

Advisory Opinion No. 76-1

QUESTION NO. 76-1:

Would the acceptance by a public officer or a ride on a privately owned airplane to attend to official business be a violation of Sec. 19(1) of any other provision of the Nevada Ethics In Government Law?

RESPONSE:

In responding to the question, the Commission decided that some distinctions should be drawn:

- a) A merely incidental acceptance on a chance occurrence that the owner of the plane or the pilot happened to be going in the same direction at the same time on a one or the other occurrence would not be forbidden by section 19(1) or any other section or the law.
- b) If the purpose of the trip was purely personal, i.e., for recreation, or a family matter, etc., acceptance of such a ride would not be prohibited by Section 19(1) or any other section or the law. Such acceptance would, of course, have to be reported in the annual disclosure statement under "Gifts."
- c) When engaged in official business, however, in one's capacity as a public officer, with the exception of the chance, incidental or one shot occurrence mentioned above, acceptance of such a ride would be prohibited by Sec. 19(1) or NRS 281.610 3., which says:

"3. No public officer may accept any salary, retainer, augmentation, expense allowance or any other compensation from any private source for the performance or his duties as a public officer or employee." (emphasis added)

The Commission opines that the acceptance of such a ride when one is performing an official duty is equivalent to accepting an expense allowance from a private source. The Law very clearly and unconditionally forbids that. The fact of saving the State money is not at issue here. The state provides for travel expenses for public officers precisely to avoid such dependence and inter-relationship of the public officer and private sources when the former is engaged in official duties.

It is not relevant either that the source providing the ride does not ask for, seek, nor hint for, etc. favors in return. Along with the specific prohibition set out in subsection 3 referred to above, the Nevada Ethics in Government Law requires public officers to avoid the appearances or improper influence when in NRS 281.630 5., it authorizes the Ethics Commission to advise as to whether the "...participation under the circumstances would adversely affect the confidence of the people in the impartiality of their public officers...." It is the opinion of the Commission that, even if it were not for the specific prohibition of NRS 281.610 3., that the "confidence of the people" would prohibit the acceptance of such rides if the occurrence was frequent and/or repeated.

Furthermore, the Commission is of the opinion that, even though the provider of such rides would not be subject to any kind of regulation by the public officer nor would have any occasion to seek any favor directly from the public officer in the course of his duties, the public in general would believe that the provision of such rides would be a cause of influence and would at least provide special access to other state agencies which might regulate the donor of the rides; the public would believe that the "good offices" of the public officer receiving the rides would gain for the provider of the rides special access or influence with the appropriate state agencies.

QUESTION 76-1 (b):

If the public officer does not bill the state government for the travel expense, and he would have had to bill the state if private transportation had not been accepted, is the plane ride to be considered a gift for the purposes of the law?

RESPONSE:

Considering the answer just given, this becomes a moot question. The Commission, however, is of the opinion that under the circumstances of official business such a ride would have the nature of an expense allowance and not a gift. Where it was for recreational or private purposes, obviously it is then a gift and must be reported under the disclosure requirements.

QUESTION 76-1 (c):

Where the public officer is invited to speak by an organization which offers to pay for transportation expenses, and the speech is important to the state as in the promotion of tourism, etc., does the acceptance by the public officer of the transportation expenses constitute a gift under the law?

RESPONSE:

Again some distinctions must be made:

a) Where the speech is equivalent to official business, as in the promotion of tourism, the conclusion must be as under Question 76-1, first question (c) above; i.e., the acceptance of such payment for transportation would be forbidden by NRS 281.610 3.

b) Where the speech did not partake of or be equivalent to an official duty, such payment for transportation could be accepted; it would be considered a normal part of the cost of obtaining a speaker. However, it does not seem to be a gift since it has a purpose, or a "valuable consideration" (NRS 281.470) attached to it, i.e., your giving the speech. However, if the total value of the transportation etc. reaches the amounts set by the disclosure requirements of the law as to income or gifts from the same source within a year's time, i.e., \$250 or more, then, you would have to report it in your annual financial disclosure report.