

ADVISORY OPINION

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REFERENCES: RCW 42.52.010, RCW 42.52.020,
RCW 42.52.030, RCW 42.52.070, RCW 42.52.160

SUMMARY OF CHANGES: Amended to update statutory references.

Use of Frequent Flyer Miles by State Officers and Employees

QUESTIONS

1. Can a state officer or employee use frequent flyer miles earned from official state travel for personal travel?
2. Can a state officer or employee donate airline tickets to a state agency for official state travel by using personal frequent flyer miles?
3. Can a state officer or employee purchase airline tickets for official state travel using personal frequent flyer miles and then seek reimbursement of that travel payment from the state?

ANSWERS

1. Yes, with limitations – State agencies may allow state officers and employees to use frequent traveler benefits earned on official travel. While the Ethics Act does not prohibit the personal use of frequent flyer miles earned while conducting official state travel, receiving such rewards is a beneficial interest in a state transaction. Therefore, state officers or employees may not participate in the selection of a carrier when they receive frequent flyer miles for travel on that carrier.
2. Yes – The Ethics in Public Service Act does not prohibit a state officer or employee from donating personal property or benefits, such as frequent flyer miles, to a state agency.
3. This question is governed by state travel regulations.

ANALYSIS

Frequent flyer miles or "frequent traveler benefits" represent an individual traveler's contractual right to receive air transportation services or other benefits, such as service upgrades, for free or at reduced costs by reason of prior purchases of property or services. Frequent traveler benefits are broadly available to the traveling public. Normally, a traveler receives his or her benefit by establishing an individual account with an airline or other transportation carrier. For most airlines, frequent traveler benefits accrue to the traveler and are not tied in any way to the source of funds used to purchase the ticket. Similarly, accrued benefits can be used for most qualified travel at the discretion of the traveler.

The Office of Financial Management (OFM) has the authority to adopt travel policies for officers and employees of the executive branch. See generally, RCW 43.03.050-.210. In 1993, after considerable research, OFM determined that the administrative costs associated with tracking and collecting frequent flyer miles would exceed the benefits derived. Consequently, OFM concluded that it was inadvisable to implement a state policy requiring state employees to transfer frequent flyer credits, earned while conducting state travel, to the state.

While OFM declined to adopt a policy requiring that agencies retain and use frequent traveler benefits earned on official travel in light of cost/benefit considerations, agencies are not precluded from adopting such policies if they deem it in their best interests. State travel regulations, as prescribed in the *State Administrative and Accounting Manual* (SAAM) at Subsection 10.10.10.b, provide that "Agencies may adopt internal travel policies and reimbursement allowances that are more restrictive than those contained in this chapter." Therefore, agencies have the option of either allowing employees to personally retain and use frequent traveler benefits earned on official state travel, or requiring that frequent traveler benefits that are accrued solely because of official travel be used only for official travel.

State travel regulations, however, do address the purchase of airline carrier services for official state travel. SAAM 10.50.45 and 10.50.40b provide in relevant part:

10.50.45 - Absent agency specific purchasing requirements, state agencies **must use** the air travel services provided by air carriers through contracts awarded by DES (Department of Enterprise Services). The only exceptions are for:

- Conditions stated in the DES contract documents.
- Emergency situations that have been approved by the agency designated travel coordinator.

In addition, SAAM 10.50.75 provides that "(e)xcept as provided in Subsection 10.50.70, a traveler may only use personal financial resources to purchase common carrier transportation in an emergency situation when the State Charge Card System is not accessible."

Currently there are several dozen approved travel agencies that book airline tickets on state contracted airline carriers. Normally, the approved travel agencies book official state travel based on the scheduling needs of the state agency or the individual traveler. However, specific requests to fly on a particular airline will be accommodated if allowed under OFM regulations.

By comparison, in April 2002, the federal government revised its longstanding rules regarding personal use of frequent traveler benefits by federal employees. Federal employees may retain promotional items, including frequent flyer miles, earned on official travel if the promotional item is obtained under the same terms as those offered to the general public and at no additional cost to the federal government. The federal government took this decision, in part, because of the administrative and personnel burdens associated with separating benefits earned due to official and personal travel. Federal travel regulations, however, still provide that federal employees may not select a travel service provider based on whether it provides frequent traveler benefits. (*See* 41 CFR Parts 301-10 and 301-53 as amended on April 12, 2002)

1. State Agencies May Allow State Officers and Employees to Use Frequent Traveler Benefits Earned on Official Travel.

The Ethics in Public Service Act (Ethics Act) prohibits state employees from accepting gifts valued at more than \$50. (*See* RCW 42.52.150) The Ethics Act, however, excludes broadly available discounts, such as frequent traveler benefits, from the definition of gift. (*See* RCW 42.52.010(9)(i)) In EEB Advisory Opinion 98-10, the Board addresses the situation where an agency pays for attendance by a state officer or employee at a conference, and the officer or employee receives a door prize for attending the conference. The Board advised that "(b)ecause consideration is paid to attend a conference, seminar, trade show, similar event, a door prize received at such an event does not constitute a "gift" under RCW 42.52.010(9)." Similarly, when consideration is paid for a frequent traveler benefit in the form of the purchase of goods and services from the airline carrier and those benefits are broadly available, receipt of frequent traveler benefits for personal travel would not violate the Ethics Act.

Unlike discounts and benefits earned for personal travel, however, frequent traveler benefits earned while on official travel involve consideration paid by the state. In EEB Advisory Opinion 98-10, the Board advised that "when a state agency provides the consideration (*for the conference*), the agency is entitled to determine what happens to a door prize" that was provided to conference participants. The Board further advised that "(i)f a state agency pays consideration, the state agency may either (1) determine that the door prize would benefit the agency and keep the prize; (2) determine that the door prize would not benefit the agency and allow the state officer or state employee to retain the prize; or, (3) determine that the door prize would not benefit the agency ..."

Because state agencies pay consideration for official travel, state agencies may require that frequent traveler benefits that are accrued solely because of official travel can only be used for subsequent official travel. For example, where a state employee would not have received any frequent traveler benefits but for official state travel, agencies could require employees to report and use any accrued benefits to pay for additional official travel. Because OFM determined the

administrative burdens associated with tracking and collecting commingled personal and official frequent flyer miles can exceed any benefits earned by the state, state agencies may allow state employees to retain and use frequent traveler benefits earned on official state travel.

In addition to regulating the receipt of gifts, the Ethics Act prohibits state employees from having a private interest that conflicts with the proper discharge of official duty. RCW 42.52.020, provides that:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

The Ethics Act also prohibits state officers and employees from having a beneficial interest in a state transaction or accepting compensation or rewards from those who have such an interest. RCW 42.52.030(1) provides in relevant part:

No state officer or state employee ... may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

Finally, RCW 42.52.070 provides that "no state officer or employee may use his position to secure special privileges for himself...."

A decision to select a specific airline carrier for official travel, even among those holding state contracts, or to use a non-state contract airline carrier involves the exercise of discretionary authority. Therefore, a state officer or employee violates RCW 42.52.020, RCW 42.52.030, and RCW 42.52.070 if they participate in or direct the selection of a specific airline carrier for official travel and also receive frequent traveler benefits for personal use from that carrier.

In EEB Advisory Opinion 01-02, the Board advised that state employees may resolve conflicts by disclosing any interest that may be in conflict with official duties, and abstaining from participation in any agency discussions or actions on any issue where the interest may be affected. Similarly, a state employee who participates in a frequent traveler benefit program may not recommend or direct that his or her official travel be booked on a certain airline carrier. As a practical matter, state officers and employees who only discuss the required destination, date, and time frames for arrival/departure with travel agents or agency employees involved in booking airline travel may accept frequent traveler benefits that may accrue from that travel.

2. Subject to State Travel Regulations, A State Officer or Employee May Purchase Official Travel with Personal Frequent Flyer Benefits.

As discussed above, the Ethics Act regulates the solicitation and acceptance of gifts from private persons. The Ethics Act, however, does not prohibit state officers and employees from donating personal funds or other personal benefits to a state agency. Therefore, unless the travel payment is prohibited under state travel regulations, a state officer or employee may donate to his or her agency personal frequent traveler benefits earned for personal or official travel to pay for travel related to the conduct of state business. State officers and employee are cautioned that by donating personal funds or benefits to a state agency they should not expect compensation or other consideration in return.

3. State Travel Regulations Prohibit Some Uses of Personal Financial Resources to Purchase State Travel.

State travel regulations generally prohibit the use of personal financial resources to obtain airline transportation services, as set forth above. Therefore, it would be improper for a state employee to use personally earned frequent traveler benefits to purchase airline transportation services, and then seek reimbursement in a manner that violates state travel regulations. (*See SAAM Chapter 10 – Travel*). Reimbursement for the purchase of airline transportation that violates state travel regulations may, depending on the circumstances, also constitute a violation of the Ethics Act.

The Board's advisory opinion is based on the general facts as stated above. The Board does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Board to reach a different conclusion. In addition, Board advisory opinions are narrowly drawn to interpret the Ethics in Public Service Act. They do not address whether the proposed action is prudent, good public policy or effective management practice.