



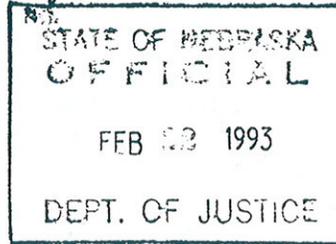
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#93010



DATE: February 19, 1993

SUBJECT: State-Owned Vehicles; Authority of the Transportation Services Bureau of the Department of Administrative Services to Acquire Motor Vehicles for use by State Agencies.

REQUESTED BY: Senator Rex Haberman
 Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
 Fredrick F. Neid, Assistant Attorney General

This is in response to your request for an opinion of this Office regarding the authority of the Transportation Services Bureau of the Department of Administrative Services to acquire vehicles by lease rather than purchase. You have referenced Neb. Rev. Stat. § 81-1010 (Reissue 1987) which includes the term, state-owned motor vehicles, within its provisions. Your specific question is whether vehicles acquired by lease "can be considered ownership for purposes of the above-referenced statute." You have indicated that you are considering proposing legislation concerning this subject.

After review of pertinent statutes, it is our opinion that motor vehicles acquired by lease may not be considered to be "state-owned motor vehicles" as that term is used and defined in Nebraska statutes. Accordingly, the Transportation Services Bureau lacks requisite authority to lease rather than purchase motor vehicles for use by state agencies, boards and commissions.

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It is the duty of the Transportation Services Bureau to acquire motor vehicles by purchase, centralize the title to state-owned passenger vehicles, and provide efficient utilization, operation and maintenance of state-owned vehicles. See Neb. Rev. Stat. §§ 81-1008 to 81-1010 (1987). The term, state-owned vehicles, is defined in Neb. Rev. Stat. § 81-1011 (1987) which states:

State-owned vehicles are defined for the purpose of sections 81-1008 to 81-1017 as all vehicles acquired primarily for the purpose of transporting state employees in their official capacities from one job location to another, but shall not include special-use vehicles, such as buses, laundry trucks, mail trucks, airport security vehicles, military trucks, and cars; vehicles which are considered a duty station, such as vehicles used by the Nebraska State Patrol, the Nebraska Oil and Gas Conservation Commission, or game wardens; or those vehicles which, by nature of their usage, require the installation or carrying of special equipment which precludes the use of such vehicles for multiple agency transportation usage.

While property that is leased is partially owned at least to the extent of the leasehold interest, ownership usually connotes more than mere possession and includes legal or rightful title to the property. Further, direct ownership of state-owned vehicles and holding title to the vehicles by the Transportation Services Bureau is expressly required. Neb. Rev. Stat. § 81-1015 (1987) states:

Subject to the provisions of section 81-1013, the transportation services bureau shall own and hold title, in the name of the State of Nebraska, to all state owned licensable passenger vehicles. All purchases of state-owned passenger vehicles and automotive equipment shall be made or approved by the transportation services bureau. The Director of Administrative Services shall not approve any voucher for the purchase of any passenger car unless submitted by the transportation services bureau.

(Emphasis added).

Use of the word, shall, in Section 81-1015 makes ownership and holding title in the name of the State of Nebraska to the vehicles by the Transportation Service Bureau mandatory. Nebraska rules of statutory construction attach mandatory action to the word, shall, used in statutes. Neb. Rev. Stat. § 49-802(1) (1988) in relevant part states: ". . . When the word shall appears, mandatory or

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ministerial action is presumed." Further our Supreme Court has similarly construed the word "shall" and determined that use of the word disclosed legislative intent that mandatory action was intended. See *Bank of Gering v. Glover*, 192 Neb. 575, 223 N.W.2d 56 (1974); *Anderson v. Carlson*, 171 Neb. 741, 107 N.W.2d 535 (1961).

For these reasons, we conclude that the Transportation Services Bureau is authorized to acquire state-owned vehicles by purchase only and is not authorized to lease motor vehicles for use by state agencies, boards and commissions for the conduct of official business.

Sincerely yours,

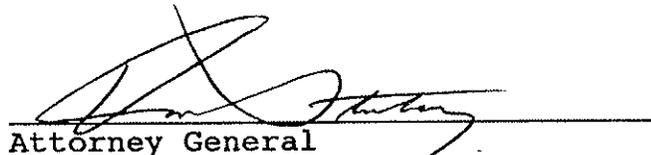
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cc: Patrick J. O'Donnell
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Approved By:



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