

August 29, 2001

On August 29, 2001 the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion on its own motion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION ADVISORY
OPINION NO 01A-1007**

STATED FACTS: Public officials sometimes are required to travel by commercial air carrier to participate in events related to the official position they hold. This requirement to travel presents the public official and the employing public agency with several situations that must be addressed to insure compliance with Oregon Government Standards and Practices laws.

This requirement for travel comes from a variety of circumstances. For example, public officials may attend conferences and training seminars; observe an innovative program in another state; observe demonstrations of equipment under consideration for purchase by the public employer; or assist another jurisdiction in a matter of mutual public interest or shared expertise. This list of examples is not exclusive, the travel may be for other purposes. Accordingly, public officials generally are on paid work status for time spent on such travel and the public employer usually pays the cost of the employee's food, lodging and travel. Sometimes, however, costs for food, lodging and travel are paid by an outside source, such as a professional association or another government entity. Even in this case, however, the public official is traveling on paid work status.

Commercial air carriers offer mileage incentive programs, commonly referred to as frequent flyer programs. If a public official joins such a program, the carrier maintains a numbered account wherein a record is maintained of the cumulative miles flown by the member. When designated levels of total miles flown are achieved, the carrier provides the member an opportunity to redeem a specified sum of miles for incentive rewards such as free tickets or seat upgrades.

Public officials on official travel may encounter another situation, which is not uncommon in the commercial air travel industry, called overbooking. Overbooking occurs when an air carrier sells more tickets for a particular flight than the flight can accommodate. When a flight is overbooked, the air carrier invites ticket holders voluntarily to give up their seats and accept a booking on a later flight. A passenger who accepts this offer is often described as being bumped. As an

incentive to gain volunteers to be bumped, the air carrier may offer a free or discounted ticket for future travel on that carrier. Airlines also may involuntarily bump passengers to later flights and provide compensation because of the inconvenience caused by the delay.

In recent years marketing programs implemented by credit card companies and other businesses, such as lodging facilities and rental car agencies, have included offers of frequent flyer mileage credit for using that particular credit card to pay for charges at such businesses. This presents public officials, who use personal credit cards for agency business expenses, with the same issue of the accumulation of frequent flyer miles.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

ORS 244.040(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

QUESTION NO. 1: Do Government Standards and Practices laws permit a public official to take advantage of these benefits? In particular, can a public official accept incentive rewards offered by commercial air carriers, such as redeeming frequent flyer miles or accepting free or discounted air travel for the employee's own personal use because of voluntary or involuntary bumping?

OPINION: No. ORS 244.040(1)(a) provides that public officials may not use their official position to obtain financial gain or avoid financial detriment if such financial

gain or avoidance of detriment is available only because the public official holds the position or office. The stated facts indicate that the employer public body or another entity pays the cost of airfare for public officials to travel to office related events. The stated facts also indicate that public officials are on paid work status when attending such events because the event is related to their official duties.

Accordingly, when a public official takes advantage of the free air travel earned from frequent flyer miles accrued during official travel, a financial benefit available to the public official solely because of that person's official position or office would occur in violation of ORS 244.040(1)(a).

In order to avoid violations of ORS 244.040(1)(a), the public official who flies on official business must maintain an accurate accounting of frequent flyer miles earned on official travel. If free ticket vouchers or other benefits are awarded or earned through voluntary or involuntary bumping during official travel, the vouchers and their value must be recorded. When frequent flyer miles earned or the value of free vouchers received during official travel is sufficient to obtain free tickets from the air carrier, the free tickets cannot be used for the employee's personal travel. Instead, the public official may redeem them only for future agency business travel or forego use of those accrued frequent flyer miles. (We believe it is good management practice for the employing public agency to also monitor the accrual of frequent flyer miles earned by employees as a result of agency business travel.)

ORS 244.040(1)(a) allows a public official to receive official salary, honoraria, reimbursement of expenses and unsolicited awards for professional achievement. If the public employer made the accrual and personal use of frequent flyer benefits and other such premiums part of the official's compensation package, the public official could accrue and personally use such benefits because compensation is excluded from the prohibition of obtaining financial benefit from official position. The governing body of a public body must formally adopt such benefits in the same manner as salary adjustments, health insurance benefits and all other elements of a public official's compensation. However, ORS 292.230(2), applicable to most state agencies, states that travel awards earned while conducting state business shall be used to reduce costs of state travel expenses.

QUESTION NO. 2: Would it be a violation of Oregon Government Standards and Practices laws for public officials on official travel to accept frequent flyer mileage awards in return for charging travel expenses, such as car rental or lodging, on a personal credit card offering such awards?

OPINION: We recently issued Advisory Opinion 01A-1006, which addressed the issue of state employees using personal credit cards for official expenses and

accepting incentive awards from the credit card companies. That opinion states that such a practice would be a violation of ORS Chapter 244.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the _____ day of _____, 2001.

Katherine E. Tennyson, Chairperson

Date

Lynn Rosik
Assistant Attorney General

Date