



Baldwin County Commission

*C/County
Atty*

Agenda Action Form

File #: 19-0645, Version: 1

Item #: GA2

Meeting Type: BCC Regular Meeting

Meeting Date: 2/5/2019

Item Status: New

From: Ronald J. Cink, Budget Director

Submitted by: Anu Gary, Administration/Records Manager

ITEM TITLE

Request for an Advisory Opinion Regarding the Use of County Vehicles by County Commissioners and Officials/Employees

STAFF RECOMMENDATION

Authorize the County Attorney to send correspondence to the Alabama Attorney General's Office and Alabama Ethics Commission to request for an advisory opinion regarding the use of County vehicles by County Commissioners and Officials/Employees.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: At the January 22, 2019 Work Session, the Commission discussed the current county policy regarding official and employee county owned take home vehicles. During the Work Session, the Commission instructed the County Attorney to draft letters requesting for an advisory opinion from the Alabama Attorney General's Office and Alabama Ethics Commission.

According to the Association of County Commissions of Alabama (ACCA), if an employee uses a vehicle for personal use it should to be stated in the County policy. The current County Policy states individuals who are issued a County car shall not use the assigned vehicle for personal use.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding? N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?

N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Administration

Action required (list contact persons/addresses if documents are to be mailed or emailed):

Correspondence to:

Steve Marshall, Attorney General
Office of the Attorney General
P.O. Box 300152
Montgomery, Alabama 36130-0152

Alabama Ethics Commission
P.O. Box 4840
Montgomery, Alabama 36103-4840

cc: David Conner, County Attorney
County Commissioners
Kim Creech

Additional instructions/notes: N/A

LAW OFFICES OF

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ORANGE BEACH, AL 36561

February 5, 2019

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

Mr. Steve Marshall
Alabama Attorney General
P.O. Box 300152
Montgomery, AL 36130-0152

DRAFT

RE: Request for Attorney General's Opinion Regarding the Use of
County Commissioners and Officials/County Vehicles by County Commissioners and Officials/Employees

I am writing this letter as County Attorney for Baldwin County on behalf of the Baldwin County Commission. The purpose of this letter is to request an Attorney General's opinion on issues relating to the use of County-owned vehicles by Baldwin County officials and employees.

First, Baldwin County Commissioners are available to receive calls and requests for their services related to official duties at all times, and Commissioners perform work at Commission offices, travel around the County and attend numerous meetings, conferences and events related to the performance of their official duties. Baldwin County is a very large County, and Commissioners and employees must often commute fairly significant distances while tending to County business. In order to provide needed transportation, Commissioners may be assigned County-owned vehicles which are used for official business, and the vehicles may be taken home. Due to time constraints and the requirements of their official duties, it is sometimes necessary for Commissioners to take care of personal business while traveling on official business as opposed to returning home to obtain a personal vehicle. For example, at least one Baldwin County Commissioner owns property where he runs his personal business which is on the general route between the regular meeting place in Bay Minette, Alabama, and his residence, which is some distance away given the size of Baldwin County. Under the circumstances in order to minimize travel time and lost productivity, a Commissioner needs to be able to tend to personal business while in route on County business or traveling to and from home, as opposed to taking the time and expense to drive to his/her residence and obtain a personal vehicle to tend to personal business. Additionally, there are other County officers/employees who are assigned a County-owned vehicle to perform their official duties, and it would minimize travel time and lost productivity if those officials and employees could

use such vehicles to make interim personal stops or tend to personal business so long as those stops are on the general route of travel on County business or travel to or from the officers/employees' personal residences.

Second, there are some Baldwin County employees whose duties may require them to travel to different parts of the County to perform their job duties. Baldwin County has offices in several locations throughout the County, with some of those locations being miles apart. Some employees may live in one part of the County and work in another, and on certain days, their duties will require them to travel to an entirely different part of the County. Some employees' residences may lie between his or her assigned County office and the location where the employee may be required to work for the day, requiring the employee to drive to the employee's permanent office, pick up a County vehicle and then backtrack to the assigned job site for the day. Baldwin County desires to minimize the excessive employee travel and lost productivity by allowing certain employees to drive County-owned vehicles to and from their residences, when deemed necessary.

At this time, the Baldwin County Vehicle Policy limits the personal use of County vehicles. Depending upon the response to this request for Ethics Opinion, the County Commission is considering amending the policy to allow for limited personal use of County vehicles consistent with state law. Simultaneously with this letter, the Commission has also sent a request for an Ethics Opinion from the Alabama Ethics Commission.

Question 1. May Baldwin County Commissioners use County-owned and assigned vehicles to stop at their personal business offices or property or take care of personal business while traveling on County business or traveling to and from their residence as long as the stops and/or office visits are either on the general route or require only minimal deviation from the route?

Question 2. May other county officials or employees use County-owned and assigned vehicles to stop to take care of personal business while traveling on County business or traveling to and from their residence as long as the stops are either on the general route or require only minimal deviation from the route?

Question 3. May Baldwin County employees who are required to travel to different areas around Baldwin County be authorized to drive County-owned vehicles to their homes when they must travel to areas of the County which are away from their County assigned office?

Your assistance in answering these questions will be greatly appreciated. If you need any additional information, or if we can be of any further assistance, please let us know.

Yours very truly,

David J. Conner
For the Firm

David J. Conner
For the Firm

LAW OFFICES OF

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February 5, 2019

VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

Thomas Albritton
Alabama Ethics Commission
Post Office Box 4840
Montgomery, Alabama 36130-4840

DRAFT

RE: Request for Ethics Opinion Regarding the Use of County
Vehicles by County Commissioners and Officials/Employees

Dear Thomas:

I am writing this letter as County Attorney for Baldwin County on behalf of the Baldwin County Commission. The purpose of this letter is to request an opinion on issues relating to the use of County-owned vehicles by Baldwin County officials and employees.

First, Baldwin County Commissioners are available to receive calls and requests for their services related to official duties at all times, and Commissioners perform work at Commission offices, travel around the County and attend numerous meetings, conferences and events related to the performance of their official duties. Baldwin County is a very large County, and Commissioners and employees must often commute fairly significant distances while tending to County business. In order to provide needed transportation, Commissioners may be assigned County-owned vehicles which are used for official business, and the vehicles may be taken home. Due to time constraints and the requirements of their official duties, it is sometimes necessary for Commissioners to take care of personal business while traveling on official business as opposed to returning home to obtain a personal vehicle. For example, at least one Baldwin County Commissioner owns property where he runs his personal business which is on the general route between the regular meeting place in Bay Minette, Alabama, and his residence, which is some distance away given the size of Baldwin County. Under the circumstances and in order to minimize travel time and lost productivity, a Commissioner needs to be able to tend to personal business while in route on County business or traveling to and from home, as opposed to taking the time and expense to drive to his/her residence and obtain a personal vehicle to tend to personal business. Additionally, there are other County officers/employees who are assigned a County-owned vehicle to perform their official duties,

and it would minimize travel time and lost productivity if those officials and employees could use such vehicles to make interim personal stops or tend to personal business so long as those stops are on the general route of travel on County business or travel to or from the officers/employees' personal residences.

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At this time, the Baldwin County Vehicle Policy limits the personal use of County vehicles. Depending upon the response to this request for Ethics Opinion, the County Commission is considering amending the policy to allow for limited personal use of County vehicles consistent with the ethics rules.

Section 36-25-5(a) and (c) provide:

(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

* * *

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership

organizations or such organizations communicating with public officials or public employees.

Question 1. May Baldwin County Commissioners use County-owned and assigned vehicles to stop at their personal business offices or property or take care of personal business while traveling on County business or traveling to and from their residence as long as the stops and/or office visits are either on the general route or require only minimal deviation from the route?

Question 2. May other county officials or employees use County-owned and assigned vehicles to stop to take care of personal business while traveling on County business or traveling to and from their residence as long as the stops are either on the general route or require only minimal deviation from the route?

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Your assistance in answering these questions will be greatly appreciated. If you need any additional information, or if we can be of any further assistance, please let us know.

Yours very truly,

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David J. Conner
For the Firm



STATE OF ALABAMA ETHICS COMMISSION



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Thomas B. Albritton
Executive Director

COMMISSIONERS

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Charles Price, Ret. Circuit Judge
Beverly Brady, Esq.
John Plunk, Esq.

TELEPHONE (334) 242-2997
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WEB SITE: www.ethics.alabama.gov

June 6, 2018

ADVISORY OPINION NO. 2018-05

Mr. John A. Tinney
Attorney for Ashland Water Board
739 Main Street
Post Office Box 1430
Roanoke, AL 36274

Personal Use of Equipment/Water Board
employee taking children to school.

An employee of the Ashland Water Board may drop his children off at daycare on his way to work in his official vehicle if the use requested is allowed "pursuant to a lawful employment agreement regulated by agency policy."

Personal Use of Equipment/Water Board
employee taking children to school.

An employee of the Ashland Water Board may drop his children off at daycare on his way to work in his official vehicle if the use requested is allowed "pursuant to a lawful employment agreement regulated by agency policy."

Dear Mr. Tinney:

The Alabama Ethics Commission is in receipt of your request for a formal Advisory Opinion of this Commission, and this opinion is rendered pursuant to that request.

FACTS

The facts as have been presented to this Commission are as follows:

"The Ashland Water Board has a vehicle which it provides to an employee which the employee keeps for transportation for matters relating to the Water Board. He is allowed by agreement with the Water Board to have possession of this vehicle at all times and utilizes the vehicle in traveling to and from work.

There are times when he might be called out at night should there be a water main break, etc. when he would be required to attend to Water Board business after hours.

This employee has children still in school in Ashland. He occasionally will drop the children off on his way to work in the Water Board vehicle. The dropping off of the children is not out of the way on his way to work and I am sure that the additional gas used in dropping off the children is minimal.

The question has arisen as to whether it is a violation of Alabama Ethics statutes for this individual to drop off the children on his way to work in the company vehicle."

QUESTION PRESENTED

Is it a violation of Alabama Ethics statutes for an employee of the Ashland Water Board to drop off the children on his way to work in the vehicle supplied to him for his official use?

ANALYSIS

The primary issues which the question raises involve the application of Ala. Code § 36-25-5(a) and (c), which state:

(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain.

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her

discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy.

The Commission previously addressed this issue under similar facts. In Advisory Opinion 2011-08 (Pettaway), the Commission held, "The Perry County Commission may, by policy, allow the Perry County Coroner to use a County vehicle for personal, as well as business use, so he may be accessible when needed." In that Opinion, the Commission recognized the practical implications of prohibiting someone who is on-call from being able to conduct errands, etc., while in an official vehicle but only when it is allowed pursuant to a lawful employment agreement regulated by agency policy. That conclusion equally applies to the question and facts presented, and the use requested herein is allowed if "provided pursuant to a lawful employment agreement regulated by agency policy."

CONCLUSION

An employee of the Ashland Water Board may take his children to school on his way to work in his official vehicle if the use requested is "provided pursuant to a lawful employment agreement regulated by agency policy."

AUTHORITY

By 3-1 vote of the Alabama Ethics Commission on June 6, 2018.


Jerry L. Fielding, Ret. Sr. Circuit Judge
Chair
Alabama Ethics Commission