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THE JOINT LEGISLATIVE ETHICS COMMITTEE

Advisory Opinion 97-007
October 16, 1997

Syllabus by the Committee:

- (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.

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: Can a member or employee of the General Assembly use, for personal travel, frequent flyer miles accrued while the member or employee was engaged in travel for state business?

Background

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. Members and employees of the General Assembly often purchase airline tickets for the purpose of travelling on state business; thereafter, the member or employee is reimbursed by the state for the cost of that ticket. The Ohio Ethics Commission in Advisory Op. 91-010 addressed the issues involved herein, the Committee generally concurs in the findings of the Commission.

Consideration of the Issues

R.C. 102.03(D) and (E)

The Ohio Ethics Laws prohibit a member or employee of the General Assembly from accepting, soliciting, or using the authority or influence of the person's position to secure anything of value where the thing of value is of such a character as to manifest a substantial and improper influence upon the member or employee with respect to his or her duties. Specifically, R.C. 102.03(D) and (E) provide:

- (D) No public official or employee shall use or authorize the use of the authority or influence of his office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon him with respect to his duties.

Anything of value is defined for purposes of R.C. 102.03 to include money, bonds, goods and chattels, promissory notes, real estate interests, and every other thing of value. Consequently, a free or discounted ticket or other benefit would fall within the definition of *anything of value* for purposes of R.C. 102.03. Therefore, it must be determined whether the acceptance of a free or discounted ticket or other benefit which is based upon frequent flyer miles accrued in the course of air travel made for purposes of state business is of such a character as to manifest a substantial and improper influence upon the member or employee of the General Assembly.

In determining whether a thing of value is of such a character as to manifest a substantial and improper influence, it is necessary to look at the *source* and *nature* of the thing of value. This Committee has previously held that regarding the nature of the thing, a definite and pecuniary benefit which is not nominal or de minimis is considered to be "substantial" for purposes of R.C. 102.03(D), (E), and (F). A free or discounted airline ticket is not something nominal or de minimis, and is therefore substantial. With respect to the source of the thing of value, this Committee has held that a member or employee of the General Assembly is prohibited from accepting or soliciting a thing of value from someone who is doing or seeking to do business with, or regulated by, the General Assembly. See Advisory Op. 95-010.

In this situation, the airline ticket which the member or employee uses to travel on state business, is paid for, or the cost is reimbursed, by the General Assembly. Consequently, the General Assembly is doing business with the various airlines from which it purchases tickets. Given this, a member or employee is prohibited from accepting, soliciting, or using the authority or influence of his or his office or employment to secure, for personal travel, free or discounted airline tickets or any other benefit, based upon frequent flyer miles accrued while traveling on state business.

Furthermore, since the state is purchasing the airline ticket for state travel, it is expending state funds for the purpose of conducting state business. Where benefits (i.e., free or discounted tickets) arise from the conducting of state business, those benefits must accrue to the state, not to a member or employee of the General Assembly personally.

Accordingly, 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.

R.C. 2921.42(A)(4)

Division (A)(4) of R.C. 2921.42 prohibits a member or employee from having an interest in the profits or benefits of a public contract entered into by or for the use of the General Assembly. A *public contract* is defined for purposes of this prohibition as the purchase or acquisition or a contract for the purchase or acquisition of property or services by or for the use of the state. R.C. 2921.42(E). The purchase of an airline ticket to be used for state business is a public contract for purposes of this section. Therefore, R.C. 2921.42(A)(4) prohibits a member or employee from receiving any profit or financial benefit, including free or discounted tickets, from the purchase of a ticket by the General Assembly for state travel.

R.C. 2921.43(A)(1)

R.C. 2921.43(A)(1) prohibits a member or employee from soliciting or accepting any compensation, with exceptions, or supplemental compensation to perform his or her official duties. R.C. 2921.43(A)(1) provides:

- (A) No public servant shall knowingly solicit or accept and no person shall knowingly promise or give to a public servant either of the following:
 - (1) Any compensation, other than as allowed by divisions (G), (H), and (I) of section 102.03 of the Revised Code or other provisions of law, to perform his official duties, to perform any other act or service in the public servant's public capacity, for the general performance of the duties of the public servant's public office or

public employment, or as a supplement to the public servant's public compensation;

Members and employees are compensated by the General Assembly for the travel they must do on behalf of the state. Any personal benefit for the member or employee which is based on travel which the member or employee is required to perform as part of his or her official duties and for which he or she is compensated by the state, would be additional compensation for the performance of his or her official duties. Accordingly, 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.

Furthermore, it should be noted that any frequent flyer miles accrued in the course of state travel may be used for additional state travel, the prohibitions enumerated above only prohibit personal travel based upon the accrued miles.

Reimbursement


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. Often times a person would not accrue sufficient personal miles or sufficient state miles to qualify for a discounted or free ticket prior to the expiration date, but a combination of personal and state miles would qualify for the free or discounted ticket. Therefore, in order to avoid the complete forfeiture of all accrued miles, a member or employee may use the accrued miles which consist of both personal and state miles for personal travel if the member or employee reimburses the General Assembly for the portion of the ticket or discount that is attributable to the state. In other words, if a free ticket is comprised of 75% personal miles and 25% state miles, the member or employee may reimburse the state the cost of 25% of the ticket.

Lastly, the Committee finds that this opinion is prospective in nature only, only those frequent flyer miles that are accrued on or after October 16, 1997, shall be used solely for the purpose of state travel.

Conclusion

Accordingly, the Committee finds and the members and employees are so advised that, (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; and (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.

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.


William G. Batchelder, Chairman
Joint Legislative Ethics Committee