

SUBJECT: USE OF BONUS POINTS FOR PERSONAL USE

SUMMARY: Personal use of bonus points for lodging or frequent flyer points obtained through State travel is not an ipso facto violation of the Ethics Reform Act.

QUESTION: The Director, Bureau of Personnel Services, Department of Health and Environmental Control, questions whether employees may use lodging points and frequent flyer points for their own benefit. While on state paid travel, employees accrue bonus points at hotels and motels. These points are redeemable for products such as toasters, waffle irons, hair dryers, etc. Employees also receive frequent flyer points for airline travel which are redeemable for free travel coupons.

DISCUSSION:

This opinion is rendered in response to a letter dated April 30, 1992 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 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:

- (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.

The State Ethics Commission notes that the bonus points for travel are awarded to travelers, regardless of their employment status. Lodging bonus points and airline frequent flyer points are awarded to any traveler, whether a private citizen or a public officeholder. Under most circumstances, State employees accruing such bonus points are not utilizing their official position to obtain such points.

Circumstances under which the public position may be deemed to being utilized for personal benefit would be if the employee made reservations with a certain hotel or motel or with a certain airline, when such reservation is more costly to the State and has no other benefits to the State (i.e., is not the most suitable lodging location, not the most direct flight, etc.)

Since such points accrue as a result of official travel, their use for personal travel may be considered by some persons to be economic gain. To others, however, such use is a perquisite of office to make

up for the inconvenience of family separation, late travel, etc. The State Ethics Commission does not believe that the use of those bonus points for personal purposes is an ipso facto violation of the law. The Commission further notes Section 8-13-705 provides:

- (A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:
 - (1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;
 - (2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
 - (3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.
- (B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:
 - (1) influenced in the discharge of his official responsibilities;
 - (2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or
 - (3) induced to perform or fail to perform an act in violation of his official responsibilities.

Since the award of the bonus points is made to innumerable travelers without regard to official status, it would not appear that such bonus points or frequent flyer points are given to influence an official action. The provision of things of value, except money, to public officeholders are not prohibited except as provided in this section.

The State Ethics Commission advises that the use of bonus points or frequent flyer points for personal use is a policy decision which should be addressed by the General Assembly or the applicable government agency.