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Mr. Jim Witherell
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STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

RE: Supersaver Airfares

Dear Mr. Witherell:

The Attorney General has asked me to respond to your inquiry regarding the use of so-called "supersaver" airfares by state agencies. As you correctly note, in order to take advantage of the substantial savings of the supersaver rates, it is usually necessary for the traveler to spend a weekend at the destination. You indicate that it is the policy of state departments to grant employees travelling on supersaver fares a per diem allowance and expense reimbursement for the weekend. You question the propriety of this practice since the employee is not literally engaged in state business on the weekend stayover.

A random sampling of state agencies has revealed no instance where a state employer compelled an employee to engage in supersaver travel as a requirement of the job. If a state employee is mandated to spend the weekend at a given location as a condition of employment, it is likely that the employee would be entitled to normal or overtime compensation in addition to the per diem and cost reimbursement. See, Idaho Code § 67-5302(17); § 67-5326, et seq. However, our informal survey indicates that state supersaver travel is, at least from a legal perspective, voluntary on the part of the employee. The remainder of our analysis incorporates the assumption that employee participation is volitional.

You question whether the state can lawfully reimburse the weekend expenses of an employee who agrees to travel on a supersaver fare. You mention that there is "no mechanism to make such gratuities to employees." We agree that there is no specific statutory authorization for the reimbursement of supersaver travelers' weekend expenses. However, we feel that common sense and fiscal rationality dictate a conclusion that these cost reimbursements are appropriate.

The State Board of Examiners has adopted the following general outlines for official travel:

Regulation 5. Mode and Route of Travel

Employees shall use the most economical and practical mode of travel, from the standpoint of time and expense and shall utilize the most standard route of travel. When unusual circumstances preclude following this regulation, departmental directors may allow an exception.

Regulation 6. Travel by Public Transportation

Reimbursement for travel by common carrier shall be limited to the normally lowest cost passage unless it is not available. ...

Travel Regulations, Procedures, and Policies
-- State of Idaho, p. 4.

The Board of Examiners has mandated that official travel should be arranged by the most economical method available. As you acknowledge in your letter, utilization of supersaver fares often results in a substantial savings for the state. When air travel is necessary, supersavers are generally the least expensive means available. Since, as mentioned above, state agencies do not compel their employees to travel under the terms of supersavers, the employees' cooperation is necessary if the state is to achieve the significant savings available through these reduced rates. The cost reimbursement and per diem allowance serve as incentives to encourage the employee to travel on a supersaver and thereby allow the state to take advantage of the reduced fares. If the reimbursement policy was terminated, the employee incentive to cooperate, in many cases, would evaporate. An agency could not then avail itself of this

economical means of travel unless it ordered its employees to spend a weekend at the destination; this would reduce the net benefit because the state would be required to pay the employee for the weekend, perhaps at "overtime" rates, in addition to paying the per diem and reimbursing costs.

Although there is no specific authorization for weekend cost reimbursements, they play a major role in allowing the state and its agencies to achieve substantial savings on employee travel and are consistent with the general state travel policy.

You close your letter with a suggestion that cost reimbursements may have tax implications for employees. Although we certainly cannot speak for the Internal Revenue Service, it seems that these payments are merely reimbursements of otherwise deductible, business travel expenses and would have no impact on a state employee's tax liability.

Thank you for your inquiry.

Sincerely,



WARREN FELTON
Deputy Attorney General
Intergovernmental Affairs

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