

**VOLUME NO. 34**

**Opinion No. 45**

**MOTOR VEHICLES - State vehicles, title to; MOTOR VEHICLES - State highway commission, custodian of state vehicles; MOTOR VEHICLES - State Motor Pool Act; MOTOR VEHICLES - State vehicles, charge for; MOTOR POOL - State highway commission, custodian; MOTOR POOL - State vehicles charge for; CUSTODIAN - Final**

ownership, not in; CONSTITUTION - Statutes presumed to be constitutional; STATUTES - Constitutionality, presumption of. Chapter 5, Title 53, R.C.M. 1947; sections 53-514, 53-515, R.C.M. 1947.

- HELD:**
1. The State Motor Pool Act, chapter 5, Title 53, R.C.M. 1947, does not require transfer of motor vehicle titles from the participating state agencies to the state highway commission.
  2. Only the actual costs for maintenance, service and storage to state vehicles may be charged by the custodian state highway commission to the participating state agencies.
  3. Legislative acts, such as the State Motor Pool Act, are presumed to be constitutional.

May 22, 1972

Mr. George Lackman, Commissioner  
 State Department of Agriculture  
 Capitol Station  
 Helena, Montana 59601

Dear Mr. Lackman:

Your department has requested my opinion concerning the application of chapter 5, Title 53, Revised Codes of Montana, 1947 (State Motor Pool Act). Your questions may be phrased as follows:

1. Whether the state highway commission has authority under the Motor Pool Act to require transfer of title to all state-owned vehicles to the state motor pool?
2. What costs may the department of highways charge to the various departments of the state for use of state vehicles?
3. Whether chapter 5, Title 53, R.C.M. 1947, is constitutional?

In determining the scope of authority of a department of state government, it is necessary to look to the statutes granting authority to the department. The state motor pool was established by Chapter 320, Session Laws of 1971, which has been codified in chapter 5, Title 53, R.C.M. 1947. Section 53-515, R.C.M. 1947, provides in pertinent part:

**“The highway commission is hereby delegated the power and authority to formulate and enforce reasonable rules and regulations governing the use and operation of all motor vehicles used in the service of the state of Montana consistent with the terms of this act.”** (Emphasis supplied)

Section 53-514, R.C.M. 1947, provides in part:

“The state highway commission is hereby constituted the **custodian** of all motor vehicles **owned or leased** by the state of Montana or **its boards, commissions or agencies . . .**” (Emphasis supplied)

The phrase “owned or leased by . . . its boards, commissions or agencies” contemplates title being in and remaining in the various state agencies. This interpretation is further buttressed by the fact that the legislature denominated the highway commission as “custodian” of the motor vehicles. The term “custodian” refers to one who has possession or control but not ownership. As was stated by the Court of Claims of New York, in **Southern Carbon Co. v. State**, 13 N.Y.S.2d 7, 9:

“There is nothing in the Statute defining the word ‘custodian’ or in any way limiting its meaning. In Bouvier’s Law Dictionary (Rawle’s Third Revision, vol. 1, page 741) the word ‘custody’ is defined as follows: ‘The term means the keeping, guarding, care, watch, inspection, preservation, or security of a thing; and carries with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected; charge; immediate charge and control, **and not the final absolute control of ownership**, implying responsibility for the protection and preservation of the thing in custody.’” (Emphasis supplied)

Therefore, the highway commission acquires a possessory interest in the state motor vehicles while the final ownership and title remain in the various state agencies originally purchasing the vehicles.

Your second question concerns what costs the motor pool may charge state agencies for the use of state vehicles. Section 53-515, *supra*, in specifying what charges may be made by the motor pool, provides in part:

“. . . All **actual costs for maintenance, service and storage** to these state vehicles shall be paid to the highway commission by the individual state agencies involved.”

Pursuant to this statutory provision, the motor pool may charge state agencies only the **cost** incurred for maintaining, servicing and storing individual motor vehicles within its custody pursuant to the Motor Pool Act. Costs which do not fall within the term “maintenance, service and storage”, such as depreciation and insurance for vehicles owned by participating agencies, may not be charged to such agencies by the highway commission. (Insurance premiums should be borne directly by the agencies having title to the affected vehicle.) The method of determining the “actual cost” to each vehicle for maintenance, service and storage is within the regulatory power of the highway commission under the powers granted by section 53-515, *supra*.

Your final question deals with the constitutionality of the Motor Pool Act. The Montana Supreme Court has consistently held that an act of the legislature is presumed to be constitutional unless clearly shown to be otherwise. See: **Cottingham v. State Board of Examiners**, 134 Mont. 1, 328 P.2d 907; **State v. Toomey**, 135 Mont. 35, 335 P.2d 1051. Pursuant to the directives of the Montana Supreme Court contained therein, the Motor Pool Act, contained in chapter 5, Title 53, R.C.M. 1947, must be presumed constitutional until a court of competent jurisdiction rules to the contrary.

THEREFORE, IT IS MY OPINION that:

1. The state highway commission is custodian of all motor vehicles in the state motor pool, pursuant to chapter 5, Title 53, R.C.M. 1947, and title to such vehicles remains with the individual state agencies.
2. The state motor pool may charge to individual state agencies the actual cost of maintenance, service and storage to state vehicles used by individual state agencies.
3. The state motor pool act, contained in chapter 5, Title 53, R.C.M. 1947, is presumed constitutional.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General