

1983 WL 181994 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 8, 1983

\*1 Mr. William A. McInnis  
Deputy Executive Director  
State Budget and Control Board  
Columbia, South Carolina 29211

Dear Mr. McInnis:

You have requested an opinion from this Office as to whether the Budget and Control Board could establish procedures for reporting the personal use of state owned motor vehicles by employees to the Internal Revenue Service and the State Tax Commission and thereby satisfy the requirements of Section 164, Part I, Act 151 of 1983.

Section 164, Part I Act 151 of 1983 (a proviso to the 1983-84 Appropriations Act) provides as follows:

The General Assembly, in recognition of the need to meet certain reporting requirements relating to information returns to be submitted to the Internal Revenue Service, hereby directs the Budget and Control Board to immediately institute a charge for the personal use of state owned motor vehicles.

It is our opinion that the requirements of Section 164, Part I, Act 151 would not be satisfied by the Board's establishment of procedures for reporting the personal use of state owned motor vehicles by employees to the Internal Revenue Service and the State Tax Commission.

A review of [26 United States Code Section 6041](#) indicates that the State of South Carolina must report to the Internal Revenue Service all personal use of vehicles by state employees valued at \$600 or more unless the legislature requires that the state be compensated for the personal use of such vehicles.<sup>1</sup>

Apparently recognizing this requirement, the General Assembly via Section 164, Part I, Act 1 of 1983 directed that the Budget and Control Board immediately 'institute a charge' for the personal use of State owned motor vehicles.

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. [Bankers Trust of South Carolina v. Bruce](#), 275 S.C. 35, 267 S.E.2d 424 (1980).

The plain language of Section 164 requires that the Budget and Control Board establish a charge for the personal use of vehicles. The word 'institute' has been construed by the courts to mean establish, set-up and set in operation. 44 C.J.S. 412; see also [Bridges v. Koppelman](#) 17 N.Y.S. 306, 312, 63 Misc. 27. In construing the word 'institute' in [City of Cincinnati v. Hawkins, Ohio](#), 78 N.E.2d 61, 62 (1947) the Ohio Court of Appeals said:

... the word 'institute' is derived from a Latin word meaning 'to place in.' It is defined as meaning 'to set up, to originate and establish, to cause to be, to found.' 78 N.E.2d at 62.

A reporting requirement for state employees would not be a 'charge' as used in Section 164 because the Board would not have set a sum due for the personal use of state vehicles as the term 'charge' requires.

'Charge' means to set or state as price or sum due, ask or require as compensation, demand, set down or record something as due from or delivered to for or to be paid or accounted for by, hold responsible for payment or return of something, to subject to pecuniary charge of liability . . .

\*2 Monroe Loan Society of Pennsylvania v. Morello, 51A.2d 347, 349, 160 Pa.Supper 418 (1947).

Thus we conclude that the plain language of Section 164 requires that the Board set up or establish a charge for the private use of state vehicles. To require state employees to merely report the use of state vehicles to the IRS at years end would not discharge the Board's responsibility to 'institute a charge' as required by this section of Act 151.

Furthermore, Section 134 of the 1983-84 Appropriations Act provides:

That salaries paid to officers and employees of the State including its several boards, commissions, and institutions shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto but such perquisites, commodities, services or other benefits shall be charged for at the prevailing local value and without the purpose or effect of increasing the compensation of said officer or employee . . . (emphasis added).

When Section 134 is read in conjunction with Section 164 of the same Act, the meaning of the latter section is made even more apparent.

Generally, the term perquisite when used in connection with a public employee means some emolument or profit beyond the salary payable to him. 63 Am. Jur.2d § 378. The personal use of a state car without charge may be a perquisite and if so would be violative of Section 164, Part I, Act 151 of 1983. See, 70 C.J.S. § 81, p.685; for a discussion of perquisites and emoluments also see Taxpayers League v. McPherson, 49 Wyo. 251, 54 P2d 897 (1936). Thus, the two provisions when read together evidence a clear legislative intent that state employees must be charged for their personal use of state owned vehicles.

For the foregoing reasons we conclude that allowing employees to report their personal use of state vehicles to the Internal Revenue Service would not satisfy the requirements of Section 164, Part I, Act 151 of 1983.

Very truly yours,

Joseph A. Wilson, II  
Chief Deputy Attorney General

#### Footnotes

1 While the personal use of vehicles by constitutional officers was not addressed in your request, it is noteworthy that [Section 1-11-270 of the Code](#) provides in pertinent part:

Only the Governor and statewide elective state officials shall be provided an automobile solely on the basis of their office. All other individuals permanently assigned with automobiles shall log all trips on a log form approved by the Board, specifying beginning and ending mileage and job function performed. (Emphasis added).

This section of the state Motor Vehicle Management Act may arguably be read to demonstrate the legislature's intent to treat the Governor and other statewide constitutional officers differently from other state employees insofar as the use of automobiles is concerned. However, we do not decide this question in this opinion.

1983 WL 181994 (S.C.A.G.)