ADVISORY OPINION NO. 2012-34

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WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Public Agency** asks whether an employee who is involuntarily bumped from an airline flight while in travel status may be personally compensated by the airline for the inconvenience, or whether the money belongs to the State.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a public agency. The agency paid the travel costs for one of its employees to attend a training session in Washington, D.C. The plane ticket cost $431.66. The agency also paid for the employee's meals, lodging and related travel expenses.

The employee was scheduled to return to West Virginia on a direct flight from Washington, D.C. on a Saturday. Her flight departure time was 9:00 a.m. When she arrived at the airport, the airline told her and several other passengers that they were being denied boarding as the plane was overweight. The airline then told her that she could take a flight later in the day from Washington, D.C. to Charlotte with an estimated arrival time in Charleston of 8:00 p.m. The airline qualified its response with the disclaimer that it could not guarantee her flight from Charlotte to Charleston as the flight was already oversold. Hence, the possibility existed that she may have to spend the night in Charlotte.

The State employee/traveler then asked if there was a flight to Pittsburgh. The airline said there was and booked this flight for her. It left D.C. at 4:00 p.m. The employee was in the D.C. airport for approximately 6 hours. She then had a one (1) hour flight to Pittsburgh. A friend picked her up in Pittsburgh that evening, she spent the night in Morgantown, and then returned to Charleston the next day.

The Code of Federal Regulations, 14 C.F.R. § 250.5, requires airline carriers to compensate passengers who are denied boarding from an oversold flight. The airline gave the employee two checks totaling $1084.00. The checks issued by the airline to the employee state that the reason for the checks is "denied boarding."

Both the employee and her agency seek guidance on whether the money from the airline belongs to her or the public agency.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code§ 6B-2-5(b)(1) reads in relevant part:

> A public official ... may not knowingly and intentionally use his ... office or the prestige of his ... office for his ... own private gain or that of another person.

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Based upon information and belief there is no statutory provision, Legislative Rule or policy which governs the situation in question. If there was, then the public agency would comply with the Ethics Act by complying with the law or policy issued by the agency with the authority to establish travel regulations for the State of West Virginia. As there is no statute or rule which specifically addresses this matter, the Ethics Commission will examine the application of the Ethics Act to the situation in question.[1]

As the issue presented is one of first impression, the Commission finds it useful to examine the Federal Travel Rules, codified at 41 C.F.R. § 301-10.8, for guidance on this issue. These rules read:

> § 301-10.116 What must I do with compensation an airline gives me if it denies me a seat on a plane?
>
> If you are performing official travel and a carrier denies you a confirmed reserved seat on a plane, you must give your agency any payment you receive for liquidated damages. You must ensure the carrier shows the "Treasurer of the United States" as payee on the compensation check and then forward the payment to the appropriate agency official.
>
> § 301-10.117 May I keep compensation an airline gives me for voluntarily vacating my seat on my scheduled airline flight when the airline asks for volunteers?
>
> Yes:
>
> (a) If voluntarily vacating your seat will not interfere with performing your official duties; and
> (b) If additional travel expenses, incurred as a result of vacating your seat, are borne by you and are not reimbursed; but
> (c) If volunteering delays your travel during duty hours, your agency will charge you with annual leave for the additional hours.

The Federal Travel Rules may be summarized as follows. If public employees or officials are in travel status and are <u>involuntarily</u> bumped, then any benefits conferred by the airline belong to the public agency as they constitute liquidated damages arising from the airline's

[1] While the Ethics Act permits public servants to keep bonus points acquired through participation in frequent traveler programs, the Commission finds this provision inapplicable to the question before it as the employee was given money from the airline for being involuntarily bumped; not as a result of an awards or benefit program. W.Va. Code§ 6B-2-5(b)(2).

failure to have a seat available for a passenger who has a reservation. In contrast, if the traveler volunteers to relinquish his or her seat, then the traveler may keep the compensation; provided that this decision does not interfere with the performance of his or her work duties, there is no extra expense to the government, and if during work hours, the appropriate annual leave is taken.

The Commission finds the Federal Rule to be of assistance in analyzing this issue, but declines to adopt this standard for purposes of determining what constitutes compliance with the West Virginia Ethics Act. Instead, the Commission finds that the Ethics Act does not prohibit public employees who are involuntarily denied boarding from keeping any compensation or benefits given by the airline if the employee's agency, after considering the totality of the circumstances--including whether the overriding inconvenience is to the agency or the traveler, authorizes the traveler to keep the compensation or benefits or some portion thereof, rather than remitting them to the agency.

The Commission takes this opportunity to remind governmental entities, including State agencies, that they are free to impose stricter standards on public employees or officials than those contained in the Ethics Act. Thus, if a public servant in travel status is bumped, either voluntarily or involuntarily, an agency may adopt a policy requiring all compensation from the airline or other benefits, e.g. free ticket or compensation, to be given to the public agency.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.,* and does not purport to interpret other laws or rules. In accordance with W. Va. Code§ 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.

/s/Jonathan E. Turak,
Jonathan E. Turak, Acting Chairperson