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State Ethics Commission of Georgia

ADVISORY OPINION NO. 2007-07 October 22, 2007

REAL OR HYPOTHETICAL SET OF CIRCUMSTANCES

Whether the Ethics in Government Act (Act) requires a candidate, public officer or lobbyist to disclose the use of private aircraft either in connection with a campaign, for the fulfillment or retention of office, or as a lobbyist expenditure, and if so, how the value of such use must be determined.

ADVISORY OPINION

The request for an advisory opinion specifically asks if a plane owned by an individual, partnership or corporation is used by a legislator, a constitutional officer, a Public Service Commissioner, a member of a state board or authority, a local elected official, or a member of their staff, what must be reported, at what rate, to whom and by whom? In addition, does the purpose of the flight affect any disclosure requirements?

Candidates and public officers must disclose the fair market value of flights they or members of their staff take on private, noncommercial aircraft if the purpose of such use is related to a campaign for office. Lobbyists or their employers or clients must disclose the fair market value of the provision of private, noncommercial aircraft to public officers or their staff members if the purpose of such provision is to influence legislation. If the use of the aircraft is for a campaign purpose then such use must be disclosed on required campaign contribution disclosure reports. If the use of the aircraft is related to a public officer's fulfillment or retention of office then campaign funds may be expended to pay for the fair market value of a noncommercial flight so long as such expenditure is ordinary and necessary and disclosed on required campaign contribution disclosure reports. If the use of the aircraft is for the purpose of influencing legislation then such use must be disclosed on required lobbyist disclosure reports whether or not a lobbyist is present on the flight. The Act defines constitutional officers, legislators, state board or authority members, and local elected officials as "public officers." O.C.G.A. § 21-5-3(22).

When a noncommercial aircraft, whether private, charter or rental, is used for campaign purposes any expenditure thereon must satisfy an ordinary and necessary expense as defined by the Act. Providing the use of a plane to a candidate or public officer without charge or at a price that is less than the fair market value is an in-kind contribution. Any in-kind contribution received as a result of a candidate or public officer's use of a private plane is subject to the contribution limits established in the Act. If more than one candidate or public officer is using the same noncommercial flight they must disclose their pro rata share of the flight's fair market value. Georgia law already prohibits the use of government aircraft for nongovernmental purposes except under certain narrow and extraordinary circumstances. O.C.G.A. §§ 21-5-30.2(b), 32-2-2(a)(16), 35-2-73(a), and 50-19-22; Ga. Const. art. III, § VI, par. VI; see also Atty. Gen. Op.'s 1989-19 and 2004-3.

When a noncommercial aircraft, whether private, charter or rental, is provided to a public officer by a lobbyist, or a lobbyist's employer or client, for the purpose of influencing legislation, the fair market value must be disclosed consistent with the provisions of O.C.G.A. § 21-5-70 et seq.

As of the date of this advisory opinion the Commission is in the process of promulgating rules to define the term "fair market value" specifically in the context of the use of noncommercial aircraft by candidates and public officers as well as rules related to the pro rata calculation of such use. These rules will specify the method for determining the fair market value of flight on noncommercial aircraft and will specify how this determination must be disclosed. Until such rules are adopted, the Commission will not pursue a candidate, public officer, committee, lobbyist, or the employer or client of a lobbyist so long as they operate under a reasonable interpretation of this advisory opinion. A "reasonable interpretation" is one that is based on a commercially reasonable determination of the fair market value of flight on noncommercial aircraft.

Prepared by Tom Plank