

## OVERRULED BY AO92-212

SEC AO92-022

DECEMBER 18, 1991

SUBJECT: BENEFITS ACCRUING FROM STATE-PROVIDED SERVICES

### SUMMARY:

Public employees are prohibited by Section 8-13-700(A) from using frequent flyer miles and other benefits from agency expenditures for personal use since such benefits result from the expenditure of public funds. Public employees are also prohibited by Section 8-13-700(B) from authorizing themselves to commute, thereby increasing total compensation.

### QUESTION:

The Director of the Legislative Audit Council has posed three questions:

1. Is a state employee allowed to use frequent flyer miles accrued while traveling on state business for their personal use?
2. Is a state employee allowed to use other benefits accrued as a result of their state service for their personal use?
3. Is a state employee allowed to authorize himself to commute and therefore increase their total compensation?

### DISCUSSION:

This opinion is rendered in response to a letter dated June 27, 1991 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act (Act No. 248 of 1991; Section 8-13-100 et. seq., 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-700(A) provides in part as follows:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

Frequent flyer miles accrue based on the number of miles flown by an individual, either business or personal. Upon reaching established mileage levels, the flyer receives a free flight, sometimes within certain restrictions. The airlines provide the free flights as a bonus to frequent fliers to encourage further use of their airlines. Such transportation either business or personal is either paid direct or reimbursed by the State agency.

It has been asserted that public officials are inconvenienced by having to travel on agency business resulting in their being away from their families, by temporarily financing payment of the airline or travel tickets, or for other personal inconveniences. Such benefit, it is asserted, is a small payment or perquisite for such inconvenience. The State Ethics Commissions rejects such assertion since such benefit should be for the agency's use, not for individual use.

It is also asserted that the airlines accrue such frequent flyer miles to the individual's credit, rather than to the public agency. Such accrual can be made to the benefit of the agency if requested in advance, i.e., when reservations are made.

The accrual of such a benefit is in the form of a rebate based on usage. Since such rebates based on public agency usage are the property of the public agency, it appears that the reason for such rebate is a direct result of public agency expenditures.

Since the basis of the benefits is a direct result of public agency business and public agency expenditures, the State Ethics Commission advises that such accrual of state-sponsored business miles for personal purposes would appear to violate the provisions of Section 8-13-700(A).

As to the second question, it appears that such other benefit accruals, whether for lodging, meals, supplies or equipment as a result of public agency expenditures falls within the same parameters, in that such benefits accrue as a direct result of public expenditures and are thus the property of the public agency.

As to the third question, the provision of a public vehicle for commuting purposes is a perquisite of office. As such, there is an economic benefit to the public official or employee. Section 8-13-700(B) provides in part as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

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(3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Therefore, a public employee is prohibited from authorizing himself to commute, thereby increasing his total compensation.

It is further the understanding of the State Ethics Commission that the Agency Head Salary Commission has responsibility for establishing the compensation for agency directors. Other employees not falling within the jurisdiction of the Agency Head Salary Commission are subject to approval by the agency director. It would appear that sufficient procedures are currently in effect to preclude unilateral approval by one employee for his own benefit.

It is further the understanding that accountability for personal use of public vehicles is necessary for income tax purposes. Reimbursement by public employees of mileage for personal use is presently required. It appears, therefore, that the General Assembly may wish to determine as a policy matter whether state agency employees should be assigned vehicles for commuting to and from work.