

VOLUME NO. 37

OPINION NO. 172

EMPLOYEES, PUBLIC - Use of private vehicles on state business; STATE AGENCIES - Power to permit use of private vehicles on state business; STATE AGENCIES - Rate of reimbursement for use of private vehicles by state employees on state business; REVISED CODES OF MONTANA, 1947 - Section 59-801; ARM 2-2.4(1)-S450.

HELD: 1. A state agency may permit its employees to use personal vehicles while on state business notwithstanding the availability of state motor pool vehicles.

2. A state employee using a personal vehicle on state business must be reimbursed at the rate set forth in the applicable subdivision of section 59-801, R.C.M. 1947, even through the rate may exceed the rate allowed for state motor pool vehicles.

4 December 1978

Morris L. Brusett
Legislative Auditor
Capitol Building
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion on the following questions:

1. May a state employee use his personal automobile on state business if a state motor pool vehicle is available to the agency?
2. If so, may the agency reimburse the employee at the mileage rate established by the Department of Highways for state motor pool vehicles, notwithstanding the provisions of section 59-801, R.C.M. 1947?

The answer to your first question appears in section 2-2.4 (1)-S450, A.R.M., which provides in part:

(b)***(2) Reimbursement at 12 Cents a Mile. All agencies (concerning only Helena based employees) have blanket authorization to permit their employees to use their personal vehicles while conducting state business and receive reimbursement at the rate of 12 cents a mile. That authorization does not preclude any agency from establishing internal procedures requiring employees to receive specific authorizations from departmental personnel as a prerequisite to using and receiving reimbursement for the use of a personal vehicle...

This provision, promulgated pursuant to legislative authorization in section 59-801, R.C.M. 1947, specifically leaves it to the individual agencies to determine whether an employee may use his personal vehicle rather than a state vehicle. Further, section 59-801(2) implicitly recognizes this practice by providing a mileage rate for use "[w]hen

the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available." It is therefore my opinion that an agency may allow its employees to use private rather than state vehicles when engaged in state business.

The answer to your second question is quite clear in both the statute and the regulations. Section 59-801 requires that an employee be reimbursed at one of two rates when using his personal vehicle for state business, the applicable rate to depend on the availability and suitability of state vehicles. This rule is also reflected in the applicable regulation, section 2-2.4(1)-S450, ARM, although the amount set forth in the regulation does not reflect an increase to seventeen (17) cents per mile authorized under section 59-801(2) pursuant to an increase in the United States Internal Revenue Service mileage allowance. The language of the statute regarding the applicable rates of reimbursement is mandatory, and the regulation must be construed to contain a similar mandatory rule.

THEREFORE, IT IS MY OPINION:

1. A state agency may permit its employees to use personal vehicles while on state business notwithstanding the availability of state motor pool vehicles.
2. A state employee using a personal vehicle on state business must be reimbursed at the rate set forth in the applicable subdivision of section 59-801, R.C.M. 1947, even though the rate may exceed the rate allowed for state motor pool vehicles.

Very truly yours,

MIKE GREELY
Attorney General