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State of California

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OPINION	:	No. 83-309
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of	:	<u>MARCH 8, 1984</u>
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THE HONORABLE GRAY DAVIS, MEMBER OF THE ASSEMBLY, has requested an opinion on the following question:

Does article XII, section 7, of the California Constitution prohibit a member of the California Legislature who is the spouse of a flight attendant from accepting a free or discounted air travel pass where such passes are offered to spouses of all flight attendants?

CONCLUSION

Article XII, section 7, of the California Constitution does not prohibit a member of the California Legislature who is the spouse of a flight attendant from accepting a free or discounted air travel pass where such passes are offered on the same conditions to spouses of all flight attendants.

## ANALYSIS

California Constitution, article XII, section 7, provides in pertinent part that "[a] transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer . . . shall work a forfeiture of that office." This provision, formerly article XII, section 19, was adopted at the Constitutional Convention in 1879. As adopted, and prior to the general election of November 5, 1974, article XII, section 19, provided:

"No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office."

Although specific reference to "a member of the Legislature" was deleted, no substantive change in meaning was intended. (Cal. Const., art. XII, § 9.)<sup>1</sup> It is clear, however, from the Analysis by Legislative Analyst contained in the California Voters Pamphlet that the legislative constitutional amendment did effect the transfer from the statutes to the Constitution of general authority for the Public Utilities Commission to regulate all public utilities, including airlines. Thus, an airline is a "system for the transportation of people or property," and hence a public utility within the meaning of article XII, section 3,<sup>2</sup> and is included within the meaning of "a transportation company" in section 7 of that article, as initially set forth.

The present inquiry is whether a member of the California Legislature who is the spouse of a flight attendant is prohibited by that section<sup>3</sup> from accepting a free or discounted air travel pass where such passes are offered to spouses of all flight attendants. It is noted initially that without regard to the constitutional prohibition it is unlawful for a

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<sup>1</sup> It is clear that a member of the Legislature holds a public office. (9 Ops.Cal.Atty.Gen. 277, 278 (1947).)

<sup>2</sup> An air carrier is a public utility. (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621; Pub. Util. Code, §§ 211, 216; see also Civ. Code, § 2168.)

<sup>3</sup> The purpose of this analysis is to examine the meaning and effect of article XII, section 7, of the California Constitution in those instances in which it applies. It is noted, however, that the provisions of the Interstate Commerce Act governing free passes and free transportation, including their permission and use as well as the limitations and conditions upon their use (tit. 49, U.S.C. §§ 10721-10724), supersede all state laws, constitutional and statutory, insofar as the interstate transportation of passengers is concerned. (*Donnelly v. Southern Pacific Co.* (1941) 18 Cal.2d 863; *Kansas City So. Ry. Co. v. Van Zant* (1923) 260 U.S. 459.)

public utility to make or grant to any person any preference or advantage, or to subject any person to any prejudice or disadvantage as to rates, charges, services, facilities, or in any other respect. (Pub. Util. Code, § 453; Civ. Code, § 2170.) Nevertheless, Public Utilities Code section 523 provides:

"When approved by the commission, *a common carrier may give free or reduced rate transportation between points within this state to:*

"(a) *Its officers, agents, employees, and members of their families.*

"(b) Indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation.

"(c) Persons injured in accidents or wrecks, and physicians and nurses attending such persons." (Emphases added.)

It will be assumed herein that any such discount which is the subject of the present inquiry is provided to a legislator as a spouse of a flight attendant in the same respect and under the same conditions as is provided to all spouses of flight attendants. It is further assumed that any such discount shall have been approved by the commission pursuant to section 523 of the Public Utilities Code.

The principal constitutional issue presented is whether a transportation pass may be provided to a legislator as a member of a larger group unrelated to the legislative process. Where the larger group consists of those immediately related to an employee of the donor, a threshold issue arises as to whether such a benefit, admittedly accruing from the employment relationship, is essentially gratuitous. It has been suggested that such a benefit provided pursuant to the terms of a contract of employment or collective bargaining agreement lacks the element of gratuity (cf. *Martin v. Greyhound Corporation* (CA 5, 1955) 227 F.2d 501, 503-504), while the absence of any contractual or statutory obligation would render the pass free (cf. *Charleston and Western Carolina Railway Co. v. Thompson* (1914) 234 U.S. 576, 577-578). In any event, the form of the inquiry *assumes* and we shall hypothesize for purposes of this discussion that the transportation pass in question is free.

It is unclear from a literary examination of article XII, section 7, whether it applies to a public officer only in such specific capacity, or extends to such officer without regard to his membership in some external class or universe. The article does not directly answer whether a transportation company may grant a discount to a public officer on a certain day or at a certain time or hour in which it grants a discount to every other passenger, or as one of many "persons injured" in an accident or wreck as provided in

subdivision (c) of section 523 of the Public Utilities Code. In arriving at the meaning of constitutional language, consideration must be given to the words employed, giving to every word, clause and sentence their ordinary significance. If doubt or ambiguity remains, then well recognized extrinsic aids may be introduced. Among these is a consideration of the objective sought to be accomplished. (*State Board of Education v. Levit* (1959) 52 Cal.2d 441, 462; *Mosk v. Superior Court* (1979) 25 Cal.3d 474, 495.)

Article XII, section 7 (formerly § 19), was adopted to control the perceived corruptive influences of the railroads upon the legislative process. (See *Debates and Proceedings of the Constitutional Convention*, p. 379; John K. McNulty, *Background Study - California Constitution Article XII, Corporations and Public Utilities* (1966) p. 100.) Would the acceptance of a free or discounted transportation pass by a member of the Legislature as a spouse of a flight attendant tend to corrupt the legislative process? It is apparent that the perceived corruptive influence consisted of the granting of special benefits in exchange for legislative favor. Thus, explicitly or implicitly, legislation favorable to the railroads was the *quid pro quo*. From this perspective, the pertinent question is not whether the pass be gratuitous vis-a-vis the company employee but whether it be granted subject to some express or implied condition of legislative or other official approbation.

If, as we assume in the absence of contrary advisement or indication, the *sole* condition for the receipt of the propounded benefit is the spousal relationship, then the element of corruptive influence appears to be lacking, and the application of the constitutional prohibition would fail to serve its intended objective.

Accordingly, it is concluded that the acceptance by a member of the California Legislature who is the spouse of a flight attendant of a free or discounted air travel pass is not prohibited by article XII, section 7, of the California Constitution where such passes are offered on the same conditions to spouses of all flight attendants. This conclusion is consistent with the rule that the constitutional enactments are to receive a liberal, practical common-sense construction (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245), and with principles set forth in *Helena Rubenstein Internat. v. Younger* (1977) 71 Cal.App.3d 406, 418:

"We consider disqualification from public office a significant civil disability. In California, the right to hold public office has long been recognized as a valuable right of citizenship. In 1869, in *People v. Washington*, 36 Cal. 658, 662, our Supreme Court declared that '[t]he elective franchise and the right to hold public offices constitute the principal political rights of citizens of the several States.' In *Carter v. Com. On Qualifications etc.*, 14 Cal.2d 179, 182, the court pointed out: '[T]he right to hold public

office, either by election or appointment, is one of the valuable rights of citizenship . . . *The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office. . . .* (Italics added.) More recently, the high court, citing *Carter*, has termed the right to hold public office a 'fundamental right.' (*Zeilenga v. Nelson*, 4 Cal.3d 716, 720; *Fort v. Civil Service Commission*, 61 Cal.2d 331, 335.) Thus, any ambiguity in a constitutional provision calling for forfeiture of an existing office and disqualification from holding public office should be resolved in favor of continued eligibility."

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