

ADVISORY OPINION NO. 98-14

Issued May 7, 1998 by the

WEST VIRGINIA ETHICS COMMISSION

PUBLIC SERVANT SEEKING OPINION

State Public Official

OPINION SOUGHT

A State Public Official asks whether it is a violation of the Ethics Act for public servants to make personal use of frequent flyer miles accumulated during official travel.

FACTS RELIED UPON BY THE COMMISSION

The Public Official asks the Commission to reconsider an earlier opinion which held that the personal use of frequent flyer miles, obtained through official travel paid for by the State, was a violation of the Ethics Act's prohibition against the use of office for private gain.

The Official's experience with private sector companies suggests that they do not prohibit employees from using frequent flyer miles resulting from company travel and he believes public servants are entitled to this perk.

PERTINENT STATUTORY PROVISIONS

West Virginia Code 6B-2-5(b)(1) states in pertinent part that ... a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

ADVISORY OPINION

The Commission's earlier opinion on frequent flyer miles found that since the miles could be used to reduce the cost of future official travel, they could not be used by public servants for their own personal travel. The opinion is one of several which require that significant benefits resulting from purchases made with **public funds** be devoted to **public use**.

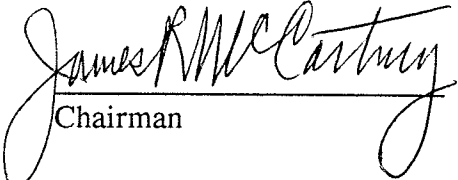
The legislative findings on which the Ethics Act is based, state that "the holding of a public office or public employment is a public trust." This is an affirmation of the traditional view that public officials and employees serve as trustees for the public interest and, as such, are held to the higher standard of conduct the law generally demands of trustees.

That high standard of conduct appears in the Legislature's censure of those who exercise the

powers of their office or employment for personal gain beyond the lawful emoluments of their position. The very foundation of the Ethics Act's code of conduct is the provision that "A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person."

The Commission has consistently held that promotional benefits resulting from official travel expenditures, such as airline or motel bonus points, belong to the public and may be used only for official purposes. These benefits, like other public resources, may not be converted to the personal use and private gain of public servants, regardless of what a private company may permit its employees to do.

The Commission's rulings and the State's own travel regulations governing the use of promotional benefits follow the same approach taken by federal regulations which prohibit government employees from making personal use of such benefits. The Commission affirms its earlier rulings.


Chairman