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SPECIAL REPORT

FLEET MANAGEMENT ADMINISTRATIVE FEE

AUDIT OVERVIEW

The Aviation Division's Revenue Shortfall Should Be Appropriated by the Legislature Instead of Funded Through Inter-Agency Fees on Automobile Fleet Rentals



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EXECUTIVE SUMMARY

Issue 1: The Aviation Division’s Revenue Shortfall Should Be Appropriated by the Legislature Instead of Funded Through Inter-Agency Fees on Automobile Fleet Rentals.

The Aviation Division operates under a revenue shortfall of nearly \$2 million.

The Department of Administration (DOA) has oversight responsibilities over the Aviation Division and the Fleet Management Division. The Aviation Division does not generate enough revenue from the rental of the aircraft fleet to fully fund its operation. Therefore, the Aviation Division operates under a revenue shortfall. Typically, an agency would price its services to recover its operating costs. However, there is inelasticity in the Aviation Division’s revenue model because there is a price point for using aircraft in the fleet above which agencies would cease to use these services. Since the State already has the capacity to operate the air fleet, it is advantageous that the aircraft usage rates be priced to allow agencies to use the services. By passing operation costs on to users of the air fleet it would make using the Aviation Division’s services too costly to agencies.

In order to make up the revenue shortfall, the DOA, through the Fleet Management Division, charges state agencies a Fleet Management Administrative Fee. This fee is charged to many state agencies that seldom if ever use the aircraft fleet.

In order to make up the revenue shortfall, the DOA, through the Fleet Management Division, charges state agencies a Fleet Management Administrative Fee. Generating nearly \$2 million in internal revenue, this fee (\$92 monthly per vehicle) is charged to agencies that lease state vehicles.

Table 1
Aviation Division’s Funding Sources for FY2007-09

FY	Aircraft Usage	Fleet Management Administrative Fee Income	Total
2007	\$724,002	\$1,196,667	\$1,920,669
2008	\$898,659	\$1,602,334	\$2,500,993
2009	\$914,209	\$1,856,744	\$2,770,953

Source: Department of Administration

The fee is inequitable, exceeds the Legislature's delegation of authority to the DOA, and causes funding to be redistributed away from activities supporting agency mandates toward the funding of the aircraft fleet. The users of the Aviation Division do not correlate with the fee payers. Several agencies, some of which are significant users of the air fleet are exempt from using the Fleet Management Division for their vehicular services. Conversely, several of the agencies that are most burdened by the fee are not users of or infrequently use the Aviation Division's services. Legislative Services legal counsel finds this arrangement inappropriate, stating that the delegation of authority to charge fees granted by West Virginia Code §5A-3-48&52 is expressly tied to vehicle usage and cannot be used for other purposes.

Recommendation

The Legislative Auditor recommends that the Legislature should consider eliminating the Fleet Management Administrative Fee by considering directly appropriating the funds necessary to overcome the revenue shortfall in the operation of the Aviation Division.

Legislative Services legal counsel finds this arrangement inappropriate, stating that the delegation of authority to charge fees granted by West Virginia Code §5A-3-48&52 is expressly tied to vehicle usage and cannot be used for other purposes.

OBJECTIVE, SCOPE & METHODOLOGY

This policy review of the Aviation Division was conducted according to West Virginia Code §4-2-5.

Objective

The purpose of this review was to determine the funding mechanisms used to overcome the revenue shortfall of the Aviation Division. This included analyzing the relationship between the monthly \$92 Fleet Management Administrative Fee and the Aviation Division's operations. Included in this analysis are examinations of the Fleet Management Administrative Fee, exemptions to the fee, and the revenue generated by the operation of the Aviation Division. The analysis also dealt with the usage of the Aviation Division by agencies that are exempt from paying the fee. The final goal of this report is to determine how the fee is levied and whether or not it is an appropriate funding structure.

Scope

The scope of this report encompasses the levying of the Fleet Management Administrative Fee and the funding of the Aviation Division since 2007. The recommendation is based on West Virginia Code, the Code of State Rules, Legislative Counsel's opinion, and the technical analysis of the Fleet Management Administrative Fee.

Methodology

The methodology of this report focused on the manner by which the Fleet Management Administrative Fee is levied, the fee's legitimacy, and the impact the fee has on agency operations. In order to establish the manner by which the fee was levied, the Legislative Auditor requested and received documents from the Department of Administration. The question of legitimacy of the fee was analyzed by focusing on the legality of the issue. In order to understand the legal rationale used by the Department of Administration for the Fleet Management Administrative Fee, the Legislative Auditor requested legal opinions from the Department of Administration and Legislative Services' legal counsel. Finally, to understand the scope and impact of the fee, the Legislative Auditor requested lists of the agencies charged the Fleet Administrative Fee and the total revenue generated by the leasing of aircrafts by the Aviation Division since 2007. All aspects of this review followed the Generally Accepted Governmental Auditing Standards (GAGAS).

ISSUE 1

The Aviation Division's Revenue Shortfall Should Be Appropriated by the Legislature Instead of Funded Through Inter-Agency Fees on Automobile Fleet Rentals.

Issue Summary

The Department of Administration (DOA) has oversight responsibilities over the Aviation Division. The Aviation Division had 11.0 full-time staff, 5 aircrafts and a total budget of \$2.4 million in fiscal year 2009. The DOA charges state agencies a fee when they use aircraft transportation provided by the Aviation Division. However, the user fee for aircraft use that is charged by the DOA is insufficient to cover the Aviation Division's expenses. In FY 2009, the revenue shortfall from aircraft user fees was over \$1.8 million. In order to make up this revenue shortfall, the DOA has been charging state agencies who lease state vehicles a surcharge of \$92 a month, in addition to the monthly leasing fee. Consequently, many state agencies are helping to subsidize the cost of the Aviation Division yet do not, or infrequently use aircraft transportation from the Aviation Division. The \$1.8 million that is being taken from state agencies some of which rarely if ever use the Aviation Division's transportation are denied the use of these funds for direct agency purposes. This arrangement creates opportunity costs that redistribute funding away from activities supporting the paying agencies' missions and into the funding of the aircraft fleet. This creates an inequitable and onerous fee for many agencies. The Legislative Auditor recommends that the Legislature consider directly appropriating the necessary funds to mitigate the revenue shortfall of the Aviation Division.

In FY 2009, the revenue shortfall from aircraft user fees was over \$1.8 million. In order to make up this revenue shortfall, the DOA has been charging state agencies who lease state vehicles a surcharge of \$92 a month, in addition to the monthly leasing fee.

The Aviation Division does not generate enough revenue from the rental of the aircraft fleet to fund the Division's operation.

The Aviation Division Operates Under a Revenue Shortfall

The DOA has oversight responsibilities over the Aviation Division. The Aviation Division has 11.0 full-time staff, 5 aircrafts and a total budget of \$2.4 million in fiscal year 2009. The Aviation Division does not generate enough revenue from the rental of the aircraft fleet to fund the Division's operation. In order to make up this revenue shortfall, the DOA charges state agencies who lease state vehicles a surcharge in

addition to the monthly fee to lease state vehicles. This fee (known as the Travel Management Administrative Fee) is currently \$92 monthly per vehicle (\$1,104 annually). In 2005 the fee was \$85. The increase was due in part to the transfer of employees from the Department of Environmental Protection to the Aviation Division. **The Aviation Division is funded by revenue received from state agencies for the usage of aircraft and an administrative fee charged by the Fleet Management Division to agencies for use of the State's fleet (see Figure 1).**

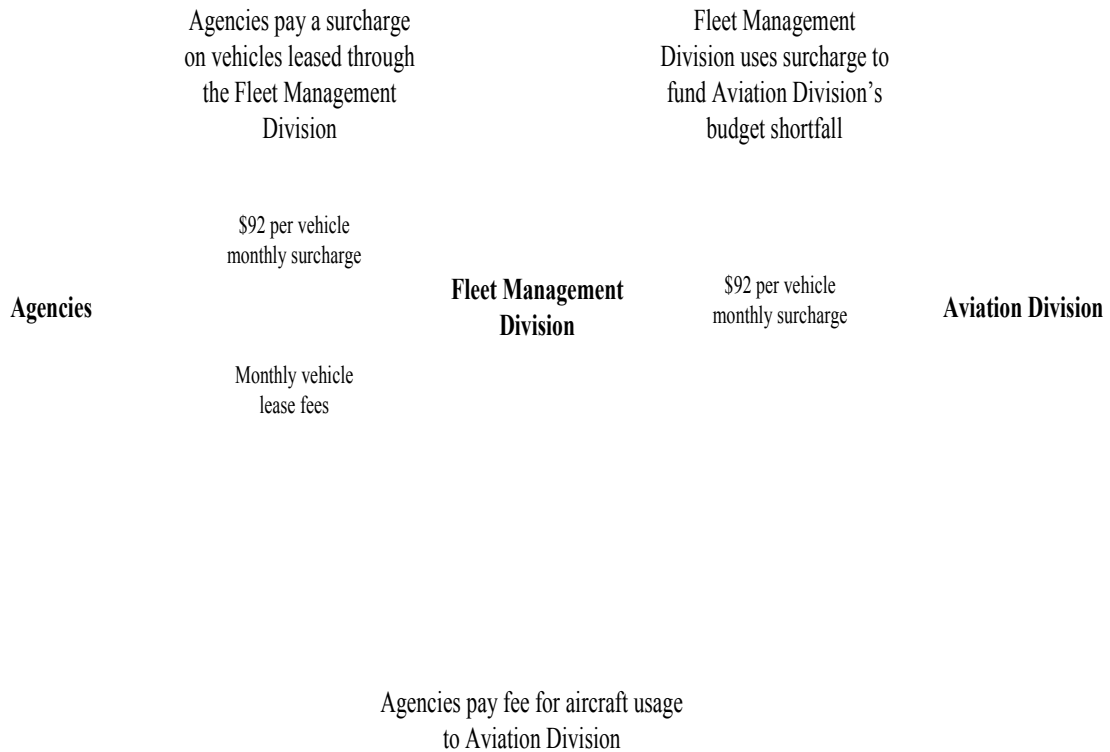
Table 1
Aviation Division's Funding Sources for FY 2007-2009

FY	Aircraft Usage	Fleet Management Administrative Fee Income	Total
2007	\$724,002	\$1,196,667	\$1,920,669
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2009	\$914,209	\$1,856,744	\$2,770,953

Source: Department of Administration

The Fleet Management Administrative Fee raises funds by charging a monthly surcharge on vehicles leased through the Fleet Management Division. This money is directed to fund the revenue shortfall of the Aviation Division.

Figure 1: The Fleet Management Administrative Fee



Source : The Department of Administration

The Fleet Management Division and Aviation Division are both programs that operate under the Purchasing Division of the DOA. The mission of the Fleet Management Division is to:

...provide overall management services for approximately 1,500 vehicles and ensure that the vehicles are appropriate to these transportation needs of the users.

The Fleet Management Division currently employs 4.86 full-time employees. A function of this division is to collect the “Fleet Management Administrative Fee.” This is a monthly surcharge to users of the Fleet that generates nearly \$2 million in internal revenue. The Division manages the leasing of vehicles in accordance with Code of State Rules §148-3-11 and West Virginia Code §5A-3-48&52.

The collection of this fee is used to partially fund the operation of the Aviation Division. It was tasked with consolidating the aviation assets of state government in 2005. The Aviation Division’s operating costs for FY 2008 were \$2,980,040. Revenue generated by the Aviation Division’s leasing of its aircrafts was \$1,602,334 in FY 2008. The Aviation Division’s mission is to:

...enhance the efficiency and effectiveness of state government by providing safe, secure, reliable, and professional air transportation.

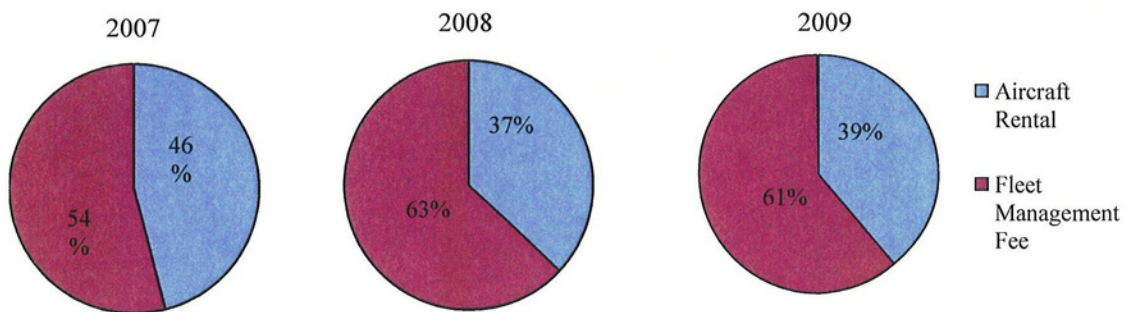
The respective missions of these two agencies are linked, with the Fleet Management Division managing much of the State’s automobile fleet and the Aviation Division managing the aircraft fleet.

Several agencies, some of which are significant users of the air fleet are exempt from using the Fleet Management Division for their vehicular services by West Virginia Code §5A-3-48. The exempt agencies are: the Division of Highways, the West Virginia State Police, the Division of Natural Resources, the Division of Forestry, the Department of Agriculture, the Higher Education Policy Commission and the higher education governing boards and their institutions.

The Aviation Division’s operating costs for FY 2008 were \$2,980,040. Revenue generated by the Aviation Division’s leasing of its aircrafts was \$1,602,334 in FY 2008.

The agencies not exempt are charged the monthly administrative fee in addition to the monthly leasing cost for using vehicles in the State’s automobile fleet. **During FY 2007-2009, the administrative fee collected by the Fleet Management Division funded a majority of the operations of the Aviation Division, as shown in Figure 2.**

Figure 2: Revenue Sources for Aviation Division for FY 2007-2009



Source: Department of Administration

State Agencies That Do Not or Infrequently Use Aircraft Transportation Are Paying for the Cost of the Aviation Division

As stated previously, there are eight agencies that are exempt from using the state’s vehicular fleet. While some of the exempt agencies have maintenance needs caused by specialized vehicles, generally it is difficult to discern why some agencies have an exemption and others do not. The West Virginia State Police and Division of Highways are among the top users of the Aviation Division. Several of the agencies that are exempt from the Fleet Management Administrative Fee are users of the aviation services that are indirectly funded through this arrangement.

Table 2
Usage of Aviation Division by Agency FY 2007-2009

FY	West Virginia State Police*	Governor's Office	Department of Environmental Protection (Not Including Mining & Reclamation)	Division of Highways*	Mining & Reclamation	Other**	Total
2007	\$71,750	\$284,343	\$135,320	\$13,510	\$213,730	\$170,198	\$888,851
2008	\$127,310	\$250,976	\$81,180	\$39,348	\$234,260	\$170,444	\$903,518
2009	\$157,260	\$192,597	\$71,542	\$40,850	\$318,760	\$128,402	\$909,411

*Denotes agency exempt from paying the Fleet Management Administrative Fee
 ** Another exempt agency, The Division of Natural Resources also used the Aviation Division
 Source: Department of Administration

Conversely, several of the agencies that are most burdened by the Fleet Management Administrative Fee are not users of or infrequently use the Aviation Division's services. The Department of Health and Human Resources paid \$47,180 in the Fleet Management Administrative Fee in 2008 but logged only 4.1 hours on state aircraft.

Table 3
Top Fleet Management Administration Fee Payers by Agency FY 2007-2009

FY	ABC	Department of Labor	DHHR/OHFLAC	Environmental Enforcement	Miners Health Safety & Training Admin	Motor Vehicles	Public Service Commission
2007	\$29,060	\$39,466	\$31,725	\$43,717	\$72,143	\$38,831	\$78,741
2008	\$38,402	\$52,666	\$47,180	\$63,722	\$104,656	\$50,218	\$119,088
2009	\$39,744	\$57,316	\$51,428	\$75,164	\$124,752	\$55,016	\$118,496

Source: Department of Administration

The users of the Aviation Division do not correlate with the fee payers. During FY 2007-2009 five agencies (Alcohol Beverage Control Administration, Department of Labor, the Public Service Commission, Division of Motor Vehicles, and Miners Health Safety & Training and

Administration) accounted for \$1,018,595 in payment of the Fleet Management Administrative Fee. During that time period none of these agencies used the aircraft in the Aviation Division, although they paid 21.87% of the total Fleet Management Fees collected.

Table 4	
Percentage of Total Administrative Fees Paid Since FY 2007	
Public Service Commission	6.79%
Miners Heath, Safety & Training Admin.	6.48%
Department of Labor	3.21%
Motor Vehicles	3.09%
Alcohol Beverage Control	2.30%
Total:	21.87%
<i>Source: Department of Administration</i>	

Since the Aviation Division does not fully recover its operating costs by leasing the State’s air fleet, it relies on this funding arrangement with the Fleet Management Division. This is due in part to the high variability of costs of the operation of the Aviation Division. Variable costs such as fuel costs and aircraft maintenance can limit the predictability of operating costs. Furthermore, there is inelasticity in the Division’s revenue model because there is a price point for using aircraft in the fleet above which, agencies would cease to use these services. Since the State already has the capacity to operate the air fleet, it is advantageous that the aircraft usage rates be priced to allow agencies to use the service. However, this means that the Division is unable to fully fund the cost of operation of the fleet by passing costs on to users of the air fleet because it would make using the Aviation Division too costly to agencies. This revenue shortfall is ameliorated by the Fleet Management Administrative Fee. This fee causes opportunity costs that redistribute funding away from activities supporting an agency’s mission and into the funding of the aircraft fleet. This creates an inequitable and onerous fee for many agencies.

Since the State already has the capacity to operate the air fleet, it is advantageous that the aircraft usage rates be priced to allow agencies to use the service.

The Levying of the Fleet Management Administrative Fee Exceeds the Legislature’s Delegation of Authority to the Department of Administration

The Department of Administration cites West Virginia Code §5A-3-48&52 and the Code of State Rules §148-3-11 as the legal rationale for its administrative fees. The Legislature delegated general authority to the DOA in WVC §5A-3-48 to:

...promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned by the state of West Virginia...

The rule promulgated (Title 148 §3-11) grants the travel management office authority to set the rates for leases at the departmental level subject to the approval of the DOA. Specifically, §11.12.1 reads:

The rates will provide for reasonable vehicle expenses, including, but not limited to, authorized fuel purchases, preventative maintenance, general maintenance and repairs, insurance, tires, insurance, depreciation, replacement and administrative costs. However, the spending unit will be responsible for all expenses related to abuse and/or misuse of the vehicle.

According to Legislative Services legal counsel, the delegation of authority to charge fees granted by West Virginia Code §5A-3-48&52 is expressly tied to vehicle usage and cannot be used for other purposes. Counsel opined:

All the provisions I have found in the rules that allow an agency to be charged, only allow charges in the context of leasing of vehicles. None of these provisions authorize the Department of Administration to charge agencies a general fee that does not directly relate to vehicle usage.

In the case of the Fleet Management Administration Fee, the assessment is legally tied to the operation of leased vehicles. Nevertheless, the surcharge is used to fund the Aviation Division’s operations. Counsel

concluded that the fee expressly used to fund the Aviation Division exceeds the narrow delegation from the Legislature. The full legal opinion is provided in appendix B. The legal opinion states:

Consequently, it appears the Department of Administration does have express authority to charge state agencies for the leasing of vehicles under the above-cited code sections and rules. It does not however have express authority to charge agencies a general fee that does not directly relate to vehicle usage in order to fund the Aviation Division.

Conclusion

In sum, the Aviation Division operates with a special revenue shortfall. The Department of Administration partially funds the Division through the Fleet Management Administrative Fee. This fee is a surcharge for users of the State's vehicular fleet. This arrangement creates opportunity costs that redistribute funding (more than \$1.8 million annually) away from activities supporting an agency's mission and into the funding of the aircraft fleet. Furthermore, agencies are charged fees to subsidize the Aviation Division disproportionate to their aircraft usage. Therefore, the Legislature should consider directly appropriating the necessary funds to mitigate the revenue shortfall of the Aviation Division.

Recommendation

The Legislative Auditor recommends that the Legislature should consider eliminating the Fleet Management Administrative Fee by considering directly appropriating the funds necessary to overcome the revenue shortfall in the operation of the Aviation Division.

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia
Director

August 27, 2009

Robert W. Ferguson, Jr.
Cabinet Secretary
State of West Virginia
Department of Administration
Capitol Building 1, Rm E 119
1900 Kanawha Boulevard, East
Charleston, WV 25303

Dear Secretary Ferguson:

This is to transmit a draft copy of the report entitled "The Aviation Division's Revenue Shortfall Should be Appropriated by the Legislature Instead of Funded Through Inter-Agency Fees" administered by the Department of Administration. This report is scheduled to be presented at the interim meeting of the Joint Committee on Government Operations and the Joint Committee on Government Organization Wednesday, September 16, 2009 from 11:00 a.m. to 1:00 p.m. in the House Chamber. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting prior to September 4, 2009. Please notify us to schedule an exact time. In addition, we need your written response by noon on September 4, 2009 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, September 10, 2009 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of Denny Rhodes in black ink.
Denny Rhodes

Enclosure

_____ *Joint Committee on Government and Finance* _____

Appendix B: Legislative Services Legal Opinion

I N T E R

**LEGISLATIVE
SERVICES**

O F F I C E

MEMO

To: Denny Rhodes, Research Manager
From: Randall Elkins, Counsel
Subject: Department of Administration- Aviation Division Fees
Date: August 26, 2009

I am writing in response to the letter you sent posing the following questions:

Is it legal for a state agency to charge a fee to other state agencies to fund the activities of a division? If so, should this power be explicitly delegated from the legislature via statute and not occur through a rulemaking?

Is it legal for the Fleet Management Division to charge agencies a general fee that does not directly relate to vehicle usage in order to fund another division (in this case the aviation division)?

The West Virginia Supreme Court of Appeals has repeatedly made the following statements in reviewing actions of state officers and agencies to determine if their actions were authorized:

- Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication.
- Administrative agencies possess such powers as are reasonably and necessarily implied in the exercise of their duties in accomplishing the purposes of the statutes they are charged with administering.
- Although an express grant of powers to an agency will be determined to include such other powers as are necessarily or reasonably incident to the powers granted, the powers should not be

Denny Rhodes, Research Manager
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extended by implication beyond what may be necessary for their just and reasonable execution.

W. Va. Code §5A-3-48 requires the Secretary of Administration to promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned by the State of West Virginia and in the possession of its departments, institutions or agencies. W. Va Code §5A-3-52 recognizes that there may be allocations of costs and charges for operating, repairing and servicing motor vehicles and aircraft made against state institutions, agencies or departments.

Read together, these two code sections provide express authority for the Department of Administration to allocate the cost of "operating, repairing and servicing motor vehicles and aircraft" among state institutions, agencies or departments. The allocation must be done pursuant to rules promulgated under the authority of W. Va. §5A-3-48 or other statutory authority. The rules implementing these provisions are in 148 CSR 3. The rules include provisions addressing the leasing of vehicles from the Department of Administration and how the costs are to be charged to the leasing agency.

All the provisions I have found in the rules that allow an agency to be charged, only allow charges in the context of leasing of vehicles. None of these provisions authorize the Department of Administration to charge agencies a general fee that does not directly relate to vehicle usage.

Consequently, it appears the Department of Administration does have express authority to charge state agencies for the leasing of vehicles under the above-cited code sections and rules. It does not however have express authority to charge agencies a general fee that does not directly relate to vehicle usage in order to fund the Aviation Division. In the absence of express authority for this fee the Department of Administration should have implied authority in order to justify the imposition of such a fee. The above-cited statutes and rules do not provide such implied authority, and I have found no other provisions that would provide a basis for implied authority for such a general fee. Therefore it is my opinion that the Department of Administration lacks the authority to impose the subject fee.

I hope this adequately addresses your questions. If you need further assistance in this matter, do not hesitate to contact me.

Appendix C: Agency Response



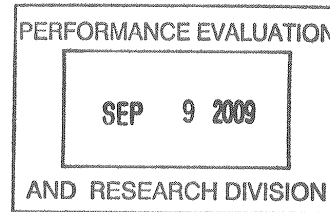
STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

JOE MANCHIN III
GOVERNOR

ROBERT W. FERGUSON, JR.
CABINET SECRETARY

September 4, 2009

Mr. Denny Rhodes
West Virginia Legislature
Performance Evaluation and Research Division
1900 Kanawha Boulevard, East
Building 1, Room W-314



Re: Aviation Fees for Aircraft Usage & Fleet Monthly Fee

Dear Mr. Rhodes,

I am in receipt of your letter of August 27, 2009, and the report on the fleet management fee used to fund the Aviation Division. The Department of Administration (the "Department") disagrees with the legal interpretations and conclusions of the West Virginia Legislature's Performance Evaluation and Research Division as set forth in the report entitled, "The Aviation Division's Revenue Shortfall Should be Appropriated by the Legislature Instead of Funded Through Inter-Agency Fees" dated August 27, 2009 (the "Report") related to the scope of authority provided to the Department as it relates to the assessment of a fleet management administrative fee to certain state spending units and offers the following as its response:

According to *express statutory* authority, the Department shall not only "promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned by the state of West Virginia", as delineated in W.Va. Code § 5A-3-48 (and as cited in the Report), but also has authority to designate storage requirements and provide for the manner of use and availability of all vehicles and aircraft subject to its regulation.

In addition, the Department has *express statutory* authority to "utilize any building or land owned by the state for the storing, garaging, and repairing" and provide for the employment of necessary personnel to manage and maintain such motor vehicles and aircraft in accordance with W.Va. Code § 5A-3-51.

DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

Moreover, the Department has *express statutory* authority pursuant to W. Va. Code §5A-3-52, to assess a fee to all applicable institution, agency, or department for all charges and costs associated with the operation, repair, and service of motor vehicles and aircraft.

Further, all allocations of costs and charges for operation, repair, service, acquisition of motor vehicles and aircraft assessed to the various institutions, agencies, or departments are deposited or transferred to a special fund for travel management are appropriated by the legislature to carry out the above purposes and shall be "paid out as the secretary may designate". W.Va. Code § 5A-3-52.

Therefore, it is clear from the above referenced code sections and the unambiguous language used by the legislature, that the Department has not exceeded its delegated authority, but has express authority to not only assess a fee, or surcharge, for the acquisition, operation, maintenance and repair, and personnel needs to maintain a fleet of state *vehicles*, but also has express authority to assess a fee, or surcharge, for the acquisition, operation, maintenance and repair and personnel needs to maintain a fleet of state *aircraft*.

The legislative rules promulgated under authority of W.Va. Code § 5A-3-48, specifically Code of State Rules § 148-3-5, § 148-3-11.1, and § 148-3-11.12, operate to further support the assessment of lease rental rates and charges by the Department through its Travel Management Office to applicable state institutions, agencies, or departments for all expenses associated with the acquisition, operation, maintenance and repair and personnel needs to maintain a fleet of state vehicles, including that of *aircraft* by virtue of the rule-making authority provided by W.Va. Code §5A-3-48.

If you have any questions, or need any additional information, please do not hesitate to contact me.

Sincerely,


Robert W. Ferguson, Jr.
Cabinet Secretary



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