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Advisory Opinion 14-12

(Travel Reward Programs)

SUMMARY: It would not be a violation of Article XXIX for a covered individual to receive and accept travel rewards and/or frequent flyer miles under the circumstances of this request.

I. BACKGROUND

The Independent Ethics Commission (“IEC” or “Commission”) has received a request from Deputy Secretary of State Suzanne Staiert¹ seeking advice as to whether she can accept travel rewards points and frequent flyer miles for her state travel which has been reimbursed by a state agency. The Requestor references the Commission minutes of November 18, 2013 where a similar question regarding frequent flyer miles was informally raised with the Commission. The Commission has previously deferred to state agency travel policies to address the ethical questions raised regarding the use of travel reward programs.

¹ Deputy Secretary Staiert has waived confidentiality relating to this request.

II. JURISDICTION

The IEC finds that the Requestor is a “government employee” and is subject to the Commission’s jurisdiction. CO Const. Art. XXIX, sec. 2(1)(3).

III. APPLICABLE LAW

In Position Statement 08-03, the Commission determined that “special discounts” extended to covered individuals upon the same terms offered to the public at large were not gifts under Article XXIX.

“The Commission, however, does not believe that the voters intended to bar commercial discounts that are made available to a broad group of individuals, where there is no realistic possibility that the offeror is seeking to influence an official act or decision or to reward a government official or employee for any official action.

Under this analysis, the IEC believes that government employees and officials may generally accept certain opportunities and benefits that are available to the general public or to all government employees and officials, or to a subset of employees and officials, so long as the opportunity is uniformly offered and the group is large enough that it is unlikely that the discount would in any way influence the recipients in the performance of their official duties. These benefits may include reduced rates for government employees at hotels, telephone service, or other commercial consumer discounts. They may also include general discounts that are available to the public, such as coupons accessible on the Internet, AAA discounts and other similar consumer discounts.”

IV. DISCUSSION

A. Travel Rewards

The facts presented in the request involve standard airline program points and credit card reward programs available to the public at large. The Requestor is seeking guidance on the personal use of flight benefit miles and credit card rewards earned in connection with a state related trip she made last year. The program points accumulate based upon usage by the traveler and cost the state no more than if the covered

individual elected not to present their private program membership credentials in connection with the travel.

With sufficient use, whether from travel on behalf of the state or from private individual travel, the programs could accumulate a sufficient number of points to reward a benefit to the traveler, such as an airline seat upgrade, a free flight or monetary credit. Keeping track of which portion of a program reward may have been earned in connection to state travel would be a nightmare for an agency as well as the covered individual.

Covered individuals face many different needs as they coordinate travel within their respective agencies. Some agencies may choose to arrange travel while others rely upon personal expenditure of the personal credit cards of covered individuals to cover the cost of travel until state reimbursement can be made. The Commission believes that government agencies are in a better position to understand the travel needs of their employees for performing state business and would decline at this time to ethically prohibit the use of travel reward programs to their employees.

However, the Commission would remind covered individuals and agencies that the use of particular airline, hotel, rental car or other travel reward program when there are more reasonable alternatives available would create an obvious appearance that a covered individual was “padding their rewards program” to the detriment of the state. In such instances, the Commission is prepared to address the ethical misconduct involved.

B. Use of State Issued Credit Cards

Reimbursement of state employees for travel is governed by section §24-18-

101 *et. seq.* and the Fiscal Rules under the State Controller's Office. The State Travel Management Program, currently in the Division of Financial Procurement (transferring to the State Controller's office in August 2014) recommends that state employees and officials use a state issued credit card for all state travel, whenever feasible, particularly if travel is frequent. A state agency using such a card system may receive a rebate or agency travel benefit to enhance its state travel budget.

For the present time, the Commission defers to governmental agencies to determine travel policies. The Commission recognizes no ethical violation for use of travel rewards programs by covered individuals in connection with their state travel, so long as reasonable state travel arrangements are not subjected to the personal accumulation of reward points rather than the benefit of the state.

V. CONCLUSION

It would not be a violation of Colorado Constitution Art. XXIX for the covered individual to accept and receive travel reward benefits under the circumstances of this request. The Commission cautions public officials and employees that this opinion is based on the specific facts presented in this request, and that different facts could produce a different result. The IEC therefore encourages individuals with particular questions to request more fact-specific advice through requests for advisory opinions and letter rulings. The Commission further encourages public officials and employees to consult and coordinate with their respective agencies regarding travel policies and guidelines prior to travel.

The Independent Ethics Commission

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Dated: July 7, 2014