

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE  
Post Audit Division

1900 Kanawha Blvd. East, Room W-329  
Charleston, WV 25305-0610  
(304) 347-4880



Denny Rhodes  
Director

March 6, 2018

Sue Racer-Troy, Director  
Division of Financial Management  
WV Supreme Court of Appeals  
Capitol Complex  
1900 Kanawha Blvd., East  
Building 1, Room E-100  
Charleston, WV 25305-0830

Dear Ms. Racer-Troy:

Enclosed is the summary of our meeting on Monday, March 5, 2018. We would like you to review this document for accuracy and note any information we may have incorrect and clarify any statements we may have misunderstood. Please feel free to make note of any errors directly to the enclosed document and return it to us so that we may make the necessary corrections. We will then resubmit the document to you for final approval and signature. If there are no errors and this summary does accurately reflect our meeting, please send us a letter attesting to its accuracy, as well as a copy of the enclosed summary that is signed by you on the first page and initialed by you on each subsequent page.

Please provide your response by Thursday, March 8, 2018. We thank you again for meeting with us on short notice and for assisting us in our audit process. If you have any questions or concerns regarding this request, please feel free to contact Justin Robinson, Audit Manager. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Denny Rhodes".

Denny Rhodes

c. Lori J. Paletta-Davis, Esq., Administrative Counsel

## **Post Audit Meeting Summary**

### **March 5, 2018 Meeting with Sue Racer-Troy, Director – Division of Financial Management**

#### **Meeting Attendees**

Denny Rhodes, Director, Post Audit Division

Aaron Allred, Legislative Auditor

Justin Robinson, Audit Manager, Post Audit Division

Doren Burrell, Legislative Services Attorney

Sue Racer-Troy, Director of Division of Financial Management, WV Supreme Court of Appeals

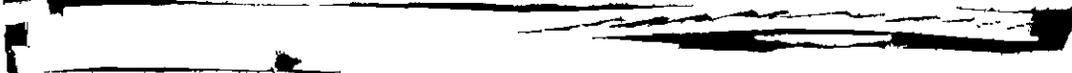
Lori Paletta-Davis, Administrative Counsel, WV Supreme Court of Appeals

#### **Background**

Ms. Racer-Troy has been employed since July 2012 with the WV Supreme Court of Appeals, preceded by Mr. Michael Proops as Director of the Division of Financial Management

#### **Use of State-Owned Vehicles**

- Ms. Racer-Troy informed Mr. Steve Canterbury that the commuting by Justice Ketchum in a state vehicle was a taxable event under the IRS Taxable Fringe Benefit Guidelines sometime soon after becoming aware of the commuting. Mr. Canterbury informed her that it was none of her business and not to treat it as taxable. Mr. Canterbury also frequently reminded Ms. Racer-Troy he could terminate her employment at any time for any reason. Ms. Troy felt some pressure due to this statement and in turn, allowed this to go on without being taxed per IRS rules.
- Some circuit judges used the US General Services Administration (GSA) rate over the \$0.15 rate allowed per W.Va. code.
- Circuit judges traveling from their primary place of work to a secondary place of work (county to county courts) are eligible.
- Ms. Racer-Troy confirmed that Justice Ketchum would use the \$0.15 reimbursement rate for general commuting but would charge the GSA rate for attending conferences.
- Ms. Racer-Troy was notified by Mr. Canterbury of the existence of a policy voted on by the Justices that would allow them to determine themselves what constituted business trips in state vehicles and how to report it sometime in August of 2016.
- Ms. Racer-Troy is uncertain if she made Gary Johnson aware of the taxable fringe benefits associated with the Justices' use of state owned vehicles when Mr. Canterbury was fired.
- The issue of the taxable fringe benefit was not addressed at all with Gary Johnson until the IRS audit.
- The Court did not directly inform the IRS of the commuting by Justice Ketchum.

- The primary focus of the IRS audit concerned the classification of some employees as contract employees. Ms. Racer-Troy stated to us during the meeting that she had told Mr. Canterbury that this treatment was improper prior to the IRS audit, but he repeatedly told her to stay out of it.
- Michael Proops did not inform Ms. Racer-Troy of any taxable fringe benefit issues concerning the Justices' use of state vehicles during his time as Director of the Division of Financial Management.
- There are no internal controls in place to ensure that the Justices did not double charge by receiving mileage reimbursement for the use of a state vehicle when getting travel settlements, other than the signed form.
- There is only one Personal Identification Number (PIN) assigned to all fuel cards for the entire Supreme Court vehicle fleet. There are also no other ways to identify specific instances of vehicle use by a particular individual outside of the reservation log, which is optional to Justices currently as they are not required to report their use.
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- Justice Ketchum did not seek the advice of or consult with Ms. Racer-Troy when determining the reimbursement check of \$843.28. Justice Ketchum gave Ms. Racer-Troy no explanation of what it was for or how he calculated other than the attached memo.
- Ms. Racer-Troy is aware of the IRS rules requiring a mileage log for vehicle use and the requirement that all miles be treated as personal miles and fully subject to the general valuation rule per IRS Publication 15-B, without relief from other valuation methods, where such a mileage log does not exist.
- Ms. Racer-Troy had no knowledge of Justice Loughry's possession of a desk, nor any knowledge of the fuel card analysis Former Justice Benjamin had conducted regarding Justice Loughry's personal use of a state vehicle.
- The court used the Fixed Asset Inventory Management system in WVFIMS, but from her inspection it appeared the Court had not updated or utilized it since 2010. Mr. Canterbury had informed her this was intentional because he did not want others knowing what the Court had. Since 2010, even IT inventory such as servers, routers, computers, etc. had not been recorded. The IT department of the court may have kept an internal record in an Access database.
- Two Buicks use and have maintained use of the On-Star navigation service.
- Mileage logs for vehicles are not kept in vehicles per best business practices.
- The Court had travel expense policies that were submitted to the State Auditor's Office. When the Justices revised their policy in August/September of 2016, the updated policy was also given to the State Auditor's Office.

- Ms. Racer-Troy was aware that Connie Toney, a secretary of the Court, was allowed to commute to work in a state vehicle. Ms. Racer-Troy was uncertain about the length of time she was allowed to do so but stated that Ms. Toney was afforded special treatment by Mr. Steve Canterbury during his time as Court Administrator.