property. This however is not possible with frequent flyer miles. As noted above, the miles accrue in the name of the person flying, not in the name of the state of Ohio. The departing member or employee is not able to transfer the miles to the General Assembly for future use by the General Assembly.

In addition to the non-transferability, a value cannot be placed on the frequent flyer miles. Generally a member or employee would be required to reimburse the state for any state property used for personal use. In Advisory Opinion 97-007 the Committee stated that where combined personal and state miles were used, the member was required to reimburse the General Assembly for the portion of the ticket derived from state miles. In that instance there was a specific value which could easily be determined, the ticket price. Unfortunately in this instance, there are only unused miles which may or may not have value and any value they may have is not ascertainable.

Moreover, whatever value there is in the miles is only temporary. Upon review of the frequent flyer programs available, it appears the accrued miles are only valid for a certain time period and are forfeited if not used within a specified time.

Lastly, it is assumed that since a member or employee has been using the miles during his or her tenure with the General Assembly, that the balance upon departure will generally be nominal or *de minimus* and not substantial in value.

Conclusion

Accordingly, the Committee finds and the members and employees are so advised that, upon separation from the General Assembly, members and employees of the General Assembly may retain all frequent flyer miles accrued while travelling on state business.

This advisory opinion is based on the facts presented. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code and does not purport to interpret other laws or rules.

_____/s/_____
Richard H. Finan, Chairman
Joint Legislative Ethics Committee