

Opinion No. 2010-108

September 24, 2010

The Honorable Denny Altes
State Senator
8600 Moody Road
Fort Smith, Arkansas 72903-6718

Dear Senator Altes:

You have requested my opinion on the following questions concerning personal use of state-owned vehicles by state officials:

1. Pursuant to Amendment 70 to the Arkansas Constitution, should any constitutional or legislative officer who is or was in possession of a state-owned vehicle immediately reimburse the state for the fair value of all past personal use of state-owned vehicles?
2. Further, should the current constitutional or legislative officers who are in possession of a state-owned vehicle immediately cease and desist driving and using such vehicles until there are official procedures in place that will: a) guarantee an appropriate public accounting for any and all personal use; and, b) set forth an appropriate method for determining the fair value of personal use thus assuring taxpayers that such officers are in compliance with the strict requirements of Amendment 70?
3. If there are such procedures in place at this time, please advise when such procedures were put in place and who approved the procedures.

The Honorable Denny Altes
State Senator
Opinion No. 2010-108
Page 2

RESPONSE

The question of reimbursement to the state for personal use of state-owned vehicles by state officers and employees is currently the subject of an action pending in the Circuit Court of Pulaski County, specifically *Gould, et al. v. Shoffner, et al.*, Pulaski County Circuit Court, 5th Division, No. 60CV-10-4111 (filed July 16, 2010). I consequently must respectfully decline to issue an opinion on that issue, which also involves the question of accounting for such use of state-owned vehicles. In recognition of the judiciary's independent constitutional role, it has long been the policy of the Attorney General, as an office in the executive branch of government, to refrain from rendering opinions on matters that are pending before the courts for determination. *E.g.*, Op. Att'y Gen. 2008-034 (and opinions cited therein).

As for whether an officer should "immediately cease and desist driving and using such vehicles," this would appear to involve either a policy decision or private legal advice, neither of which falls within the proper scope of an Attorney General opinion.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:EAW/cyh