



MEMORANDUM

TO: Steven D. Canterbury, Administrative Director
FROM: J. Kirk Brandfass, Administrative Counsel
DATE: July 21, 2016
RE: State Owned Vehicles

Legislative Rule

Title 148, Series 3: State Owned Vehicles

In West Virginia, “[l]egislative power may be constitutionally delegated to an administrative agency to promulgate rules and regulations necessary and proper for the enforcement of a statute. W. Va. Const. art. VI, § 1; art. V, § 1.” Syl. Pt. 3, *State ex rel. Callaghan v. W. Va. Civil Serv. Comm’n*, 166 W. Va. 117, 273 S.E.2d 72 (1980). W. Va. Code § 29A-1-2(d) [1982], and such a legislative rule has the force and effect of law.” Syl. Pt. 5, *Smith v. W. Va. Human Rights Comm’n*, 216 W. Va. 2, 602 S.E.2d 445 (2004). *State ex rel. State Farm Mut. Auto. Ins. Co. v. Bedell*, 226 W. Va. 138, 143, 697 S.E.2d 730, 735 (2010).

Legislative rules are those “affecting private rights, privileges or interests,” in what amounts to a legislative act. W. Va. Code, 29A-1-2(i) (1982). Legislative rules have “the force of law [.]” W. Va. Code, 29A-1-2(d) (1982). See also *Chico Dairy Co. v. West Va. Human Rights Comm’n*, 181 W. Va. 238, 382 S.E.2d 75 (1989) (to be valid, the promulgation of legislative rules must be authorized by the West Virginia Legislature). *Appalachian Power Co. v. State Tax Dep’t of W. Virginia*, 195 W. Va. 573, 583, 466 S.E.2d 424, 434 (1995).

Title 148, Series 3, of the *West Virginia Code of State Rules* [2015], is designated “State Owned Vehicles.” This rule was passed by the West Virginia legislature on March 14, 2015, and became effective on July 1, 2015.

§ 148-3-1.1, designated “Scope,” provides “[t]his Rule governs all State owned vehicles and aircraft, including the minimal requirements for all state spending units that have a state vehicle and/or aircraft in their possession.”

§ 148-3-2.3, provides, “‘Commuting’ means an employee who has a state vehicle assigned to them, whether permanently assigned or temporarily assigned, and they drive the vehicle to and from their home and office.”

§ 148-3-2.11 provides, “‘Official business’ means business on behalf of the State of West Virginia.”

“With the application of IRS Publication 463, it was determined the former Deputy Commissioner’s tax home was Charleston, WV because it was his official headquarters. As a result, when the former Deputy Commissioner traveled to Charleston, WV from his home, it did not qualify as a deductible travel expense per the IRS definitions. Therefore, any amounts reimbursed by DOC for travel expenses should have been reported as wages paid to the former Deputy Commissioner.”

IRS Commuting Rule (IRS Publication 15-B)

Under the IRS Commuting Rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one-way commute (that is, from home to work or from work to home) by \$1.50. If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee’s wages or reimbursed by the employee. You can use the commuting rule if all the following requirements are met.

(1) You provide the vehicle to an employee for use in your trade or business and, for bona fide noncompensatory business reasons, you require the employee to commute in the vehicle. You will be treated as if you had met this requirement if the vehicle is generally used each workday to carry at least three employees to and from work in an employer-sponsored commuting pool.

(2) You establish a written policy under which you don’t allow the employee to use the vehicle for personal purposes other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee’s home). Personal use of a vehicle is all use that isn’t for your trade or business.

(3) The employee doesn’t use the vehicle for personal purposes other than commuting and de minimis personal use.

(4) If this vehicle is an automobile (any four-wheeled vehicle, such as a car, pickup truck or van), the employee who uses it for commuting isn’t a control employee. (emphasis added)

IRS Publication 15-B states that for a government employer, an elected official constitutes a “control employee.”

West Virginia Division of Highways Administrative Operating Procedures

The *State of West Virginia Fleet Management Policies and Procedures Manual*, Edition 7, in Section VII, addresses the issue of commuting in connection with the use of State owned

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.14 Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

Rule 3.15 Reporting Requirements

(A) A judge shall publicly report the amount or value of:

- (1) compensation received for extrajudicial activities as permitted by Rule 3.12;
- (2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$150; and
- (3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$500.

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

The generally recognized standard for applying the inherent powers doctrine requires its use to be reasonable and necessary.”)

Possible Consequences of Improper Use of State Vehicles

Use of a state vehicle in a manner that contravenes the provisions of an applicable West Virginia legislative rule, or an Internal Revenue Service (IRS) regulation, could result in a determination that untaxed wages were accrued that must be reported to the IRS.

Contravention of the relevant provisions of the Code of Judicial Conduct could result in the filing of an ethical violation complaint with the Judicial Investigations Commission.