

EXECUTIVE BRANCH ETHICS COMMISSION

**ADVISORY OPINION 03-38**

October 16, 2003

RE: Do state agency's procedures for assigning motor pool vehicles to field inspectors fall under the jurisdiction of the Executive Branch Code of Ethics?

DECISION: No, but the Commission believes the agency should ensure that a policy is in place for assignment of vehicles so that favoritism and impropriety are not created or perceived.

This opinion is in response to your request of September 5, 2003, for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 16, 2003 meeting of the Commission and the following opinion is issued.

You are employed as an environmental inspector in a regional office of the Natural Resources and Environmental Protection Cabinet (the "Cabinet"). You have concerns with the Cabinet's procedure of replacing assigned vehicles to inspectors, as you believe the policy for replacement to be either non-existent (not in writing) and based on a system of favors (what you term the "quid pro quo" system). You state this "quid pro quo" system gives employees the impression they must perform services for their superior, outside of normal and official duties, in order to receive decent equipment and equitable working conditions.

The substandard equipment you mention are the 1992 Ford Rangers maintained at the Louisville regional office which do not have up to date safety equipment, have no good place for tool storage, and cannot be driven off-road to inspection sites. This, you say, impacts the ability of employees assigned these vehicles to perform their jobs on a daily basis, while you have noticed that many late model vehicles apparently languish in the Cabinet's central office parking lot.

Currently you are assigned a 1993 Jeep, which you state has two identified major problems and is non-operational. You have been told you are number seven (7) on a list to have this vehicle replaced, and have been told that as persons ahead of you on the list have their

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vehicles replaced, you may use one of their old vehicles on an interim basis. This concerns you, because of safety concerns for vehicles higher on the list to be replaced than yours.

Finally, you express concerns about misuse of Cabinet resources to maintain old and unsafe vehicles, so that each person in the Louisville field office, including the secretary, will have their own assigned vehicle. You wonder how much money is spent on maintaining the inappropriate vehicles versus other money-saving efforts, such as recycling, etc. In support of these issues, you have attached several memoranda and e-mail messages between you and various Cabinet personnel.

You ask if the Commission considers this situation to be a problem, or if this is the way things work in all of the other cabinets of state government.

The Executive Branch Code of Ethics in KRS Chapter 11A provides guidance to state employees concerning conflicts of interest and the use of an employee's official position. The Commission has consistently stated in its opinions that the proper use of state resources and equipment is an agency management decision not under the jurisdiction of the Commission. See Advisory Opinion 99-7. However, the Commission has also routinely cautioned both management and employees not to misuse state time or equipment; excessive misuse of state resources could constitute a violation of KRS 11A.020(1)(d):

(1) No public servant, by himself or through others, shall knowingly:

...

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

You have described Cabinet actions regarding vehicle assignments that clearly are management decisions. The attachments to your request show that you have brought these concerns to Cabinet management. Management's responses show they have considered the issues you raised and have responded to you. Whether or not these responses satisfy your concerns, whether they are in your opinion non-responsive to the issues you raised, or whether the responses are, in fact, adequate, are not matters on which the Commission can issue an opinion, as noted above.

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However, the issues you raise in your request to the Commission and in your communications with Cabinet management regarding alleged or perceived favoritism in assignment of vehicles, and waste or misuse of state resources by the Cabinet, cause the Commission great concern. While the favoritism (“quid pro quo system”) allegation lacks specifics, if true, such behavior should be of concern to the Cabinet, and could constitute a violation of KRS 11A (see KRS 11A.020(1)(d) above). Likewise, the Cabinet should rightfully be concerned about allegations of waste or misuse in the assignment of state vehicles, especially multiple assignments to an individual and assignments of vehicles to office staff without a need for a state vehicle.

Thus, in answer to your question, the Commission is concerned by the issues you raise. These issues are properly management decisions, however; and you should continue to address these issues to Cabinet management. The Commission encourages the Cabinet to fully investigate the issues raised, especially those of favoritism, waste or misuse of state resources, and possibly unsafe vehicles being assigned to state employees.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

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BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinions 99-7