



FILED

WEST VIRGINIA LEGISLATURE 2011 JAN 11 PM 4:24  
Legislative Rule-Making Review Committee

Senator Joseph Minard, Cochair  
Delegate Bonnie Brown, Cochair  
Debra A. Graham, Chief Counsel  
Felisha N. Sutherland, Administrative Assistant

OFFICE OF THE SECRETARY OF STATE  
Rita A. Pauley, Associate Counsel  
Brian Skinner, Associate Counsel  
Charles Roskovensky, Associate Counsel  
Jay Lazell, Associate Counsel

January 10, 2011

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Natalie E. Tennant, Secretary of State, State Register

TO: Donna Lipscomb, Executive Coordinator  
WV Department of Administration  
State Capitol Complex  
Building 1, Room E-119  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

Proposed Rule: State Owned Vehicles, 148CSR3

The Legislative Rule-Making Review Committee Recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule:
  - (A) as originally filed \_\_\_\_\_
  - (B) as modified by the agency \_\_\_\_\_
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.   X
5. Recommends that the Legislature rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Department of Administration  
Purchasing Division

State Owned Vehicles  
148CSR3

The Legislative Rule-Making Review Committee moved to amend the rule on page nine, section 11, by striking out the section in its entirety.

**Department of Administration**  
**Purchasing Division**  
State Owned Vehicles  
148CSR3

**STATEMENT OF REASON**

The provisions of section 11 of the proposed rule series exceeds the scope of the authority conferred on the Secretary of the Department of Administration by the Legislature in S.B. 219. S.B. 219 amended the provisions of W.Va. Code § 5A-1-2(f) to authorize the Secretary to establish a Fleet Management Office within the Department of Administration for the specific purpose of managing all motor vehicles and aircraft owned or possessed by the State of West Virginia or any of its departments, divisions, agencies, bureaus, boards, commissions, offices or authorities. (emphasis added). The inclusion of the term "offices" in the list of entities subject to the section and the absence of an exemption for executive department constitutional officers, would appear to support a finding that the Legislature did not intend for the Secretary to delegate the authority conferred by the statute to executive branch constitutional officers.

Although, W.Va. Code § 5A-1-2(f) makes the establishment of the Fleet Management Office discretionary ("the secretary may. . ."), once the Secretary makes use of the authorization provided by law, he must strictly comply with the mandatory terms of the statute. Here, the Legislature authorized the Secretary to establish the Fleet Management Office to manage all motor vehicles and aircraft owned or possessed by the State or any of its departments or offices. The Legislature's use of the terms "all" "departments" and "offices" would appear to establish the Legislature's intent to include motor vehicles used by the offices of Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Attorney General in this directive. The Secretary's attempt to further delegate the authority granted to him by this statute appears to exceed the scope his authority.

Additionally, evidence that the Secretary has exceeded his authority is further buttressed by the Legislature's specific repeal of the former exemption to the Secretary's authority to promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of state owned motor vehicles for the Division of Highways, Department of Transportation, State Police, Division of Natural Resources, Division of Forestry, Department of Agriculture, Higher Education Policy Commission and the High Education governing boards and their institutions. In the case of the Department of Agriculture, the Secretary would attempt to undo by rule what was done by statute by restoring the Commissioner of Agriculture's power to manage the motor vehicles used by his office.