

Merom Brachman, *Chairman*  
Mark A. Vander Laan, *Vice Chairman*  
Bruce E. Bailey  
Megan C. Kelley  
Mary M. Ross-Dolen  
Elizabeth E. Tracy

Paul M. Nick  
*Executive Director*



OHIO ETHICS COMMISSION  
William Green Building  
30 West Spring Street, L3  
Columbus, Ohio 43215-2256  
Telephone: (614) 466-7090  
Fax: (614) 466-8368

[www.ethics.ohio.gov](http://www.ethics.ohio.gov)

---

**INFORMATION SHEET: ADVISORY OPINION NO. 2025-02**  
**FREQUENT FLYER MILES AND REWARDS POINTS**

**What is the question in the opinion?**

Can public officials and employees use frequent flyer miles or other rewards points accrued during official travel for their personal use?

**What is the brief answer in this opinion?**

Yes. Public officials or employees can use frequent flyer miles, credit card rewards, hotel points, or other rewards earned during official business for their personal use, provided that (1) these rewards are earned the same way as members of the public would earn them; and (2) they do not impose additional costs to the public agency. However, a public official or employee is prohibited from choosing an airline, vendor, or service just to get rewards points for themselves.

**To whom do the conclusions in this opinion apply?**

The conclusions in this opinion apply to all individuals who are elected or appointed to, or employed by, any public agency, including but not limited to any state agency, county, city, township, school district, public library, and regional authority, regardless of whether the person is: (1) compensated or uncompensated; (2) serving full-time or part-time; or (3) serving in a temporary or permanent position.

**When did the conclusions in this opinion become effective?**

The opinion became effective upon acceptance by the Ohio Ethics Commission.

**For More Information, Please Contact:**

Paul M. Nick, Executive Director; or  
Chris Woeste, Chief Advisory Attorney

**THIS COVER SHEET IS PROVIDED FOR INFORMATION PURPOSES. IT IS NOT  
AN ETHICS COMMISSION ADVISORY OPINION. ADVISORY OPINION NO.  
2025-02 IS ATTACHED.**

Syllabus by the Commission:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a public official or employee from personally using frequent flyer miles or other rewards points accrued during official business as long as these rewards are acquired under the same conditions as a member of the public would earn them and the rewards do not pose additional costs to the public agency.
- (2) Division (A)(1) of Section 2921.43 of the Revised Code does not prohibit the personal use of frequent flyer miles accrued by a public official or employee while on official travel because it does not constitute additional compensation for the performance of his or her public duties.
- (3) The Ethics Law represents the minimum standards that public officials or employees must follow to avoid violating criminal laws. Public agencies can prohibit their officials or employees from accepting frequent flyer miles or other rewards points by adopting policies that are more restrictive than the Ethics Law.
- (4) This Advisory Opinion overrules Advisory Opinion No. 91-010 and Informal Advisory Opinion No. 2003-INF-0224-1 issued to Mr. Marshall.

\* \* \*

## **Introduction**

In this Advisory Opinion, the Commission adopts the frequent flyer guidelines from the federal government that are used in many other jurisdictions. These guidelines allow a public official or employee to use frequent flyer miles that were earned during official travel for his or her personal travel if the public official or employee earns the miles under the same conditions as the public and at no additional cost to the government. While this Advisory Opinion primarily references frequent flyer miles, the analysis also applies to other reward points programs. Any references to “frequent flyer miles” or “frequent flyer miles and other rewards programs” are intended to incorporate all similar rewards points programs including credit card rewards, hotel rewards, and gas rewards.

This Advisory Opinion overrules Advisory Opinion No. 91-010 and Informal Advisory Opinion No. 2003-INF-0224-1 issued to Mr. Marshall.

## **Prior Restrictions on Frequent Flyer Miles**

Airline loyalty programs, commonly known as “frequent flyer” programs, allow travelers to accumulate “miles” that can later be redeemed for various rewards that may include one-way or

round-trip airline tickets, upgrades to a higher class or service, and vacation packages.<sup>1</sup> These programs award frequent flyer miles based on the dollar value of the airline ticket, and a member's transactions with the airline's partners such as other airlines, cruise lines, hotels, vacation package providers, car rental companies, online retailers, and financial planners.<sup>2</sup>

The airline controls the accumulation, redemption, and value of frequent flyer miles, including regulating the number of points in circulation, how many points travelers accumulate, and when the points expire.<sup>3</sup> Travelers do not influence these factors.

In Advisory Opinion No. 91-010, the Commission restricted the use of frequent flyer miles accrued during official travel for personal use. Since that Advisory Opinion was issued in 1991, frequent flyer programs have now become commonplace for nearly all airlines.<sup>4</sup> Airlines now use frequent flyer account numbers as personal identifiers and it has become increasingly difficult, if not impossible, for travelers to avoid or opt out of frequent flyer programs and other rewards programs.

The Commission recognizes that removing restrictions on personal use of frequent flyer miles would increase administrative efficiency by removing the need to track rewards miles accrued on an individual traveler's account. Therefore, the Commission believes it is time to reevaluate Advisory Opinion No. 91-010 to better align with the federal government and other jurisdictions' guidance on this matter.

### **Other Rewards or Discount Programs**

In prior opinions, the Commission considered the use and acceptance of other rewards programs including credit card and hotel rewards points. In 2003, the Commission determined that R.C. 102.03(D) and (E) did not prohibit a public official or employee from receiving credit card rewards for official expenses charged to a personal credit card and later reimbursed by a public agency.<sup>5</sup> The Commission distinguished credit card rewards from frequent flyer miles, noting that the credit card rewards were not provided by a vendor of the public agency, while frequent flyer miles were provided directly by a vendor.<sup>6</sup> The Commission cautioned against using a specific credit card to maximize rewards points or a specific credit card discount program to receive more reimbursement from the public agency than the actual cost to the public official or employee.<sup>7</sup>

Similarly, in a Staff Opinion, the Commission did not prohibit a public official or employee from personally earning and using hotel rewards points accrued while attending events in his or her public capacity.<sup>8</sup> However, the public official or employee could not select a hotel that resulted in a higher cost for the public agency in order to earn reward points, or seek reimbursement beyond a discounted room rate offered through a hotel rewards program.<sup>9</sup>

The different standards for frequent flyer miles, credit card points, and hotel rewards points has been a source of confusion for public agencies across the state. Other jurisdictions provide examples for more consistent approaches that reduce the administrative burden on public agencies.

### **Federal Government and Other Jurisdictions**

Since 2002, the federal government has permitted federal employees to retain any “promotional items,” such as frequent flyer miles, earned during official travel.<sup>10</sup> Federal employees may use these benefits for personal travel, provided they are acquired under the same conditions as the public and at no additional cost to the government.<sup>11</sup> However, federal employees are not allowed to choose an airline based on whether it provides frequent flyer benefits.<sup>12</sup> Additionally, conference, event, or group travel planners are prohibited from keeping any travel benefits received in connection to planning an official conference or other group travel for personal use.<sup>13</sup>

Other jurisdictions have permitted public officials’ and employees’ personal use of frequent flyer miles earned while on official travel. For example, the New York City Conflict of Interest Board permitted the use of frequent flyer miles earned from official travel for personal purposes unless the official or employee selects a flight at additional expense to New York City to receive or increase frequent flyer benefits. The New York City Conflict of Interest Board reasoned that: (1) it is highly unlikely that the airline is trying to influence any government decision or reward an employee for official actions; (2) the miles are freely available to most travelers, regardless of their professional positions; (3) it would be unrealistic to try to collect these miles or require public officials or employees to separate miles earned from official and personal travel; and (4) the enforcement of miles accrued on official travel would likely be too burdensome to be an effective cost-benefit measure.<sup>14</sup> Alabama,<sup>15</sup> California,<sup>16</sup> New York,<sup>17</sup> Texas,<sup>18</sup> and Washington<sup>19</sup> have similar policies with some acknowledging the administrative challenges associated with restrictive rules on frequent flyer miles.

### **The Revised Standard for Frequent Flyer Miles**

Consistent with the federal guidelines and those of many other jurisdictions, the Commission believes that it is the appropriate time to revise Ohio’s Ethics Law restrictions on frequent flyer miles and other rewards points.

Public officials or employees can use frequent flyer miles, credit card rewards, hotel points, or other rewards earned during official business in their personal life, provided that (1) these rewards are earned the same way as members of the public would earn them; and (2) they do not impose additional costs to the public agency. However, a public official or employee is prohibited from choosing an airline, vendor, or service based on whether it provides frequent flyer miles or other rewards points.<sup>20</sup> Additionally, a conference, event, or group travel planner is prohibited from personally using frequent flyer miles, credit card rewards, hotel points, or other rewards earned in connection to booking a conference, event, or group travel.<sup>21</sup>

### **Application of the Ethics Law to Frequent Flyer Miles and Rewards Programs**

The application of the Ethics Law to frequent flyer miles and rewards programs can be divided into three parts: conflict of interest (R.C. 102.03(D) and (E)), public contracts (R.C. 2921.42(A)(4)), and supplemental compensation (R.C. 2921.43(A)).

*Conflict of Interest under R.C. 102.03(D) and (E)*

R.C. 102.03(D) and (E) provide:

- (D) No public official<sup>22</sup> or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

R.C. 102.03(D) and (E) prohibit a public official or employee from recklessly<sup>23</sup> soliciting, accepting, or using the authority or influence of his or her public position to secure any financial benefit for himself or herself.<sup>24</sup> The Commission has explained that an official's or employee's objectivity and independence of judgment would be impaired if he or she were to participate in decisions that could affect his or her personal financial interests.<sup>25</sup>

Frequent flyer miles constitute a "thing of value" received from a vendor of the public agency.<sup>26</sup> The issue is whether the value of frequent flyer miles is significant enough as to manifest a substantial and improper influence that could impair the public official's or employee's independence of judgment with respect to his or her public duties.

Since issuing Advisory Opinion No. 91-010, the Commission has taken a more balanced approach to comparable vendor discounts and incidental benefits that prevent against the misuse of public authority. The Commission has not prohibited public officials or employees from accepting discounts from a vendor for their personal use, as long as the discount (1) is available to a large group of customers; (2) applies uniformly to all eligible officials or employees or the agency; and (3) is not given in exchange for the performance of official duties.<sup>27</sup> These discounts are not prohibited because they are not intended to influence an official's or employee's judgment, but rather to "develop a larger pool of consumers in a geographical area."<sup>28</sup>

Applying the Commission's discount analysis to frequent flyer programs:

- (1) Frequent flyer miles are available to a broad group of individuals, whether private citizens or public officials or employees.
- (2) Frequent flyer miles uniformly accrue to all eligible officials or employees for official travel.
- (3) Frequent flyer miles are not offered to public officials or employees for performing their official duties, but rather because they are travelers on the airline.

When applying the Commission's discount analysis, the acceptance of frequent flyer miles for personal use is not of such a character as to create or manifest a substantial and improper influence upon the public official's or employee's independent judgment in the performance of his

or her official duties. Therefore, the restrictions in R.C. 102.03(D) and (E) do not prohibit a public official or employee from personally using frequent flyer miles or other rewards points accrued during official business as long as these rewards are earned the same way as a member of the public would earn them and the rewards do not impose additional costs to the public agency.

In contrast, a planner who books a conference, event, or group trip could earn a substantial number of frequent flyer miles or reward points from just one event, since the points add up from multiple travelers. The frequent flyer miles or other rewards points would be given as part of his or her official duties in booking the event or travel.<sup>29</sup> This could increase the risk that the planners' decisions will be substantially and improperly influenced by reward point benefits. Therefore, a conference, event, or group travel planner is prohibited from personally using frequent flyer miles, credit card rewards, hotel points, or other rewards earned in connection to booking a conference, event, or group travel.<sup>30</sup>

*Public Contracts under R.C. 2921.42(A)(4)*

The Ethics Law also prohibits a public official from having any interest in any public contract of the agency the official serves. R.C. 2921.42(A)(4) states that no public official<sup>31</sup> shall knowingly:

Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected.

A “public contract” exists whenever a public agency buys or acquires goods or services, from any source, including another public agency, regardless of whether there is a written contract.<sup>32</sup> A public agency’s purchase of a flight for a public official would be a public contract.<sup>33</sup>

Advisory Opinion No. 91-010 stated that a public official has an interest in a contract with an airline because the public official would receive frequent flyer miles as part of the contract. However, a public official’s interest in this context is minimal. The frequent flyer miles attached to a specific flight are a small portion of the overall contract with the airline and are a uniform benefit provided by the airline to any ticket buyer.<sup>34</sup> It is more administratively efficient to allow public officials to personally use these frequent flyer miles given their minimal benefit to the public official relative to the cost of preventive measures.

Additionally, the Commission’s primary concern in Advisory Opinion No. 91-010 was public officials or employees selecting a specific airline in order to accrue more frequent flyer miles for their personal use.<sup>35</sup> However, the new standard prohibits a public official or employee from selecting an airline based on the frequent flyer rewards. This minimizes the risk to the public while also reducing the administrative burden associated with managing frequent flyer miles. Therefore, the restrictions in R.C. 2921.42(A)(4) would not prohibit a public official from using frequent flyer miles and similar rewards program benefits, accrued during official travel, for personal use.

*Supplemental Compensation under R.C. 2921.43(A)*

The next issue is whether a public servant's personal use of frequent flyer miles earned during official travel constitutes unlawful, supplemental compensation for the performance of his or her public duties.

"Compensation" is anything of value given to a public servant for services, whether in the form of cash, tangible goods, or other financial gain or benefit.<sup>36</sup> Compensation includes fringe benefits like health insurance, sick leave, and vacation pay.<sup>37</sup> These benefits are typically considered part of an employee's compensation package.

Frequent flyer miles programs differ from traditional fringe benefits.<sup>38</sup> Unlike employer-provided benefits, airlines offer frequent flyer miles as customer loyalty incentives, independent of an employer's compensation package. Frequent flyer miles function as a marketing tool for airlines and are tied to a traveler's personal loyalty account rather than a direct employment benefit. Furthermore, the accumulation of these miles does not impose any extra cost on the public agency because the agency purchases airline tickets at standard market rates. Since the miles are automatically awarded based on the traveler's status, and not at the discretion of the employer, they remain distinct from fringe benefits. Therefore, R.C. 2921.43(A)(1) would not prohibit the personal use of frequent flyer miles accrued by a public servant while on official travel because it does not constitute additional compensation for the performance of his or her public duties.

### **Agency Rules**

The Ethics Law represents the minimum standards that public officials or employees must follow to avoid violating criminal laws. Although a public agency cannot create policies or rules that are less restrictive than the Ethics Law, an agency can implement policies, decisions, or rules that are more restrictive than the Ethics Law.<sup>39</sup> Public agencies may prohibit their officials or employees from personally using frequent flyer miles or other rewards points accrued during official business by adopting policies that are more restrictive than the Ethics Law.

The Commission recommends that public agencies adopt policies or rules regarding travel that clarify whether an agency allows its officials or employees to personally use frequent flyer miles or other rewards points accrued during official business. Agencies should also develop travel policies or rules that ensure public officials and employees select the lowest reasonable rate that meets the agency's needs.<sup>40</sup>

### **Conclusion**

Limited to questions arising under Chapter 102 and Sections 2921.42 and 2921.43 of the Revised Code, it is the opinion of the Commission, and the Commission advises that:

- (1) Divisions (D) and (E) of Section 102.03 of the Revised Code do not prohibit a public official or employee from personally using frequent flyer miles or other rewards points accrued during official business as long as these rewards are acquired under the same conditions as a member of the public would earn them and the rewards do not pose additional costs to the public agency.

- (2) Division (A)(1) of Section 2921.43 of the Revised Code does not prohibit the personal use of frequent flyer miles accrued by a public official or employee while on official travel because it does not constitute additional compensation for the performance of his or her public duties.
- (3) The Ethics Law represents the minimum standards that public officials or employees must follow to avoid violating criminal laws. Public agencies can prohibit their officials or employees from accepting frequent flyer miles or other rewards points by adopting policies that are more restrictive than the Ethics Law.
- (4) This Advisory Opinion overrules Advisory Opinion No. 91-010 and Informal Advisory Opinion No. 2003-INF-0224-1 issued to Mr. Marshall.



---

Merom Brachman, Chairman  
Ohio Ethics Commission

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's website: [www.ethics.ohio.gov](http://www.ethics.ohio.gov).

---

<sup>1</sup> Olazábal, Marmorstein & Sarel, *Frequent Flyer Programs: Empirically Assessing Consumers' Reasonable Expectations*, 51 Am. Bus. L.J. 175, 181-82 (2014).

<sup>2</sup> *Id.*

<sup>3</sup> See Justin Bachman, *Airlines Make More Money Selling Miles Than Seats*, Bloomberg, available at <https://www.bloomberg.com/news/articles/2017-03-31/airlines-make-more-money-selling-miles-than-seats> (last updated Mar. 31, 2017) [<https://perma.cc/LPG4-SRQB>].

<sup>4</sup> *Id.*

<sup>5</sup> Ohio Ethics Commission Informal Advisory Opinion No. 2003-INF-0224-1 (Marshall).

<sup>6</sup> *Id.* (“[T]he issuer of a personal credit card used by an ODJFS official or employee while conducting state business is not a vendor to ODJFS. In the absence of this connection between the credit card issuer and ODJFS, the benefits of a reward program provided by a credit card issuer to an ODJFS official or employee would not automatically create an improper influence upon the official or employee...”)

<sup>7</sup> *Id.*

<sup>8</sup> Staff Op. issued to Pfaff (8-29-13).

<sup>9</sup> *Id.* (“R.C. 102.03(E) prohibits a city employee from accepting or soliciting the benefits of a reward program for using a hotel for public travel if the use of the hotel results in a higher cost for the public agency. The employee is prohibited from booking a hotel room that offers reward points or other incentives if a lower priced room is available at a hotel that does not offer an incentive.”)

<sup>10</sup> National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, tit. XI, § 1116, (codified at 5 U.S.C.S. 5702); 41 C.F.R. 301; see also I.R.S. Announcement 2002-18, 2002-10 I.R.B. 621 (“[T]he IRS will not assert that any taxpayer has understated his federal tax liability by reason of the receipt or personal use of frequent flyer miles or other in-kind promotional benefits attributable to the taxpayer's business or official travel.”).

<sup>11</sup> 41 C.F.R. 301-53.2 (“Any promotional benefits or materials received from a travel service provider in connection with official travel may be retained for personal use, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government.”)

<sup>12</sup> 41 C.F.R. 301-53.4 (“May I select travel service providers for which my agency is not a mandatory user in order to maximize my frequent traveler benefits? No, you may not select a traveler service provider based on whether it provides frequent traveler benefits.”)

<sup>13</sup> 41 C.F.R. 301-53.3.



<sup>14</sup> New York City Rules 53.1-01(h) (6); the City of New York Conflict of Interest Board Advisory Opinion No. 2006-05.

<sup>15</sup> The Alabama Code allows public officials and employees to retain bonuses received from official travel paid with public funds—including, but not limited to, frequent flyer miles—for personal use, as long as the miles are non-transferable. Ala.Code 36-7-60; Alabama Ethics Commission Advisory Opinion No. 2018-13.

<sup>16</sup> The California Fair Political Practices Commission does not deem frequent flyer miles accrued on official travel as gifts or income. California Fair Political Practices Commission Advisory Opinions Nos. I-88-332, and I-91-280. The California Attorney General’s Office has advised that public officials and employees may use frequent flyer miles earned from state-business travel to obtain an airline ticket for personal use, or for a family member. 1997 California Atty. Gen. Op. No. 97-301.

<sup>17</sup> The New York State Joint Commission on Public Ethics advised that New York public officials and employees may utilize frequent flyer miles accrued from official travel for their personal use because the acceptance of a gift from a disqualified source does not violate any state law. NYS Joint Commission on Public Ethics, previously Commission on Public Integrity of the State of New York Advisory Opinion No. 08-04.

<sup>18</sup> The Texas Penal Code 39.02(d) provides that frequent flyer miles “are not things of value belonging to the government.” The Texas Ethics Commission’s guidance states that personal or private use of frequent flyer miles accrued on official state travel is not a crime. Texas Ethics Commission, *A Guide to Ethics Laws for State Officers and Employees* (Rev. Jan. 1, 2022).

<sup>19</sup> The Washington Executive Ethics Board issued Advisory Opinion No. 03-03, which concluded that “[s]tate agencies may allow state officers and employees to use frequent traveler benefits earned during official travel” due to the administrative challenges of tracking and separating personal and official frequent flyer miles.

<sup>20</sup> See, e.g., 41 C.F.R. 301-53.4.

<sup>21</sup> See, e.g., 41 C.F.R. 301-53.2; see also 41 C.F.R. 301-74.1(d).

<sup>22</sup> R.C. 102.01(B) (“‘Public official or employee’ means any person who is elected or appointed to an office or is an employee of any public agency.”)

<sup>23</sup> See Adv. Op. No. 2020-02; see also *State v. Towns*, 2020-Ohio-5120 (6th Dist.)(applying R.C. 2901.21(B) to R.C. 102.03(B) because “the statute does not indicate a purpose to impose strict liability.”); see generally *Ohio Jury Instructions*, CR § 521.17 (Rev. Jan. 30, 2021).

<sup>24</sup> Adv. Ops. No. 89-008, 2001-03, and 2001-04.

<sup>25</sup> *Id.*

<sup>26</sup> Adv. Op. No. 91-010 (“[A] discounted or free ticket for airline travel or any other discounts fall within the definition of ‘anything of value’ for purposes of R.C. 102.03.”); Inf. Adv. Op. No. 2003-INF-0224-1 (Marshall).

<sup>27</sup> Adv. Op. No. 91-010; see also Adv. Op. No. 2011-08.

<sup>28</sup> Adv. Op. No. 2001-08.

<sup>29</sup> See Adv. Op. No. 2011-08.

<sup>30</sup> This closely mirrors the federal rule, and agencies are encouraged to use the federal rule for guidance on this issue. See 41 C.F.R. 301-53.2; see also 41 C.F.R. 301-74.1(d).

<sup>31</sup> R.C. 2921.01(A)(1).

<sup>32</sup> R.C. 2921.42(I)(1); Adv. Ops. No. 87-003 and 2009-06. A public contract can be a bid or unbid, written or oral agreement. Adv. Ops. No. 87-002 and 2009-06.

<sup>33</sup> Adv. Op. No. 91-010.

<sup>34</sup> See Adv. Op. No. 2011-08.

<sup>35</sup> Adv. Op. No. 91-010 (“[A] public official or employee who is permitted to utilize ‘frequent flyer’ benefits obtained during the course of state travel for her own personal travel could be swayed to reserve official flights with a specific airline in order to accrue “frequent flyer” miles, rather than to reserve flights with the most economically priced carrier.”)

<sup>36</sup> Adv. Op. No. 2008-01.

<sup>37</sup> *State ex rel. Parsons v. Ferguson*, 46 Ohio St.2d 389, 391 (1976).

<sup>38</sup> The I.R.S. does not tax personal usage of frequent flyer miles or other in-kind promotional benefits attributable to business or official travel. I.R.S. Announcement 2002-18, 2002-10 I.R.B. 621.

<sup>39</sup> See Adv. Op. No. 2004-03. See also R.C. 102.06 and 102.08 (the Ethics Commission’s authority is limited to issues that arise under Ohio Revised Code Chapter 102 and Sections 2921.42 and 2921.43).

<sup>40</sup> See, e.g., Ohio Adm.Code 126-1-02; see also Ohio Aud. Bulletin 2018-003.