



OFFICE OF THE  
UTAH STATE AUDITOR

January 27, 2014

Sean Reyes  
Attorney General  
Utah State Capitol Complex  
350 North State Street  
Suite 230  
Salt Lake City, UT 84114-2320

Re: The Office of the Attorney General's assigned vehicles policies and practices

Dear Attorney General Reyes:

At the request of the Office of the Attorney General (AG's Office), the Office of the Utah State Auditor (OSA) performed a limited inquiry and analysis of the use of vehicles that are assigned to employees within the AG's Office and whether that use is in compliance with certain applicable State statute, administrative rules, and AG's Office policies. Please note that we have provided confidential information under a separate cover letter.

### Scope and Methodology

The AG's Office performed an internal review of compliance with State motor vehicle laws and policies for vehicles except for those assigned to sworn and certified peace officers. This review is documented in the Internal Memorandum dated September 16, 2013 included as Attachment A. The OSA concurs with conclusions and recommendations contained therein, and we largely concur with the proposed findings contained therein. Our scope included vehicles that were assigned to all employees who were granted commute/take-home privilege.

- We gathered and reviewed various statutes, administrative rules, and the policies set by the AG's Office governing state motor vehicle use. We applied the following rules, laws, and policies:
  - Utah Code 63A-9-101; 63A-9-401, 402; 63A-9-601; 67-5-23
  - Administrative Code R27-3-4 through 9
  - Attorney General Policy 706 and 2.21
- We requested an inventory of all vehicles assigned to the AG's Office as of December 9, 2013.
- We analyzed the use of vehicles that were assigned at the time to individuals who were granted commute privilege.
- We obtained data on mileage, personal use reimbursement, and other information in an attempt to determine how vehicles are being used.
- We evaluated whether the usage of the vehicles is in compliance with laws, rules, and policies.

- We inquired with similar entities for comparisons on vehicle usage.

Our conclusions are limited due to a lack of readily available detail on vehicle usage. Also, we made certain assumptions in our analysis as explained below when data did not exist. Therefore, we present our observations and conclusions below as areas that may need further consideration by the Attorney General in order to improve efficiency and ensure compliance with state laws, rules, and policy.

Some of the information and data we obtained is sensitive due to the nature of the work performed by investigators in the AG's Office. Therefore, we have not included details here that might compromise the effectiveness or safety of those individuals.

### **Background Information**

The AG's Office currently utilizes 54 vehicles – 16 that are either pooled vehicles or assigned vehicles with no commute privileges, and 38 that are, or were, assigned to individuals with commute privileges. Based on information received on December 9, 2013 from the previous fiscal year and the current calendar year, the non-investigator employees with commute privileges during the period reviewed consisted of two attorneys who are not POST-certified law enforcement officers (the former Chief Deputy Attorney General, and the Medicaid Fraud Unit Division Chief), and 35<sup>1</sup> investigators. Since then, we understand that these two attorneys no longer have assigned vehicles with commute privileges. For the 35 investigators, 28 are authorized to use state vehicles for official and personal use under Utah Code 67-5-23. The Attorney General is provided a vehicle as part of his compensation package and authorized to use the vehicle for business and personal use under another statute. Our analysis did not include the vehicle assigned to the Attorney General and, therefore, the conclusions below do not apply to that position.

All of the investigators discussed herein work for the Investigations Division. Each investigator is a POST-certified law enforcement officer. The vehicles used by the investigators are all unmarked, police-equipped vehicles without EX plates. The vehicles are varied in make, model, and year in order to be less identifiable as police vehicles. Investigators are assigned vehicles by the AG's Office and do not choose their vehicles. They are used for a variety of purposes. The AG's Office website describes the mission and duties of the Investigations Division as follows:

- The mission of the Investigations Division is to identify, apprehend and prosecute violations of the criminal laws of the State of Utah and the United States through professional investigation of criminal complaints.

We also draw your attention to the historical growth in the number of vehicles assigned to the AG's Office shown in Attachment D.

---

<sup>1</sup> Employment data reports 35 investigators while vehicle usage logs indicate 36 investigators. Call-out logs also report 36 investigators although not the same 36 investigators associated with the vehicle logs. The OSA identified 37 unique investigators. The OSA did not research the discrepancy but assumes the possibility of staffing change during the period of review.

## Observations and Conclusions – Investigators

### Analysis of Vehicle Use

We obtained data from the Division of Fleet Services regarding the total number of miles driven for each vehicle. We then estimated the number of miles that were likely used for commuting purposes based on the distance from the investigator’s city of residence to the Murray office. Our method assumes that each investigator commutes 4 times per week, with an average of 15 times per month to account for holidays, sick leave, and vacation time. We estimated personal miles based on the reimbursement for personal mileage records. We considered the remainder to be business miles. Table 1 identifies the five investigators with the lowest estimated business miles as a percent of total miles. Table 2 identifies the five investigators with the highest estimated business miles as a percentage of total miles. Table 3 reports the average total miles and types of usage for all investigators. For the complete table of estimated vehicle usage per investigator see Attachment B.

**Table 1. Five lowest business miles usage by investigators**

| OSA Assigned Number For Investigators <sup>2</sup> | Miles Traveled FY13 <sup>3</sup> | Estimated Commute Miles as Percent of Total | Estimated Personal Miles as Percent of Total | Estimated Business Miles as Percent of Total |
|--|----------------------------------|---|--|--|
| 28   | 20,693                           | 90%   | 1%   | 9%   |
| 6  | 10,182                           | 72%   | 11%  | 17%  |
| 36   | 16,687                           | 65%   | 15%  | 20%  |
| 1  | 15,220                           | 67%   | 10%  | 23%  |
| 21   | 21,065                           | 73%   | 2%   | 25%  |

**Table 2. Five highest business miles usage by investigators**

| OSA Assigned Number For Investigators | Miles Traveled FY13 | Estimated Commute Miles as Percent of Total | Estimated Personal Miles as Percent of Total | Estimated Business Miles as Percent of Total |
|---------------------------------------|---------------------|---|--|--|
| 14                                    | 11,380              | 10%   | 8%   | 82%  |
| 18                                    | 21,561              | 17%   | 6%   | 78%  |
| 22                                    | 14,383              | 21%   | 2%   | 77%  |
| 29                                    | 13,429              | 12%   | 13%  | 75%  |
| 20                                    | 17,237              | 21%   | 6%   | 73%  |

<sup>2</sup> OSA assigned a unique number to each investigator to protect the confidentiality of the identity of each investigator in the AG’s Office. This confidential information (Attachment E) is included via a separate cover letter.

<sup>3</sup> Fiscal year 2013: July 1, 2012 through June 30, 2013.

**Table 3. Average vehicle usage by investigators**

| Average Miles Traveled FY13 | Estimated Commute Miles as Percent of Total | Estimated Personal Miles as Percent of Total | Estimated Business Miles as Percent of Total |
|-----------------------------|---|--|--|
| 14,881                      | 44.1%                                       | 7.4%   | 48.5%  |

The mileage logs lacked sufficient detail to determine whether investigators commuted regularly to the central office or commuted to alternate work sites. Therefore, the analysis is subject to errors based on the assumptions we made. This analysis simply provides a baseline for the Attorney General to consider whether the vehicles are being utilized efficiently and effectively. We noted that 10 of the 35 vehicles had estimated commute usage of over 60% and 6 of the 35 had estimated personal usage of over 15%; both of which seem to indicate that business usage seems to be very limited for those vehicles.

**Recommendation:**

- The Attorney General should consider whether the cost of providing vehicles to some or all of the investigators has a justifiable benefit to the public, particularly for vehicles that are used predominantly for commute and other personal use.

**Personal Use of Assigned Vehicles**

We reviewed mileage logs for November 2013 and personal mileage reimbursement records for July 2012 through October 2013. We found that all but one of the 36 investigators used their assigned vehicles for at least some personal use in addition to commute use. However, based on the documentation and discussions with personnel, it does not appear that investigators use the vehicles substantially for personal use (see Attachment B).

While we found that the Investigations Division appears to be in compliance with the internal policy that requires each investigator to track and reimburse for their personal mileage in excess of commute, we noted the following areas of concern regarding personal use of the vehicles:

**Current Law and AG’s Office Practice Appear To Be In Conflict**

Per Utah Administrative Code R27-3-5, “personal use of state vehicles is not allowed without the authorization of the legislature.” Per Utah Code 67-5-23, “the Attorney General may authorize up to 28 law enforcement officers...to use a state issued vehicle for official and personal use.” Per current practice and AG’s Office Policy 706, in effect over the Investigative Division,

*“...agents may use their assigned Division vehicle for incidental use during the work day...personal use of Division vehicles, other than the incidental use . . . will be reimbursed to the Office...agents who meet the requirements of this policy may use their assigned vehicle when off-duty within a 50 mile radius of their residence, or as authorized by the Chief.”*

Although the policy contains a provision for reimbursement of personal use miles, the statutes we reviewed do not allow for any personal use other than for the 28 authorized law enforcement officers. Further, from our perspective, it does not appear that the rules governing commute use allow for additional personal use of the vehicles, de minimis or otherwise. Furthermore, the practice of reimbursing for personal use over and above commute use is not supported in the state laws and rules we examined.

Recommendations:

- The Attorney General should determine whether it is essential for all investigators to have personal use privileges.
- The Attorney General should review whether the personal use of the vehicles for investigators in excess of the 28 authorized by statute, regardless of reimbursement policy, is in violation of the law.

**Personal Use Reimbursement Rate Appears To Be Excessively Low**

Office Policy 706 dictates the rates of reimbursement for personal use other than incidental use as follows:

*“Personal use of Division vehicles, other than the incidental use described . . . will be reimbursed to the Office at the rate of \$10.00 per calendar month or any portion of a calendar month for the first 75 miles. Personal use of Division vehicles in excess of 75 miles, up to 150 miles, will be reimbursed to the Office at the rate of \$20.00 per calendar month or any portion of a calendar month. Personal use of Division vehicles in excess of 150 miles, up to 200 miles, will be reimbursed to the Office at the rate of \$30.00 and \$0.15 for each mile in excess of 200 miles per calendar month or any portion of a calendar month. Excessive personal use of a Division vehicle may result in revocation of personal use privileges.”*

This rate is roughly \$0.13 - \$0.15 per mile at the upper end of the reimbursement rate schedule. This rate is lower than the previous IRS rate of approximately \$0.565 per mile or State approved mileage reimbursement rates which, per R25-7-10(3)(b), are \$0.38 per mile if a state vehicle is available to the employee or \$0.565<sup>4</sup> per mile if a state vehicle is not available to the employee<sup>5</sup>. We believe these amounts provide a reasonable standard or benchmark in determining an appropriate reimbursement rate. If it is determined by the AG’s Office that it is appropriate for investigators to reimburse for personal use under State law, the extremely low reimbursement rate for personal use of the vehicles could create a substantial benefit for employees that is not currently adequately accounted for as personal income and may create a tax liability for the employee and a tax reporting liability for the employer.

---

<sup>4</sup> The standard IRS reimbursement rate for business miles was reduced from \$0.565 per mile to \$0.56 per mile, effective January 1, 2014.

<sup>5</sup> Some offices only provide for a single reimbursement rate and do not have a tiered reimbursement rate. For example, OSA recently adopted a flat rate of \$0.38 per mile regardless of the availability of a state vehicle to simplify the tracking of the appropriate reimbursement rate.

Recommendation:

- The Attorney General should re-evaluate the policy and the reimbursement rates to ensure compliance with State statute and consider the federal and state tax implications.

### **Commute Use of Assigned Vehicles**

Administrative Rule R27-3-8 exempts law enforcement officers from the IRS imputed daily fringe benefit for commute use. However, Administrative Rule R27-3-7 sets forth various criteria an agency/office should use to justify commute privileges for employees and compliance requirements for the privilege of using assigned vehicles for commute use. The 24-hour “on-call” criterion is generally used as justification for an investigator’s commute privilege. Per Administrative Rule R27-3-7(1)(a):

*“24-hour “On-Call.” Where the agency clearly demonstrates that the nature of a potential emergency is such that an increase in response time, if a commute or take home privilege is not authorized, could endanger a human life or cause significant property damage. Each driver is required to keep a complete list of all call-outs for renewal of the take home privilege the following year. ...”*

We believe that the practicality criterion of the rule may also apply. Practical need criterion is specified per Administrative Rule R27-3-7(1)(c):

*“When the agency clearly demonstrates that it is more practical for the employee to go directly to an alternate work-site rather than report to a specific office to pick up a state vehicle.”*

The investigators we interviewed reported a combination of both the on-call and practicality factors. They reported that they often travel to alternate work-sites both before and after regular working hours and that, as police officers, they are subject to call-out at all times for emergency and non-emergency purposes.

We noted the following areas of concern regarding commute use of these vehicles:

#### **Required Call-Out Logs Not Maintained**

Administrative Rule R27-3-7 requires that to support the 24-hour “On-Call” justification for commute use, each driver is required to keep a complete list of all call-outs. We noted that the Investigations Division reports to the Division of Fleet Operations an estimated number of call-outs per year instead of maintaining and then reporting a list of actual call-outs per year. Further, we noted that investigators use a broad definition of a call-out which includes call-outs during the work-day or during their commute as well as after-hours call-outs that were unplanned and unexpected. The strictest definition of “call-out” using the administrative rule would be that it is an emergency-related call received while off-duty. Even the “estimated” call-out report showed a wide disparity, with several investigators receiving only 5 call-outs per year while several others are reported to have averaged approximately 4 call-outs per month. The AG’s Office estimated call-out report is also attached for reference as Attachment C.

Recommendation:

- The Attorney General should define in policy what constitutes a call-out and for which investigators this designation is appropriately justified.
- The Attorney General should ensure that proper procedures are in place to document call-outs.
- The Attorney General should, if appropriate, clarify practical need policies and ensure practices exist requiring appropriate documentation.

**Commute Vehicle Trip Logs Inadequately Maintained**

Per Administrative Rule R27-3-7(2), “The trip log must be created for the first and last trip of the day for all take-home vehicles.” Per review of the November 2013 mileage logs, there was a wide variation on the detail reported. Some personnel recorded all daily mileage and the purpose, while some only recorded personal mileage. Some gave detailed descriptions and some gave no description at all.

Recommendations:

- The Attorney General should implement procedures to ensure that trip logs meet the minimum standard set by the administrative rule.
- The Attorney General should consider the level of reporting detail necessary to aid in determining how effectively vehicles are being utilized. In addition to the minimum requirements of recording daily beginning and ending odometer and recording personal miles, we suggest the following:
  - Require detail that is sufficient to show whether investigators are commuting directly to and from alternate work sites.
  - Require detail that is sufficient to differentiate between commute miles (directly to and from the home office location) and business-related travel.
  - Implement a procedure to document which trips meet the definition of a call-out, as recommended in the previous section.
  - Consider methods to automate trip logging that is cost effective and would improve tracking the utilization of assigned vehicles while reducing the burden on investigators to manually track the data.

**Comparison with Other Entities**

For background information and comparison, we contacted several neighboring states that employ investigators and received responses from four states. We inquired whether their investigators are POST certified, whether they are assigned vehicles, and whether they have commute or personal use privileges. We present the information here for your information to aid in future analysis.

| Entity                    | Number of Investigators | POST certified | Assigned Vehicles | Commute Privileges | Personal Use Privileges | Total Vehicles |
|---------------------------|-------------------------|----------------|-------------------|--------------------|-------------------------|----------------|
| Arizona Attorney General  | 40-50                   | 40-50          | Yes               | No                 | No                      | 40-50          |
| Colorado Attorney General | 30                      | 30             | No                | No                 | No                      | 12             |
| Nevada Attorney General   | 38                      | 38             | Yes               | Yes                | No                      | 42             |
| Wyoming Attorney General  | 67                      | 67             | Yes               | Yes                | No                      | 67             |

Recommendations:

- The Attorney General should consider whether assigning cars with commute and other personal usage is truly necessary to accomplish the mission of the Investigations Division or whether it is an unnecessary historical holdover.

## Observations and Conclusions – Non-Investigators

### Analysis of Vehicle Use

Based on information received on December 9, 2013 and from the previous fiscal year and the current calendar year, two non-investigator employees (Kirk Torgensen, the former Chief Deputy Attorney General, and Robert Steed, the Medicaid Fraud Unit Division Chief) were assigned vehicles with commute privilege but no personal usage allowance. During the OSA's inquiry, we noted that the AG's Office removed these vehicles from the two attorneys and no longer allows them to have an assigned vehicle with commute privileges<sup>6</sup>.

We obtained data from the Division of Fleet Services regarding the total number of miles driven for each vehicle. We then estimated the number of miles that were likely used for commuting purposes based on the distance from the employee's residence to the Murray office. Our method assumes that each employee commutes 4 times per week, with an average of 15 times per month to account for holidays, sick leave, and vacation time. We considered the remainder to be business miles. Table 4 displays this information.

**Table 4. Vehicle Usage by Non-Investigators**

| Employee       | Miles Traveled FY13 | Estimated Commute Miles as Percent of Total <sup>7</sup> | Estimated Business Miles as Percent of Total |
|----------------|---------------------|--|--|
| Kirk Torgensen | 12,151              | 41%  | 59%  |
| Robert Steed   | 13,517              | 80%  | 20%  |

### Commute Use

Administrative Rule R27-3-7 sets forth various criteria an agency/office can use to justify commute privileges for employees and compliance requirements for that privilege. We noted the following areas of concern regarding commute use of these vehicles:

<sup>6</sup> The AG's Office reported on January 23, 2014 that Steed no longer uses a vehicle for commuting effective December 7, 2013.

<sup>7</sup> A reasonable person might question whether a vehicle assigned solely for business and commute purposes could completely avoid even de minimis personal usage.

### **Inadequate Commute Privilege Justification**

We question the justification for commute privileges for these two attorneys. The need for the use of one vehicle was justified as 24-hour "On-Call." However, this justification is unreasonable since this employee is not a law enforcement officer and could not effectively respond to emergencies. The need for the use of the other vehicle was justified to the OSA as necessary under the practical need criterion of Administrative Rule R27-3-7; however, the AG's Office Internal Memorandum (Attachment A), concluded that the vehicle was provided as part of a compensation package. Both justifications appear inappropriate under the referenced Administrative rules and statutes given the job duties of these individuals.

#### **Recommendation:**

- The Attorney General should further examine the commute privilege need of the two non-investigator attorneys and determine if that need complied with the state law. If not, the Attorney General should consider whether it is appropriate for those two employees to reimburse the State for the benefit they received.

### **Commute Vehicle Trip Logs Inadequately Maintained**

Per Administrative Rule R27-3-7(2), "The trip log must be created for the first and last trip of the day for all take-home vehicles." We reviewed the November 2013 trip logs for Mr. Steed and noted his logs provided limited information on start and end odometer readings for each day and did not designate business versus commute use. Mr. Torgensen did not appear to maintain any trip logs for the same period.

#### **Recommendations:**

- The Attorney General should ensure that proper procedures are in place to make sure that trip logs meet the minimum standard set by the administrative rule.
- The Attorney General should consider the level of reporting detail necessary to aid in determining how effectively vehicles are being utilized.

### **Questions Exist Regarding Commute Privilege Tax Reporting**

Administrative Rule R27-3-6(4) indicates that "commute use is, unless specifically exempted under R27-3-8, considered a taxable fringe benefit..."; and R27-3-8(1) states that "employees with an individual permanently assigned vehicle are exempt from the imputed daily fringe benefit for commute use when the permanently assigned vehicles are either: (a) Clearly marked police and fire vehicles; (b) Unmarked vehicles used by law enforcement officers if the use is specifically authorized; ..." The two attorneys who were allowed commute privileges are not sworn law enforcement officers. Neither of the vehicles meets the criteria within R27-3-8 regarding marking.

One attorney regularly reimbursed the AG's Office the equivalent of the IRS imputed fringe benefit rate for commute (\$1.50 for each leg of the commute). The other reimbursed the AG's Office sporadically. It is unlikely that these employees would truly qualify for the imputed fringe benefit rate since one of the requirements is that the vehicle be necessary in the performance of the job and not considered part of compensation. The AG's Office Internal Memorandum (Attachment A) indicated that one of the attorney's vehicle was improperly used as part of a compensation package for the employee. The

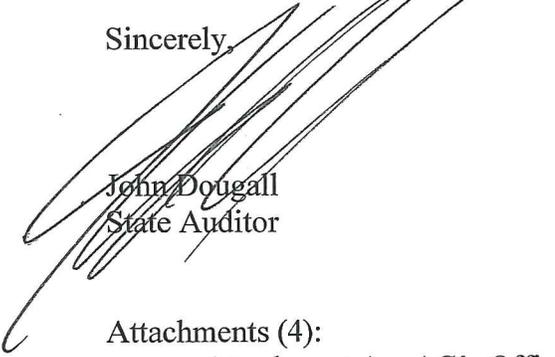
other employee was allowed commute privileges under the 24-hour "On-Call" criterion, however, since he was not a sworn law enforcement officer, it is unlikely that this criterion applied. Since these employees were reimbursing the AG's Office, either in whole or in part, for the IRS fringe benefit rate, the AG's Office did not report this as a fringe benefit for the employees.

Recommendation:

- The Attorney General should ensure that tax ramifications are fully considered when allowing commute privileges for employees.
- The Attorney General should ensure that each employee has fully reimbursed the AG's Office or that appropriate taxable fringe benefits are reported properly.

We appreciate the cooperation of your staff in support of this inquiry. Please let me know if you have additional questions or if we can be of additional assistance.

Sincerely,



John Dougall  
State Auditor

Attachments (4):

- Attachment A – AG's Office Internal Memorandum (September 16, 2013)
- Attachment B – Estimated Vehicle Usage Per Investigator
- Attachment C – AG's Office Estimated Call-Out Report
- Attachment D – Historical Allocation of Vehicles to AG's Office

**Attachment A – AG’s Office Internal Memorandum (September 16, 2013)**

## INTERNAL MEMORANDUM

TO: Brian Tarbet  
General Counsel

FROM: John Bowen  
Werner Haidentaller  
John McCarrey  
Glen Sexton

DATE: September 16, 2013

Re: Review of Compliance with State Motor Vehicle Laws & Policies for  
Vehicles Not Assigned to Sworn & Certified Peace Officers

### SCOPE OF WORK

You asked us to review the Office's use of state vehicles that are assigned to an individual, excluding vehicles used by sworn and certified peace officers, to determine compliance with the use requirements of the laws and policies of the State of Utah.<sup>1</sup> Issues such as use of State of Utah Fuel Cards or retention of a vehicle within our office's vehicle inventory is beyond the scope of our review.

### METHODOLOGY

The following methodology was used to conduct our review:

- We gathered and reviewed Utah's statutes and administrative rules governing state motor vehicle use

---

<sup>1</sup> The phrase "sworn and certified peace officer" is defined by Utah Code Ann. § 53-13-103. A "state vehicles is each motor vehicle owned, operated, or in the possession of an agency." Utah Code Ann. § 63A-9-1001(8); *see also* Utah Admin Code. R27-1-2(45). An "agency" is defined as "each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state. Utah Code Ann. § 63A-9-101 (1)(a).

- We requested an inventory of all vehicles assigned to the Office of the Attorney General<sup>2</sup>
- We excluded all vehicles from this inventory that were assigned to sworn and certified peace officers based on information from the AG's Administration Division
- We analyzed the use of the remaining vehicles consisting of vehicles assigned to an individual or vehicles used as a pooled or shared vehicle for adherence to state law and policy
- Where available, we reviewed vehicle use documents for May and June 2013 – where unavailable, we looked at July and August information or a shorter period if necessary
- Our confidence in the conclusions below is limited because of the lack of adequate records

This review was a “desk review” with no inspection of the vehicles.

### **SUMMARY OF CONCLUSIONS**

The table below summarizes our review and recommended findings:

---

<sup>2</sup> Due to a rotation of vehicles during the time we began our work, we have focused on the vehicles currently in service within the AG's Office from the September 3, 2013 Division of Fleet Operations Vehicle List. Before we had narrowed the scope of our audit, we did have some information prior to that date. We have not tried to reconcile that information with the current vehicle list. We had already reviewed data for a 2001 Lumina prior to setting the scope of the audit and determined its use for June 2013 was unauthorized take home use. That vehicle is no longer in the AG Motor Pool.

**Vehicles Identified on the Vehicle List Division of Fleet Operations, July 10, 2013, 2013  
(Excluding Vehicles Assigned to Sworn and Certified Peace Officers)**

| <u>OPERATOR</u> | <u>VEHICLE<br/>(Take Home<br/>Privilege)</u> | <u>TYPE OF USE</u> | <u>LICENSE</u> | <u>NOTES</u>   | <u>PROPOSED<br/>FINDINGS</u>                            |
|-----------------|--|--------------------|----------------|--|---|
| Mike Carter     | 2013 Camry<br>(No)                           | Assigned/Pooled    | 512535         |  | No Use<br>Records.<br>Unable to<br>Verify Pooled<br>Use |
| Sharon Conrad   | 2013 Prius<br>(No)                           | Assigned/Pooled    | 500717         |  | Complies  |
| Sharon Conrad   | 2013 Prius<br>(No)                           | Assigned/Pooled    | 500737         |  | Complies  |
| Sharon Conrad   | 2012 Civic<br>(No)                           | Assigned/Pooled    | 509526         |  | Complies  |
| Sharon Conrad   | 2012 Civic<br>(No)                           | Runners            | 509527         | This vehicle was a<br>motor pool vehicle<br>during June & July<br>2013 | Complies  |
| Sharon Conrad   | 2005 Focus<br>(No)                           | Assigned/Pooled    | 94506          |  | Complies  |
| Sharon Conrad   | 2011 Transit<br>(No)                         | Runners            | 50991          |  | Complies  |
| Pat Jensen      | 2003 Taurus<br>(No)                          | Assigned/Pooled    | 88286          |  | Complies  |
| Leslie Mascaro  | 2008 Lumina<br>(No)                          | Assigned/Pooled    | 71691          |  | Complies  |
| Leslie Mascaro  | 2009 Impala<br>(No)                          | Assigned/Pooled    | 2469BH         |  | Complies  |
| Alan Sevison    | 2013 Prius<br>(No)                           | Assigned/Pooled    | 500735         |  | No Use<br>Records.<br>Unable to<br>Verify Pooled<br>Use |
| Robert Smith    | 2006 Taurus<br>(No)                          | Assigned/Pooled    | 87899          |  | Complies  |

| Vehicles Identified on the Vehicle List Division of Fleet Operations, July 10, 2013, 2013<br>(Excluding Vehicles Assigned to Sworn and Certified Peace Officers) |                     |                        |        |  |                    |
|--|---------------------|------------------------|--------|--|--------------------|
| Robert Steed   | 2012 Camry<br>(Yes) | Assigned/Not<br>Pooled | 17823  |  | Does Not<br>Comply |
| David Tibbs  | 2013 Escape<br>(No) | Assigned/Pooled        | 514855 |  | Complies           |
| Kirk Torgensen   | 2012 Camry<br>(Yes) | Assigned/Not<br>Pooled | B071FW |  | Complies           |
| Janette White  | 2006 Focus<br>(No)  | Assigned/Pooled        | 87872  |  | Complies           |
| Deborah Wood   | 2013 Escape<br>(No) | Assigned/Pooled        | 514869 |  | Complies           |

Based on the information that we requested and received, there should be no other individual use or pooled or shared use state vehicles within the office.

### ANALYSIS SUPPORTING OUR CONCLUSIONS

The Department of Administrative Services, Fleet Operations has compiled many of the statutes and rules governing use of state vehicles and who is entitled to a vehicle as part of a compensation package.<sup>3</sup> Fleet is authorized by statute to make rules establishing “use requirements for state vehicles.” Utah Code Ann. § 63A-9-401 (1)(d). Fleet has issued an administrative rule governing fleet vehicles. All of the vehicles we examined are fleet vehicles subject to the administrative rule.

The general rule for authorized use of a state vehicles is that the use shall only be “for official state business.” Utah Admin. Code R27-3-4(1). Personal use “means the use of a state vehicle to conduct an employee’s personal affairs, not related to state business.” R27-1-2 (36). Examples of unauthorized use of a state vehicle are transporting family, friends, pets, non-state employees, hitchhikers, hazardous materials, and other uses. R27-3-4(4). “Personal use of state vehicles is not allowed without the direct authorization of the Legislature.” Utah Admin.

---

<sup>3</sup> <http://fleet.utah.gov/menu-fleet-status-and-admin-rules.html>

Code R27-3-4(5)(1).

There is a narrow exception to the general rule against personal use for authorized commute or take home use.<sup>4</sup> “‘Commute use’ means an employee driving a state vehicle from the employer’s place of business to the employee’s place of residence more than five calendar days per month. R27-1-2 (11). Similarly, a “take home vehicle” is “a state vehicle assigned to be driven to and from an employee’s place of residence and their assigned work location for more than five calendar days per month. R27-1-2(46).

Commute or take home use is allowed under one or more of the following conditions:

- 24-Hour On-Call - the agency demonstrates that a quick response time is necessary to protect human life or avoid significant property damage
- Virtual Office - the agency demonstrates that the employee is required to work at home or out of a vehicle at least 80% of the time and needs the vehicle to perform critical state duties
- Practical Need - the agency demonstrates that it is more practical to travel from home to an alternate work site than to go to a specific office and pick up a state vehicle
- Statutory Compensation - An elected or appointed official is “specifically allowed by law” a vehicle as part of their compensation package

Utah Admin. Code R27-3-7.

Commute or take home use is applied for and approved when the petitioning

---

<sup>4</sup> There is an additional exception allowing for limited personal use when traveling on overnight state business. Utah Admin. Code R27-3-5(2).

agency “for each driver” granted this privilege submits “an online take home spreadsheet from the DFO [Fleet] take home website.” R27-3-6. “Take home authority is granted when the Agency Executive Director submits the spreadsheet form” to fleet. *Id.* All “take home” vehicles require a “trip log [that] must be created for the first and last trip of the day . . .” R27-3-7(2).

Administrative Rule R27-3-9 requires that an agency establish internal policies on commute or take home privileges and contains sever sanctions for an agency adopting standards less stringent than those in Fleet Service’s administrative rules:

- “Agencies with drivers who have been granted commute or take home privileges shall establish internal policies to enforce the commute use, take home use and personal use standards established in this rule. Agencies shall not adopt policies that are less stringent than the standards established in these rules.”
- “Commute or take home use that is unauthorized shall result in the suspension or revocation of the commute use privilege by the agency. Additional instances of unauthorized commute or take home use may result in the suspension or revocation of the state driving privilege by the agency.”

Utah Admin. Code Rule R27-3-9. Each agency is responsible to investigate complaints, impose discipline for misuse, and report findings to Fleet and Risk Management. Utah Code Ann. § 63A-9-501.

Attorney General Policy Manual § 2.21 contains the adopted office policy for vehicle use. But the policy does not contain a commute or take home use provision. This violates the mandate of the rule requiring that “[a]gencies with drivers who have been granted commute or take home privileges shall establish internal policies to enforce the commute use, take home use and personal use standards established in this rule.”

Further, the AG policy contains a provision that may violate state policy.

The State rule provides that transporting family, friends, or non-state employees is an unauthorized use of a state vehicle. Utah Admin. Code Rule R27-3-9. The AG policy provides that “[a]dvance approval from the Division chief is required if taking someone other than a state employee in a state vehicle.” Attorney General Policy Manual § 2.21(B); *but see* R27-1-2 (8) (defines “authorized passenger” as acting within the scope of employment, necessary to the authorized driver’s employment duties, or “pre-approved by the appropriate department head to accompany an authorized driver”).

Finally, the Fleet Operations rule allows an agency to make leased state vehicles available to its employees for day to day work travel under the guidelines of the rule. R27-3-10.

We have applied these standards to determine whether the use of each of the vehicles identified in the table above complies with state law and policy. The analysis and recommendation for each vehicle is contained in the table below.

| Analysis Supporting Conclusions for Each Vehicle |                        |   |
|--|------------------------|---|
| Mike Carter                                      | 2013 Camry             | No logs. Unable to verify pooled use.   |
| Sharon Conrad                                    | 2013 Prius<br>(500717) | This vehicle was put into service on July 17, 2013. <sup>5</sup> We reviewed August 2013 data. Complies.                          |
| Sharon Conrad                                    | 2013 Prius<br>(500737) | This vehicle was put into service on August 9, 2013. We reviewed August 2013 data. Complies.                                      |
| Sharon Conrad                                    | 2012 Civic<br>(509527) | We reviewed May/June 2013 data. Vehicle subsequently used by runners. Complies.   |
| Sharon Conrad                                    | 2012 Civic<br>(509526) | We reviewed May/June 2013 data. Complies.   |
| Sharon Conrad                                    | 2005 Focus             | We reviewed May/June 2013 data. Complies.   |
| Sharon Conrad                                    | 2011 Transit           | We were provided the runners’ daily schedules, but no detailed logs were available. Based on the schedules, the vehicle complies. |

---

<sup>5</sup> Either the vehicle pick-up date or the last available pick-up date from Fleet was used for the date the vehicle was put into service.

| Analysis Supporting Conclusions for Each Vehicle |             |  |
|--|-------------|--|
| Pat Jenson                                       | 2003 Taurus | We reviewed July/August 2013 data because no May/June 2013 data was available. Complies.   |
| Leslie Mascaro                                   | 2008 Impala | Vehicle went into service as a pooled vehicle on August 14, 2003. Its prior use was by a licensed peace officer. We reviewed August 2013 data. Complies.   |
| Leslie Mascaro                                   | 2009 Impala | We reviewed May/June 2013 data. While they are incomplete, the use appears to be authorized.   |
| Alan Sevison                                     | 2013 Prius  | This vehicle was put into service on August 9, 2013. No logs. Unable to verify pooled use.   |
| Robert Smith                                     | 2006 Taurus | We reviewed May/June 2013 data. Complies   |
| Robert Steed                                     | 2012 Camry  | We reviewed May/June 2013 data as well as information from the operator. Vehicle received by operator as part of compensation package not authorized by statute. Use does not comply with Utah Code Admin. P. R27-3-7.   |
| David Tibbs                                      | 2013 Escape | This vehicle was put into service on June 26, 2013. We reviewed July/August 2013 data. Vehicle appears to comply.  |
| Kirk Torgensen                                   | 2012 Camry  | We reviewed the Division of Fleet Operations Take Home Detail Report dated September 3, 2013 showing "on-call." We received written information from operator that vehicle is used to travel to three different work locations under "Practical Need" exception. No 2013 logs available. Complies. |
| Janette White                                    | 2006 Focus  | We reviewed May/June 2013 data. Complies.  |
| Deborah Wood                                     | 2013 Escape | This vehicle was put into service on June 26, 2013. We reviewed July/August 2013 data. Complies.   |

## RECOMMENDATIONS

Based on our review we recommend the following:

- Review and reauthorize all current take home use to determine if it satisfies state law and policy. Modify use of any vehicle that is inconsistent with state law and policy as described above and bring it into compliance
- Strengthen and correct the internal AG policy on vehicle use to

comply with state policy and educate those assigned and using state vehicles

- Designate in written policy who is authorized on behalf of the AG's Office to submit the application to Fleet for commute or take home use. We recommend that this be the Attorney General. Conduct at least annual – if not more frequent – review and reauthorization of commute and take home privileges
- Require submission of regular and accurate travel destination and mileage logs and written verification by supervisors and individuals assigned state vehicles for any purpose to document that the use of the vehicle complies with state laws and policies (R27-3-7(2) (daily commute log requirements))
- Implement controls to ensure compliance with state laws and policies, including designation of an individual within the accounting unit of the office who is responsible to regularly receive reports from individuals assigned a vehicle and verify ongoing compliance with state laws and policies, including supervisory approval of each report and, monitor reports to Fleet to document compliance with state laws and policies and to protect employees and the Office from unintended tax consequences
- Train all employees responsible for use of motor pool on records and documentation necessary to show compliance with state laws and policies

**Attachment B – Estimated Vehicle Usage Per Investigator**

| <b>OSA<br/>Assigned<br/>Number For<br/>Investigators</b> | <b>Miles<br/>Traveled<br/>FY13</b> | <b>Estimated<br/>Commute<br/>Miles as<br/>Percent<br/>of Total</b> | <b>Estimated<br/>Personal<br/>Miles as<br/>Percent<br/>of Total</b> | <b>Estimated<br/>Business<br/>Miles as<br/>Percent<br/>of Total</b> |
|--|------------------------------------|--|---|---|
| 28   | 20,693                             | 90%  | 1%  | 9%  |
| 6  | 10,182                             | 72%  | 11%   | 17%   |
| 36   | 16,687                             | 65%  | 15%   | 20%   |
| 1  | 15,220                             | 67%  | 10%   | 23%   |
| 21   | 21,065                             | 73%  | 2%  | 25%   |
| 33   | 11,191                             | 65%  | 9%  | 25%   |
| 5  | 19,959                             | 65%  | 9%  | 26%   |
| 35   | 16,427                             | 66%  | 7%  | 27%   |
| 9  | 13,122                             | 56%  | 16%   | 28%   |
| 19   | 19,151                             | 62%  | 8%  | 30%   |
| 34   | 12,534                             | 58%  | 8%  | 34%   |
| 4  | 11,463                             | 63%  | 0%  | 37%   |
| 11   | 18,462                             | 53%  | 6%  | 41%   |
| 12   | 14,739                             | 50%  | 6%  | 44%   |
| 27   | 5,885                              | 39%  | 16%   | 45%   |
| 17   | 10,206                             | 46%  | 7%  | 46%   |
| 3  | 15,421                             | 47%  | 6%  | 47%   |
| 13   | 15,451                             | 47%  | 5%  | 48%   |
| 16   | 4,264                              | 33%  | 16%   | 51%   |
| 30   | 6,998                              | 32%  | 16%   | 51%   |
| 26   | 19,327                             | 44%  | 5%  | 52%   |
| 15   | 9,437                              | 39%  | 10%   | 52%   |
| 8  | 10,488                             | 29%  | 16%   | 55%   |
| 24   | 12,866                             | 33%  | 12%   | 55%   |
| 2  | 19,873                             | 36%  | 7%  | 57%   |
| 31   | 21,087                             | 34%  | 2%  | 64%   |
| 10   | 12,863                             | 28%  | 7%  | 65%   |
| 23   | 12,341                             | 24%  | 7%  | 69%   |
| 25   | 12,773                             | 28%  | 2%  | 70%   |
| 7  | 29,896                             | 24%  | 6%  | 70%   |
| 32   | 17,659                             | 17%  | 12%   | 71%   |
| 20   | 17,237                             | 21%  | 6%  | 73%   |
| 29   | 13,429                             | 12%  | 13%   | 75%   |
| 22   | 14,383                             | 21%  | 2%  | 77%   |
| 18   | 21,561                             | 17%  | 6%  | 78%   |
| 14   | 11,380                             | 10%  | 8%  | 82%   |

**Attachment C – AG’s Office Estimated Call-Out Report**

| OSA Assigned Number<br>For Investigators | Estimated Call-<br>Outs CY13 <sup>8</sup> |
|--|---|
| 21                                       | 5   |
| 10                                       | 5   |
| 25                                       | 5   |
| 28                                       | 10  |
| 6  | 10  |
| 33                                       | 10  |
| 9  | 10  |
| 34                                       | 10  |
| 30                                       | 10  |
| 8  | 10  |
| 29                                       | 10  |
| 16                                       | 25  |
| 26                                       | 25  |
| 15                                       | 25  |
| 37                                       | 35  |
| 36                                       | 50  |
| 1  | 50  |
| 5  | 50  |
| 35                                       | 50  |
| 19                                       | 50  |
| 11                                       | 50  |
| 12                                       | 50  |
| 27                                       | 50  |
| 17                                       | 50  |
| 3  | 50  |
| 13                                       | 50  |
| 24                                       | 50  |
| 2  | 50  |
| 31                                       | 50  |
| 23                                       | 50  |
| 7  | 50  |
| 32                                       | 50  |
| 20                                       | 50  |
| 22                                       | 50  |
| 18                                       | 50  |
| 14                                       | 50  |
| 4  | N/A                                       |

<sup>8</sup> The AG’s Office did not maintain adequate “call-out” logs. This table contains the estimated “call-outs” assigned to each investigator at the end of the calendar year 2013. There was no ability to determine which “call-outs” were of an emergency or outside-of-business-hours nature.

## Attachment D – Historical Allocation of Vehicles to AG’s Office

This information was provided by the Division of Fleet Services.

