

MEMORANDUM

STATE OF ALASKA DEPARTMENT OF LAW

TO: Jim Clark
Chief of Staff

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SUBJECT: Spousal Travel on King Air

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Linda Perez, Administrative Services Director and Designated Ethics Supervisor for the Office of the Governor, asked me to prepare a memorandum addressing travel on the state's King Air aircraft by spouses of administration officials. At present, spouses of administration officials may accompany the officials on the King Air if they reimburse the state the cost of the flight at the lowest coach fare available on a commercial flight for that trip.

Question

What would need to be done to enable spouses of administration officials who are traveling with the Governor on the King Air at his request to fly free of charge?

Answer

The present reimbursement policy is required by the Executive Branch Ethics Act. A change to that policy would require the legislature to amend the Ethics Act.

Legal Analysis

AS 39.52.120(a) provides in pertinent part: "A public officer may not...intentionally secure or grant unwarranted benefits or treatment for any person." The

current reimbursement policy is based on this section of the Ethics Act and related regulations.

“Unwarranted benefits or treatment” is defined by regulation to include “a deviation from normal procedures for the award of a **benefit**, regardless of whether the procedures were established formally or informally, if the deviation is based on the **improper motivation.**” 9 AAC 52.040(a)(1)(emphasis added).

The term “benefit” means

anything that is to a person’s advantage or self-interest, or from which a person profits, regardless of the financial gain including any . . . service, privilege, . . . advantage, . . . or anything of value;

AS 39.52.960(3).

The term “improper motivation means

a motivation not related to the best interests of the state, and includes giving primary consideration to a person’s (A) kinship or relationship with a public officer; (B) financial association with a public officer; (C) potential for conferring a future benefit on a public officer; or (D) political affiliation.

9 AAC 52.990(4).

In order to determine whether the Governor would be granting “unwarranted benefits or treatment” by allowing the spouses of state officials to travel for free on the King Air, we must examine each of these definitions in turn.

(a) Is free travel for spouses on the King Air a “benefit”?

If the Governor were to allow the spouse of an administration official to accompany the official on the King Air at no cost, the Governor would be granting a benefit to that official. Free air travel is a valuable “privilege” or “service” or “advantage” because the state official would avoid the cost of paying airfare for his or her spouse to undertake what is essentially a personal trip for the spouse. Thus, free air travel on the King Air for the spouses of administration officials would be a “benefit” under the Ethics Act.

(b) *Is the benefit “unwarranted”?*

As stated above, 9 AAC 52.040(a)(1) defines an unwarranted benefit as one conferred through (i) any deviation from formally or informally established procedures that is (ii) based upon an improper motive.

(i) *Deviation from Procedures*

Normal procedure requires people traveling on the King Air to reimburse the state if they are not traveling on official business. Providing this service free of charge for the spouses of administration officials would be a deviation from normal procedures.

(ii) *Improper Motivation*

A deviation is based upon an “improper motivation” if the deviation is unrelated to the state’s best interests and the deviation gives primary consideration to kinship or relationship with a public officer. In this instance, the motivation would not be related to the best interests of the state: There would be no public purpose for an official’s spouse to travel on the King Air for personal reasons (*i.e.*, not for official business). The primary consideration in granting the benefit would be the spouse’s relationship with the administration official and the official’s relationship with the Governor – precisely the type of motivations that are prohibited by the Ethics Act.

For purposes of the Ethics Act, it is irrelevant that it does not cost the state more to fly the King Air with more of its seats occupied. The focus of the Ethics Act is on the *benefit* being conferred on the administration official who would not have to pay the cost of a commercial air ticket to fly his or her spouse to a location, not the cost to the state.

Therefore, under current law, the Ethics Act precludes the spouses of administration officials from flying on the King Air unless the official reimburses the state the cost of a coach fare ticket for the spouse.

(c) *How would the law need to be changed?*

An amendment to the Ethics Act would be required to enable the Governor to allow spouses of administration officials to accompany the official on King Air flights free of charge. An exception to the general rule would need to provide something along the following lines:

It is not a violation of the Act for spouses of public officials to travel with the public official on state-owned aircraft for no

charge if the travel by the public official is required by the Governor and the travel by the spouse is authorized by the Governor, provided the cost to the state is the same regardless of whether the spouse is or is not on the aircraft.¹

Please let me know if you have further questions on this matter.

cc: Linda Perez
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Office of the Governor

Mike Nizich
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Office of the Governor

¹ Such a change might have implications for the listed officials under the travel and compensation reporting requirements set out in AS 37.05.210. The billing and reporting methodology and requirements associated with useage of the King Air were examined by the Legislative Auditor in Audit No. 12-30014-02 (November 9, 2001).