



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 269

June 16, 1995

Whether an officeholder may use a state or a campaign plane for personal purposes if appropriate reimbursement is made for the personal use. (AOR-300)

The Texas Ethics Commission has been asked to consider whether an officeholder may use a state or a campaign plane for personal purposes if appropriate reimbursement is made for the personal use. The request letter also asks what the appropriate rate of reimbursement would be.

State Aircraft

In some circumstances, personal use of state resources is permissible if the state is reimbursed for personal use.¹ See Penal Code § 39.02(a)(2) (prohibiting misuse of state resources). In the past the Aircraft Pooling Board permitted reimbursement for certain types of personal use of state airplanes. See generally Gov't Code § 2205 (statutes governing the Aircraft Pooling Board). The Aircraft Pooling Board no longer permits such reimbursement, however, because providing flights not paid for wholly with state funds would subject flights operated by the board to additional and costly federal regulations. Letter from Bob Dulaney, Executive Director, Aircraft Pooling Board (March 27, 1995) (prepared for general distribution) (copy on file with Ethics Commission). Therefore, an officeholder may not use a state plane for purposes other than those authorized by section 2205.036 of the Government Code even if the officeholder pays for such use. See also Acts 1993, 73d Leg., ch. 1051, art. V, § 20(1)(j), at 56; General Appropriations Act 1995, 74th Leg., H.B. 1, art. IX, § 20(1)(j), at 54 (effective September 1, 1995). Questions about whether a particular use of a state plane is permissible under section 2205.036 of the Government Code should be directed to the Aircraft Pooling Board.

Aircraft Purchased With Political Contributions

The request letter also raises a question about personal use of an airplane purchased with political contributions. The campaign finance law prohibits the conversion of an asset purchased with political contributions to personal use. Elec. Code § 253.035(a), (c). A "personal use" is one that "primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office." *Id.* § 253.035(d). As long as there is no additional cost incurred, the personal use prohibition does not prevent a friend or family member from accompanying a candidate or officeholder on an airplane purchased with political contributions.

If additional costs are incurred, the airplane would not be converted to personal use as long as the officeholder (or the friend or family member) reimburses the officeholder's political fund on the basis of the reasonable value of any personal use. [Ethics Advisory Opinion No. 116](#) (1993). We note, however, that a candidate or officeholder who has purchased an airplane with political contributions should determine whether federal regulations place restrictions on the acceptance of reimbursement for use of the plane.

The request letter also asks whether reimbursement based on the amount specified for state reimbursement for use of a private airplane for state travel is an appropriate rate of reimbursement for personal use of an airplane purchased with political contributions. Reimbursement should be based on the reasonable value of the use. In an earlier advisory opinion we stated it would be appropriate to base reimbursement for personal use of a car purchased with political contributions on the rate specified in the appropriations act for use of a private car for

state travel. [Ethics Advisory Opinion No. 116](#), *citing* Acts 1991, 72d Leg., 1st C.S., ch. 19, art. V, § 14(1)(a), at 1013.

In regard to reimbursement for state travel in personally owned or leased aircraft, the current appropriations act provides:

The rate of reimbursement to key officials, members of boards and commissions, and members of the Legislature for travel in their personally owned or leased aircraft within and without the boundaries of the State of Texas shall be forty cents (40¢) per highway mile when traveling in single-engine aircraft, fifty-five cents (55¢) per highway mile when traveling in twin-engine aircraft, and one dollar (\$1.00) per highway mile when traveling in turbine-powered aircraft.

When additional key officials, members of boards and commissions, or members of the Legislature are conveyed on trips within or without the boundaries of the State of Texas in privately owned or leased aircraft, they each shall receive as a mileage reimbursement an amount equal to that which would have been paid had they traveled by average coach airfare below first class. The Comptroller shall develop procedures whereby these multiple reimbursements can be aggregated into a single payment and paid either to the individual owning or leasing the aircraft or to the vendor providing a leased aircraft; however, the total reimbursement shall not exceed the actual cost of the trip.

Acts 1993, 73d Leg., ch. 1051, art. V, § 14(2)(a), at 5338-39; *see also* General Appropriations Act 1995, 74th Leg., H.B. 1, art. IX, § 14(2)(a), at 47 (effective September 1, 1995). The proper reimbursement for personal use of an airplane paid for with campaign funds is the reasonable value of the personal use. The provision set out above suggests that the rate of reimbursement for use of private aircraft for state business was set not to reimburse for the actual cost or the reasonable value of the use of the aircraft, but to insure that the state's costs for the use of privately owned aircraft are kept low. If so, the rates set in that provision would not be appropriate standards for determining the rate of reimbursement for personal use of an airplane purchased with political contributions.

SUMMARY

An officeholder may not use a state plane for purposes other than those authorized by section 2205.036 even if the officeholder pays for such use.

The basis for reimbursement for personal use of an airplane paid for with campaign funds is the reasonable value of the personal use.

¹ Whether a particular agency permits reimbursement for personal use of state property is a matter for the agency to decide in accordance with any applicable statutes.