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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

Washington, DC 20515-6328

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JOHN KLINE, MINNESOTA
MICHAEL T. MCCAUL, TEXAS

TODD UNGERECHT
COUNSEL TO THE RANKING
REPUBLICAN MEMBER

SUITE HT-2, THE CAPITOL
(202) 225-7103

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Standards of Official Conduct
Stephanie Tubbs Jones, Chairwoman
Doc Hastings, Ranking Republican Member

SUBJECT: Multiple Reservations on Commercial Flights

The Committee has received inquiries concerning whether the House gift rule (clause 5 of House Rule 25) prohibits Members, or congressional staff acting on a Member's behalf, from making multiple reservations on commercial flights for official travel if permitted to do so by commercial air carriers. These inquiries arose in the wake of the decision of some carriers to end the practice of permitting Members to make multiple reservations after enactment of amendments to the Senate gifts rule and lobbying disclosure requirements on September 14, 2007.¹ Following the decision by those carriers to end the practice, the Senate in October 2007 adopted an amendment to the Senate gift rule explicitly stating that allowing Senators the ability to make multiple reservations was not a gift.² No such change has been made to House Rules. The purpose of this advisory memorandum is to provide some general information to House Members, and congressional staff who arrange Member travel, on the subject of making multiple reservations for official travel if offered by an airline.

Background. Until recently, at times commercial air carriers have permitted Members to purchase a full fare, refundable ticket for a flight to or from Washington, D.C, while also permitting those Members to reserve seats on another flight or flights with the same itinerary at the time the initial ticket is purchased.

¹ The House had made a number of changes to its gift rule in January 2007, but it does not appear that any airlines determined to end or modify their multiple reservations practice following those changes. It appears that the airlines decided to end the practice after the enactment of the requirement under Public Law the 110-81, the Honest Leadership and Open Government Act that lobbyists certify that they have not given gifts to Members or Congressional staff in violation of the gift rule. False certifications are subject to criminal penalties.

² We understand that some air carriers again began to offer the practice for Senators after determining that the Senate Ethics Committee and the Senate Rules Committee had concluded that the practice did not violate Senate rules if offered in connection with official travel.

Since Members work both in Washington, DC and in their districts, permitting Members to make multiple reservations in these limited circumstances, some have argued, improves the Members' ability to provide the representational services for which they were elected, by making it possible for Members to return to their districts more promptly following official Washington, D.C. activities.

The Committee understands that there is no industry-wide standard concerning the practice of permitting travelers to make multiple reservations, and in fact travelers are generally not permitted to reserve a seat or make multiple ticket purchases for multiple flights to a particular destination. The Committee has confirmed with airlines that the ability to make multiple reservations with a single ticket purchase is not a service or opportunity that may be purchased from airlines, either by Members or by other travelers.³

The Gift Rule. A threshold question concerns whether the practice described above implicates the House gift rule. The House gift rule specifies that a Member (or staff person) may not knowingly accept any gift except as provided for in the rule.⁴ The term "gift" is defined as –

a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.⁵

The Committee has previously advised that when a Member or staff person "is offered a tangible item, service, or anything else, he or she must first determine whether the item has monetary value. If it does, then the individual may accept it only in accordance with the provisions of the gift rule."⁶

As noted above, the ability to make multiple reservations in connection with the purchase of a single ticket to a particular destination is not something that is offered for purchase or as part of any official benefit that any air travelers may accrue, and the Committee has received no convincing information that the practice would lead to lost revenue for an airline that allows it. Finally, it is the Committee's understanding that the cost to a Member of a flight purchased pursuant to a multiple booking arrangement is not affected or influenced by the ability to make multiple reservations.

Accordingly, there appears to be little or no identifiable monetary value associated with airlines providing such a service to Members (or other travelers to whom such a service may be offered). But because the Committee cannot conclusively determine that the service has no monetary value, accordingly, the Committee cannot

³ If any airline were to allow passengers to purchase the ability to make multiple reservations for a set price, Members would have to pay that price in order to purchase the same opportunity available to other passengers for purchase.

⁴ See House Rule 25, cl. 5(a)(1)(A)(i).

⁵ *Id.*, cl. 5(a)(2)(A).

⁶ *Gifts & Travel* booklet, at 13.

conclude that Members may make multiple reservations, if permitted to do so by an airline, without potentially violating the gift rule.

If the practice is deemed a gift, the practice may nevertheless be acceptable, depending on the circumstances, under the exception to the gift rule for certain widely available opportunities and benefits. As pertinent here, the provision permits the acceptance of opportunities and benefits that are "offered to members of a group or class in which membership is unrelated to congressional employment."⁷ The Committee understands that some of the airlines may permit very high mileage travelers who participate in a "frequent flyer" or similar mileage program to make multiple reservations for flights to a single destination. Also, some carriers will permit multiple reservations on a case-by-case basis when a sufficient reason exists, as determined by individual reservations agents who have discretion to make such decisions. In such cases, if the ability of the Member to make multiple reservations is unrelated to the Member's official status as a member of Congress, the Member could accept the service under the gift rule.

The Committee also has the authority to waive the application of the gift rule "in an unusual case" (House Rule 25, clause 5(a)(3)(T)), but the Committee will waive the gift rule only when the circumstances demonstrate that "there is no potential conflict of interest or appearance of impropriety." See Committee Gifts and Travel Booklet at 53. For the reasons expressed below, the Committee concludes that this is an appropriate case to exercise its waiver authority, and does therefore waive the gift rule to permit Members to accept the ability to make multiple reservations in limited circumstances.

This is an "unusual case" within the meaning of the gift rule in several respects. As explained above, a service or opportunity may be considered a gift under the gift rule only when it has **monetary** value. The requirement that a gift have monetary value is underscored by other provisions of the gift rule, as well as statutory disclosure requirements such as the Ethics in Government Act and the Foreign Gifts and Decorations Act, which include provisions requiring differing treatment of gifts depending on their value. When, as here, the monetary value (if any) of a service cannot reasonably be calculated or estimated, the application of the gift rule is questionable, and a waiver may therefore be appropriate.

Even assuming for the sake of argument that the service has some monetary value, the service does not appear to personally benefit the Member other than as a matter of convenience or scheduling. The Member is merely flying on one scheduled flight rather than another. Unlike, for example, a first class seat, which provides personal benefit to the traveler in terms of service, accommodations and meals, the ability to make multiple reservations does not provide any benefit to the traveler in terms of the trip itself. Any actual monetary benefit associated with multiple reservations would accrue to the benefit of the House rather than any Member individually.

The representational benefit discussed above also makes this an unusual case. Most analyses under the gift rule concern personal benefit to Members, and rarely

⁷ *Id.*, cl. 5(a)(3)(R)(ii).

implicate issues regarding improving the Members' ability to serve their constituents more effectively.

The Committee concludes that there is no potential conflict associated with allowing Members to make multiple reservations, and that the practice does not create an appearance of impropriety. While airlines, both collectively and individually, may have interests before the House, the absence of personal benefit to Members from the practice, and the likely lack of any monetary value to the practice, mitigates any potential conflict.

Under no circumstances should a Member, or staff person acting on the Member's behalf, solicit this service if it is not offered by the airline. Multiple reservations may only be made for official travel. If any airline offers the ability to make multiple reservations for a fee, Members may make multiple reservations only if they pay the fee.

**Please contact the Standards Committee's Office of Advice and Education
at (202) 225-7103 with any questions.**