

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-16

May 29, 2003

RE: May employee accept air travel ticket for future use?

DECISION: Yes, within limitations.

This opinion is issued in response to your March 24, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the May 29, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. A state employee traveling on state government business travel voluntarily accepted a "bump" from an air flight (the ticket of which was paid for by the state agency for which the employee works) and received an airline ticket to anywhere in the United States for travel within the next year. You ask the Commission if the employee may accept the ticket from the airline for personal use.

KRS 11A.005(1) (c) provides:

(1) It is the public policy of this Commonwealth that a public servant shall work for the benefit of the people of the Commonwealth. The principles of ethical behavior contained in this chapter recognize that public office is a public trust and that the proper operation of democratic government requires that:

...

(c) A public servant not use public office to obtain private benefits;

KRS 11A.020(1) (c) and (d) provide:

(1) No public servant, by himself or through others, shall knowingly:

...

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(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family; or

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Additionally, KRS 11A.045(1) provides:

(1) No public servant, his spouse, or dependent child knowingly shall accept any gifts or gratuities, including travel expenses, meals, alcoholic beverages, and honoraria, totaling a value greater than twenty-five dollars (\$25) in a single calendar year from any person or business that does business with, is regulated by, is seeking grants from, is involved in litigation against, or is lobbying or attempting to influence the actions of the agency in which the public servant is employed or which he supervises, or from any group or association which has as its primary purpose the representation of those persons or businesses. Nothing contained in this subsection shall prohibit the commission from authorizing exceptions to this subsection where such exemption would not create an appearance of impropriety.

“Compensation” and “gift” are defined in KRS 11A.010(3) and (5), respectively, as follows:

(3) "Compensation" means any money, thing of value, or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by himself or another;

(5) "Gift" means a payment, loan, subscription, advance, deposit of money, services, or anything of value, unless consideration of equal or greater value is received; "gift" does not include gifts from family members, campaign contributions, or door prizes available to the public;

In Advisory Opinion 96-26 (a copy of which is enclosed), the Commission advised an employee not to accept a certificate for a complimentary night's lodging at a hotel because the employee was involved in procuring the services of the hotel for a branch meeting. Although the employee was offered the free night's stay due to inconvenience during her personal stay, it was still considered a gift, and the fact that she was involved in a decision regarding the hotel as part of her official duty would have caused a conflict for her if she accepted the gratuity.

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This situation is similar in that being “bumped” by an airline (whether voluntarily or not) is an inconvenience for the employee. However, in this case, it appears that the passenger is providing a service to the airline by giving up his seat. The airline is not providing a complimentary ticket without receiving something tangible in return from the passenger. The passenger must give up his seat in order to receive the airline ticket. Thus, the Commission does not consider the ticket for future air travel to be a “gift” pursuant to KRS 11A.010(5) and KRS 11A.045(1), but rather compensation from the airline for the passenger’s relinquishing of his seat.

Because the relinquishing of his seat is an inconvenience personally to the employee, the Commission believes that the employee may accept the ticket for future travel for his personal use, and is not required to donate it to his state agency, unless he so desires. However, if the employee voluntarily chooses to give up his seat, and thus his state business trip is delayed, the Commission believes that the employee should not be compensated by the state for any additional time spent in travel that may result from the relinquishing of his seat. If the employee is involuntarily bumped, then he should be compensated by the state for the additional travel time, but may still retain the ticket for his inconvenience.

The Commission believes that compensation for relinquishing the seat is not for performance of the employee’s official duties, and thus acceptance of the ticket is not prohibited by KRS 11A.040(5).

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosure: Advisory Opinion 96-26