



Florida House of Representatives

Marco Rubio, Speaker
Office of the General Counsel

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FORMAL OPINION 08-02

To: Identification Not Requested

Prepared by: Jeremiah Hawkes, General Counsel

Date: March 19, 2008

Re: Demonstration or Test Flights

You have inquired whether you may participate in a demonstration or test flight paid for by United States Government Entities such as NASA and the US Air Force and what disclosures and ethical requirements you may have to fulfill if you do.

You may participate in such flights, however, if you do so you will need to disclose the gift or reimburse the provider.

The facts of the situation that you presented are simple. You have been invited to be an observer on aerial demonstrations and/or test flights underwritten by United States Government entities. The flights would involve the testing and demonstration of aircraft, avionics and aerospace telemetry equipment. The flights depart and land at the same location so there is no travel from one location to another involved. The flights will be conducted whether or not you participate. None of the entities who pay for these flights hire a legislative lobbyist in Florida. These flights occur by invitation only and are not available commercially. You are providing for your own transportation to and from the airport and are not being provided with anything beyond the flight.

There are two statutes which govern the providing of gifts and services to members. The first is section 11.045(4), Florida Statutes, which prohibits persons and organizations that are registered to lobby the Florida Legislature or hire lobbyists are prohibited from making any goodwill expenditures to members. This statute does not apply because none of the sponsors of these flights hire lobbyists in Florida.

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The other statute that addresses the providing of gifts and services is section 112.3148, Florida Statutes, which provides that when a non-relative gives a gift worth over \$100.00 to a Florida Official it needs to be reported to the Commission on Ethics. See section 112.3148(8)(a), Florida Statutes. The definition of "gift" as used in this section is found in section 112.312(12)(a), Florida Statutes, which provides:

"Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days...

Usually flights are valued by giving the same value as unrestricted coach fare along the same route or using the closest available commercial airports. See Florida Administrative Code Rule 34-13.500(4) and House Opinions 91-33, 91-41, 95-08 and 00-10. This standard would not apply in this situation because this flight is not being made for the purposes of transportation. There is no reasonable commercial equivalent service to compare to either. In this instance the fall back position is the actual cost to the donor. See section 112.3148(7)(a), Florida Statutes. In reviewing the opinions of the House and the Commission on Ethics I cannot find an exact precedent for this situation. However, in an instance where a Highway Patrol Pilot was found in violation of ethics laws for taking unauthorized passengers on patrol flights which took off and landed from the same location, the method of valuation used was cost per flight hour multiplied by the amount of hours flown divided by the number of passengers. See DOAH Case No. 93-1259EC. I would apply this same formula to determine the cost of this flight for you. If this information cannot be determined, I would recommend that you consider the value to be more than \$100.00 and that you report the gift. Pursuant to section 112.3148(8)(b)1, Florida Statutes, your report can state that the value is unknown.

If you can ascertain the value of the flight you have two options. You can report it as a gift on your quarterly gift disclosure pursuant to section 112.3148(8), Florida Statutes, or you can compensate the provider the difference in the cost of the flight and \$100.00 within 90 days. If you reimburse the provider down to \$100.00 or less than there would be no reporting requirement. If you paid the full amount it would not even be a gift pursuant to the definition provided above. As you are aware, you will need to be sure you comply with any applicable Federal Aviation Regulations governing reimbursements for such flights.

You did not note in your letter if this flight was directly in relation to your legislative duties or in a private capacity. This fact has no bearing on the outcome of this opinion; while a member can accept payment from an agency for transportation in relation to official government business, (section 312.312(12)(a)7, Florida Statutes) the definition of agency does not extend to US Governmental agencies. See section 312.312(2), Florida Statutes, House Opinion 00-10.

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In conclusion, you may accept the flight but, if you do, and the value is over \$100, you must report the flight as a gift or reimburse the provider the cost of the flight.

JMH/cm

cc: Office of the Speaker
Rules & Calendar Council
Committee on Ethics & Elections
Commission on Ethics
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