

Opinion No. 80-04

February 11, 1980

OPINION OF: Jeff Bingaman, Attorney General

BY: Peter L. Dinelli, Assistant Attorney General

TO: Mr. William S. Huey, Secretary, Natural Resources Department, Villagra Building, Santa Fe, New Mexico 87503

PUBLIC OFFICERS AND EMPLOYEES

State vehicles on official business may not be used to pull or haul personal vehicles.

QUESTIONS

May a public officer or employee use any state motor vehicle while on official business to pull or haul personal vehicles such as trailers and motor bikes?

CONCLUSIONS

No.

ANALYSIS

The use of state motor vehicles is subject to rules and regulations promulgated by the Department of Finance and Administration and the Property Control Division of that department.

OPINION

The duties of the Secretary of the Department of Finance and Administration as defined by Section 9-3-5 NMSA 1978 provide that he:

". . . may make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions."

Pursuant to Section 15-3-25 NMSA 1978, the director of the Property Control Division of the Department of Finance and Administration:

". . . shall have custody and control of all motor vehicles designed primarily for passenger use which are the property of the state or which are for the public use of any agency or officer and shall make rules governing the maintenance and use of all vehicles of this state under his control"

Effective December 1, 1978, the Department of Finance and Administration enacted Rule 78-9 governing the state transportation pool and the operation and use of state motor vehicles for public purposes. Section 1 of that regulation provides, in part:

"A. State vehicles should be used by public officers and employees only when necessary to perform official state business The use of state vehicles is discouraged if:

(1) any part of the trip will involve personal business;

* * *

(3) any social event or other entertainment is scheduled as a part of the trip even though such social event or entertainment is in the furtherance of official state business."

In addition, Section 13 of Rule No. 78-9 provides, in part:

"A. . . . state officers and employees are authorized to use state {**112*} vehicles only in the furtherance of official state business. 'Official state business', as used in this section, does not include:

(1) transportation of a state officer or employee between his place of residence and place of employment unless such transportation is a part of an official business trip;

(2) transportation to carry out personal business such as shopping; or

(3) transportation to or from a social function unless the social function is necessary in the furtherance of official state business."

It has been well-stated that rules promulgated pursuant to statutory authority may have the force and effect of law. See, e.g., **Regents of New Mexico College of Agriculture and Mechanical Arts v. Albuquerque Broadcasting Co.**, 158 F.2d 900 (10th Cir. 1947). Laws should be construed to achieve the purpose for which they were intended. **Tijerina v. Baker**, 78 N.M. 770, 438 P.2d 514 (1968). Thus, Rule 78-9 should be construed in accordance with its intended purpose and although it does not specifically prohibit the use of state vehicles for hauling or pulling personal vehicles while on official business, it is apparently intended to prohibit any personal use of state vehicles. Given the context of the rule and the emphasis on "official state business" only, it would be inconsistent to find that a dual use of state vehicles, official and unofficial, is permitted under the rule because it is not expressly prohibited. Moreover, Section 15-3-30 NMSA 1978 provides that:

"Any person who shall use any motor vehicle which is the property of the state or designated for the use of the state or any department or agency thereof for private use or purposes of pleasure shall be deemed guilty of a misdemeanor and for such offense

shall be punished by a fine of not less than \$50.00 (fifty dollars), or by imprisonment in the county jail for not more than three (3) months or by both such fine and imprisonment."

Thus, under applicable regulation and law, state vehicles may not be used for any purpose other than official state business.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General