



STATE OF ALABAMA ETHICS COMMISSION



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ADVISORY OPINION NO. 2018-13

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A public official or public employee who has accumulated a bonus for official travel that has been paid for with public funds may keep and personally use whatever bonus was received as a result of that travel. This encompasses any bonuses that are accumulated from any type of travel including, but not limited to, sky miles, frequent flier miles, points for fuel purchased, or hotel stays.

Dear Ms. Parchman:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission, and this opinion is rendered pursuant to that request.

QUESTION PRESENTED

Would it be an ethics violation for a public official to gain sky miles (points that can be used for future travel) from airline flights that he or she takes for official business? Specifically, if he or she obtains free sky mile points as a result of official traveling (which is paid for by the board), can the official use those points on personal travel in the future?

FACTS AND ANALYSIS

The facts as have been presented to this Commission are as follows:

A school board member is flying for official business of the Birmingham School Board. He will be using a personal credit card for the travel and be reimbursed by the Board for the travel thus

creating free sky mile points associated with his credit card. He would like to keep the free sky mile points to use for future personal travel for himself or someone else of his choosing.

Ala. Code §36-25-5(a) prohibits a public official or public employee from using their office for personal gain unless the use and gain are otherwise specifically allowed by law.

Ala. Code §36-7-60 states as follows:

*Any other law to the contrary notwithstanding, a public official or a public employee may receive, obtain, or otherwise convert to personal use a bonus that is incidental to travel in the performance of official duties of the public official or public employee if the bonus is individual in nature and not able to be transferred to another unrelated individual or to the state, or a county, municipality, or governmental entity. This section is declaratory of and does not constitute a change in existing law. *Emphasis added.**

Ala. Code §36-25-5(a) was enacted in 1995 whereas Ala. Code § 36-7-60 was enacted in 1998 and neither has been amended. Ala. Code § 36-7-60 is a specific statute allowing the accumulation of a bonus due to official travel and specifically sets out it is controlling regardless of “[a]ny other law to the contrary.” Ala. Code § 36-25-5(a) is a general statute prohibiting use of office for personal gain. For that reason, Section 36-7-60 is the controlling statute. Therefore, a public employee or public official may personally use whatever bonus is accumulated from official travel. Our Advisory Opinion is consistent with the view of the Office of the Attorney General as expressed in AG Advisory Opinion 99-110: Section 36-7-60 of the Code of Alabama makes it clear that officials or employees are allowed to use things such as frequent flyer miles for their personal use and benefit. This is allowed as long as the miles are non-transferable. If the bonus meets the requirement of being nontransferable, then the official or employee is free to use the bonus for his personal use. Once a person gains ownership of an item, the person may “use” the item by consuming it himself, or he may “use” it by giving it away. The statute does not place restrictions on the term “personal use.” Therefore, it is the opinion of this Office that an employee or official may use his personal bonus to purchase a ticket for someone, pursuant to the airline rules or regulations that allow an individual to use frequent flyer miles to purchase a ticket for a relative or a friend.

To the extent than any other opinion issued by the Ethics Commission contradicts this opinion, it is expressly overruled.¹

¹ See Advisory Opinion 96-02.

CONCLUSION

A public official or public employee who has accumulated a bonus for official travel that has been paid for with public funds may keep and personally use whatever bonus was received as a result of that travel. This encompasses any bonuses that are accumulated from any type of travel including, but not limited to, sky miles, frequent flier miles, points for fuel purchased, or hotel stays.

AUTHORITY

By 5-0 vote of the Alabama Ethics Commission on October 3, 2018.



Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission