

100-3 (D)

TO: Jim Kennedy, Chief Auditor

FROM: Chuck Vollmer, Senior Audit Manager

RE: Summary of findings regarding Mr. Palmer's letter of 1/10/04

DATE: February 17, 2004

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Below please find an item-by-item summary of our findings regarding the allegations Mr. Palmer makes in his January 10, 2004 letter to Auditor Montgomery (Attachment A), along with my comments regarding how I feel we should address it.

**1. Justices and State Funded Luxury Cars:**

**Allegations:** Mr. Palmer's contention is that providing the justices with state vehicles and allowing them to use the vehicles for personal use constitutes a job perk which judges are forbidden from receiving under Article IV, Section 6(B) of the Ohio Constitution.

**Summary of Findings:** On pages 3-5, and again on page 6 of their February 11, 2004 letter to me (Attachment B) the Court has strongly asserted its determination that the provision of vehicles to the Justices does not violate Article IV, Section 6(B) of the Constitution. Furthermore, in a July 11, 2002 letter to Mr. Palmer (Attachment C) then-AOS Chief Counsel D. Michael Grodhaus indicated our office could not conclude definitively that the provision of vehicles to the justices is a perk, and therefore we would not be taking any action on this specific issue.

**Comments:** This legal determination is outside the scope of a financial audit and there appears to be a sound legal basis for allowing justices to have state cars.

**2. Justices' tax liabilities for personal use of cars:**

**Allegations:** Mr. Palmer cites the provisions of a 2002 Department of Administrative Services (DAS) memo in order to calculate the amount of taxable benefit from their personal use of Court-provided vehicles he feels the justices should have claimed as income during CY 2001 (presumably). He then asserts that this income should have but did not appear on the justices' 2001 W-2 forms, and that the justices did not maintain logs detailing their personal vs. business use of state vehicles as they were required to do.

**Summary of findings:** Since the Court is exempt from the DAS fleet management program described in Ohio Revised Code (ORC) section 125.832, normally the provisions of a DAS memo such as the one Mr. Palmer cites would not apply to the Court. However we reviewed the IRS valuation methods summarized in the memo and used by Mr. Palmer to make his calculations and compared them to the provisions contained in IRS Publication 15-B (Attachment D; relevant pages only). We found that, irregardless of the source of Mr. Palmer's information, the IRS provisions discussed in

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the memo do indeed apply to the Court. It appears the logic and methodology behind Mr. Palmer's calculations is correct, although we could not verify the specific figures he uses in these calculations.

As to Mr. Palmer's allegations that the justices' W-2 forms should but do not disclose any taxable benefit from the personal use of state vehicles, he is correct. The Court admitted they have never included this information on the W-2s. Their rationale for not reporting this information is addressed on page 5 of their 2/11/04 letter, but boils down to the fact they had concluded the IRS rules did not require the Court to report this information so long as the Court informed the justices that the justices were responsible for self-reporting the taxable benefits derived from their personal use of the vehicles. Based on our review and interpretation of IRS Pub. 15-B this conclusion was incorrect, a determination the Court appears to agree with in their 2/11/04 letter.

Finally, regarding Mr. Palmer's claim the justices did not maintain required logs detailing personal vs. official use of their court-provided vehicles, we are unable to verify this assertion. While it would be logical to assume the justices would have to maintain this information in order to properly report such usage on their tax returns, we did not find any Court regulations requiring such logs, and in fact the Court would not have required them since they felt they bore no responsibility to report or monitor such usage.

**Comments:**

The Court's failure to report the justices' taxable income realized from their personal use of state vehicles on their W-2 forms will be addressed as a non-compliance citation in the FY 02-03 management letter.

**3. Moyer's abuses of his state car:**

**Allegations:** In this section, Mr. Palmer lists numerous instances from the past four years where Chief Justice Moyer used his Court-issued credit card to purchase fuel while out of town. The apparent intent of these lists is to demonstrate that Chief Justice Moyer frequently used his Court-issued vehicle for personal reasons.

**Summary of Findings:** While we were unable to verify all of the numbers Mr. Palmer presents in his lists due to time constraints, the numbers we did attempt to verify were found to agree to the records the Court provided us with, and we have no reason to believe that the remaining numbers would not agree. However, while DAS directives specifically prohibit the personal use of State vehicles, as indicated above these provisions do not apply to the Court. Furthermore, as discussed by the Court on page 6 of their 2/11/04 letter, Court resolutions presuppose that the vehicles are being provided to and used by the justices for business purposes, and that the justices are required to self-report any and all personal use of the vehicles to the IRS.

**Comments:** In a nutshell, we could not find any regulations which prohibit the personal use of Court-provided vehicles by the justices, provided such usage is properly reported to the IRS. We have discussed with the Court the necessity of developing formal policies and guidelines which more specifically address the personal vs. business use of