

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

February 21, 1997

The Honorable Dick Ackerman
Assembly Member, 72nd District
California Legislature
State Capitol
Post Office Box 942849
Sacramento, California 94249-0001

**Re: Your Request for Advice
Our File No. A-97-044**

Dear Assembly Member Ackerman:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Does it constitute a gift if an officeholder exchanges frequent flyer miles for a free ticket to be used by the officeholder or one of the officeholder's family members? Can an officeholder accept a pass from an airline for the officeholder's spouse or designee without violating the Act's gift provision? The free ticket and pass are part of an airline's frequent flyer program.

CONCLUSION

Because the tickets and discount pass available through the airline's frequent flyer program are a discount made by the airline in the regular course of business to members of the public, they do not constitute a gift under the Act.

FACTS

An officeholder flies between the district he or she represents and Sacramento. The tickets are purchased through a state travel office. The state pays for legislators to make one round trip from the district to Sacramento per month. Any other travel by a legislator from his or her district to Sacramento must be paid for from the legislator's office budget, from campaign funds, or from personal funds. Your question, however, pertains to travel between the district and Sacramento paid for by the state.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

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As the officeholder flies between destinations he or she earns frequent flyer miles. The airline in which the frequent flyer miles are earned offers the frequent flyer mile incentive to everyone, regardless of status or elected office. In addition, the airline offers a promotion to furnish an annual pass to a guest or designee of individuals who exceed a specific number of frequent flyer miles. This pass is available to anyone regardless of status or elected office. Does the acceptance of free tickets or a pass earned with frequent flyer miles constitute a gift under the Act?

ANALYSIS

Section 82028 of the Act defines "gift" as follows:

"(a) 'Gift' means, except as provided in subdivision (b), any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value." (Emphasis added.)

* * *

We have advised that an official, who receives a free ticket under an airline's frequent flyer program that is available to all members of the public, has not received a gift and is not required to disclose the free airline ticket on his or her statement of economic interests. (*Odom* Advice Letter, No. I-91-280.)

In this case, the airline offers its frequent flyer program of free tickets and annual passes in the regular course of business to all members of the public. Accordingly, the free tickets and pass earned by a legislator through the airline's frequent flyer program do not constitute a gift under section 82028 of the Political Reform Act. The free tickets and pass are not subject to the Act's gift limit and do not need to be reported on the officeholder's statement of economic interests.

A separate issue, however, is whether legislators may retain frequent flyer credits earned while on official business or whether these are the property of the state.² You may wish to contact counsel to the Rules Committee or the attorney general's office regarding this question.

With respect to campaign travel, note that section 89513(a)(4) states:

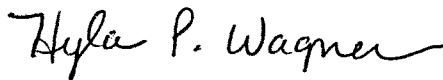
“(4) Whenever campaign funds are used to pay or reimburse for travel expenses and necessary accommodations, any mileage credit which is earned or awarded pursuant to an airline bonus mileage program shall be deemed personally earned by or awarded to the individual traveler. Neither the earning or awarding of mileage credit, nor the redeeming of credit for actual travel, shall be subject to reporting pursuant to Section 84211.”

In addition, note that Article XII, Section 7, of the California Constitution, states that “[a] transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office.” I have enclosed an excerpt from the booklet *Conflicts of Interest*, published by the attorney general's office in 1989 and updated in 1995, which discusses the constitutional prohibition and opinions issued by the attorney general's office interpreting the prohibition. You should contact the attorney general's office if you want further information about the applicability of this provision to frequent flyer programs.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Staff Counsel, Legal Division

Enclosure

² For example, frequent flyer mileage, memberships, or premiums such as discounts on future fares, received by a state employee while traveling on official state business are the property of the state and must be turned in to the employee's accounting office. (State Administrative Manual section 0741 and Management Memo No. 95-11, titled Statewide Travel Management Program and Discount Airfares for Official Business, issued by the Department of General Services, June 15, 1995.)