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MAR 19 1992

COMPTROLLER'S MEMORANDUM NO. 1992-9

TO: All Department Heads

FROM: Russel S. Nagata, Comptroller

SUBJECT: Travel Benefits Relating to Frequent Flyer Type Programs

There have been inquiries regarding the handling of travel credits issued by airlines on their frequent flyer type programs. Over the years, memorandums have been issued by this office on specific airlines promotional programs.

The current frequent flyer programs of the airlines have introduced some complications to the handling of travel benefits. We have been informed that it is a policy of some airlines to restrict the use of the benefits to only the person who travelled and earned the credits; that is, the credits are not transferrable to another person. Also, we understand that frequent flyer type accounts can be opened only for individual, and not for entities, such as government organizations. Additionally, some airlines reportedly do not permit individuals (State employees) to maintain separate frequent flyer accounts for business (State) travel and personal travel; instead, all travel, be it business and/or personal, are accounted for or commingled in a single account.

While the current frequent flyer programs have added numerous complications to the administration of travel benefits, nevertheless, travel benefits accrued on State travel must, where at all possible, be used for State business. Employees should, unless not permitted by the airlines, establish and maintain separate State and personal travel accounts. Where separate accounts are not allowed, and State and personal travel credits are commingled in a single account, State credits must still be used for State travel to the extent it is possible. If the benefits cannot be used for a future State purpose the employee may use State travel benefits for personal travel.

The successful operation of the substance of this memorandum depends heavily on the integrity of those subject to the memorandum, and on the attention given by the programs incurring and processing travel expenditures. Your support will therefore be important in having this memorandum circulated throughout your department or agency, as well as to your procurement and fiscal offices.

RUSSEL S. NAGATA
Comptroller

STATE ETHICS COMMISSION

MAIL: P.O. BOX 616 • HONOLULU, HAWAII 96809 • (808) 587-0460 • FAX (808) 587-0470
1001 BISHOP STREET, PACIFIC TOWER 970 • HONOLULU, HAWAII 96813

March 3, 1992

RECEIVED
MAR - 4 1992
COMPTROLLER'S OFFICE
STATE OF HAWAII

MEMORANDUM TO: All State Agency and Department Heads

FROM: The State Ethics Commission

SUBJECT: Use of Frequent Flyer Credits by State Officials and Employees

Recently, questions have arisen about the use of frequent flyer credits by state officials and employees who travel on government business. These credits are used for seating upgrades, discounted air fares, free airline tickets, discounted hotel room rates, and other benefits. It has been reported by the media that these frequent flyer credits are often kept by state officials for personal use.

In 1988, the State Ethics Commission issued an advisory opinion to State Comptroller Russel Nagata regarding the use of frequent flyer travel benefits accrued on state travel. In that opinion, the Commission held as follows:

1. That transferable travel benefits accrued on state travel must either be used for subsequent state travel by the employee who accrued the benefits or must be transferred to another state employee for state business;

2. That non-transferable travel benefits accrued on state travel must also, where at all possible, be used for state business; and

3. That if it appears that frequent flyer benefits will not or cannot be used for a future state purpose, state employees may use the benefits for personal travel without contravening the State Ethics Code provided the State has adopted a policy to this effect. Absent such a state policy, travel benefits accrued on state travel cannot be used for personal travel.

The Commission also noted in its advisory opinion that state employees who misuse travel privileges, at state expense, in order to accumulate benefits for their personal use may be in violation of the State Ethics Code.

A copy of the Commission's advisory opinion, Advisory Opinion No. 88-9, is enclosed for your information.

The Commission is informed that the State Department of Accounting and General Services currently is working on a policy governing the use of nontransferable travel benefits accrued from state travel. State employees are reminded that in the absence of a state policy

providing for the personal use of nontransferable benefits, the State Ethics Code prohibits the use of these benefits for personal travel.

Thank you for informing the employees in your department of these requirements. Should you have any questions, please feel free to contact the Commission's office at 587-0460.

SDY/mk

STATE ETHICS COMMISSION

1001 BISHOP ST., PACIFIC TOWER 970 • P.O. BOX 616 • HONOLULU, HAWAII 96809 • TELEPHONE 548-6401

July 20, 1988

ADVISORY OPINION NO. 88-9

CONFIDENTIAL

Russel S. Nagata
Comptroller
Department of Accounting and
General Services
P.O. Box 119
Honolulu, Hawaii 96810-0119

Dear Mr. Nagata:

By memorandum dated May 23, 1988, you requested an opinion from the State Ethics Commission (the "Commission") as to whether it would be a violation of the ethics code for a state employee to use nontransferable air mileage credits acquired from travel on state business toward the purchase of an airline ticket for personal travel.

On May 26, 1988, the Commission's staff met to discuss this matter with Mr. Wilfred Sakamoto, who heads the Administration Division in the Department of Accounting and General Services ("DAGS"), and Mr. Elias Matthews, who is the Chief of the Pre-Audit Branch in the Administration Division. At that meeting, the Commission's staff was informed that DAGS has promulgated the following instructions regarding the use of travel benefits that apply to all state departments and agencies:

(1) Benefits that accrue as a result of official travel by State officers and employees belong to the State; the benefits do not belong to the officers or employees personally. Departments and State agencies are therefore reminded not to make travel arrangements to benefit individual employees.

(2) Whenever possible, department [sic] and agencies should not allow coupons or other benefits to lapse; rather, the benefits should be used at the earliest possible date to reduce State costs. Any benefits that cannot be so used before the time of lapse should be offered to other State departments and agencies.

DAGS Memorandum No. 1984-36, dated August 14, 1984, from Hideo Murakami, Comptroller, to Heads of Departments and Agencies, regarding "Airlines' Discounts and Other Promotional Programs."

The Commission further understands that DAGS has not established any instructions specifically pertaining to nontransferable travel benefits.

Your request for an opinion relates to the frequent flyer promotional programs that are offered by various airlines. The Commission is informed that these programs vary among the many different airlines, but that the basic concept underlying these programs is that travellers accrue points or credits based upon the number of miles flown on a particular airline. After accruing a specified number of points or credits, travellers are then awarded benefits by the airline. The Commission has learned that benefits include upgrades on airline seating classes, hotel accommodations and car rentals; discounted airfare and hotel room rates; and free airline tickets, hotel accommodations, and car rentals. The Commission has also learned that the frequent flyer awards for some airlines are freely transferable, but that other airlines limit or prohibit the transferability of these awards.

The section of the State Ethics Code, chapter 84, Hawaii Revised Statutes ("HRS"), that is applicable to the question you have raised regarding the personal use of travel benefits accrued from state travel is section 84-13(2), HRS, which provides as follows:

> §84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:
>
> . . .
>
> (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.

This section of the ethics code prohibits a state employee from receiving compensation or other consideration for performance of the employee's duties except as provided by law. Section 84-13(2) is a subsection to section 84-13, HRS, which generally prohibits a state employee from using or attempting to use the employee's official position to secure an unwarranted privilege or advantage.

The Commission strongly believes that frequent flyer travel benefits accrued on state travel must be used for state purposes. At the same time, however, the Commission realizes that this may not always be possible. We are aware that many, if not most, frequent flyer benefits cannot be transferred from one state employee to another. Further complicating this situation is the fact that most airlines apparently do not permit state employees to maintain separate frequent flyer accounts for personal travel and state travel.

The Commission concludes that transferable travel benefits accrued on state travel must either be used for subsequent state travel by the employee that accrued the benefits or must be transferred to another state employee for state business.

The Commission further concludes that nontransferable travel benefits accrued on state travel must also, where at all possible, be used for state business. If it appears that frequent flyer benefits will not or cannot be used for a future state purpose, the Commission believes that state employees may use the benefits for personal travel without contravening the ethics code provided the State has adopted a policy to this effect. The Commission makes no determination as to whether such a policy should be promulgated by DAGS or by some other department, agency, or governmental branch. Absent such a state policy, however, the Commission holds that travel benefits accrued on state travel cannot be used for personal travel.

In considering this matter, the Commission realizes that the use of travel benefits accrued on state business may be subject to abuse. State employees who misuse travel privileges, at state expense, in order to accumulate benefits or awards for their personal use may be in violation of section 84-13, HRS, for using their official positions to obtain an unwarranted privilege or advantage for themselves. However, the Commission believes that the personal use of travel benefits that cannot be used for state purposes would not necessarily be violative of HRS section 84-13 or 84-13(2) if the State specifically provides for this through some established state policy and if the State is also able to adopt a mechanism for administering and enforcing that policy.

The Commission is sensitive to the fact that the public may perceive the personal use by state employees of travel benefits acquired from state travel as unfair or unjust compensation. However, the Commission does not believe that the ethics code prohibits, on a per se basis, the receipt by employees of all benefits and privileges that may accompany public employment. Certainly the State, as an employer, has the discretion to accord its employees various benefits or privileges. If the State itself provides for its employees to receive nontransferable travel benefits that cannot be used for a state purpose and that would otherwise lapse and be wasted, the Commission does not feel that unwarranted advantages or compensation would accrue to employees as far as the ethics code is concerned. An ethics problem arises only when employees receive unauthorized benefits or receive preferential treatment.

If your department does in fact promulgate a policy to allow state employees to make personal use of nontransferable travel benefits accrued on state travel, the Commission would be more than willing to review that policy to ensure that it does not conflict with any of the provisions of the ethics code.

The Commission appreciates your request for an opinion in connection with this matter.

STATE ETHICS COMMISSION

Laurie A. Loomis, Chairperson

K. Koki Akamine, Commissioner

Cynthia T. Alm, Commissioner

Rev. David K. Kaupu, Commissioner

NOTE: Vice Chairperson Arnold J. Magid was not present during the discussion and consideration of this opinion.