MEMO

Date: December, 2014

TO: NDUS LCC Members

FROM: Cynthia Wagner Goulet, Assistant General Counsel
Office of NDUS General Counsel— Bismarck

RE: Inquiries regarding use of state fleet vehicles

The following discussion is presented, as examples of specific and generalized inquiries from some of the institutions relative to use of state vehicles by or on behalf of employees and students. Because many situations need to be determined on a case-by-case basis, **this information is offered as guidance, and does not serve as an official position or rule of the State or of the NDUS Office of General Counsel.**


Scenarios presented:

1. Travel to specified events, seminars or conferences, by students who are in certain classes, and students are required to participate in such activities; outings or field trips which are a part of the class syllabus, and students are required to participate in such excursions. The vehicle will be driven by the institution employee (instructor), and if necessary, by student(s) who have been assigned such task by competent authority. A student so assigned is thereby acting as a volunteer employee of the institution for purposes of driving the state vehicle. Examples given include students in the Diesel, Ag, and Manufacturing Tech classes attending Big Iron Conference; plumbing and HVAC classes touring a nearby ethanol plant; business class students attending a state competition.
   - Generally speaking, requests to use state vehicles for transporting students who are enrolled in a class which has, as part of its class syllabus, a requirement that the students participate in such activities are likely to be authorized.

2. Travel by student clubs for purpose of attending activities and events which are educational in nature. Example given: Campus Welding Club to tour area manufacturer.
   - Requests for use of state vehicles by student clubs for such excursions are not likely to be authorized. See discussion in NDUS Guide to Authorized Use of State Fleet Vehicles, and in particular, its discussion in section “Use of State Vehicles by Student Groups,” pages 2 – 4.

3. Club hockey team, for transportation to and from the games. Team sets its schedule, games and practices; team has a coach who is not an institution employee; team is funded primarily by monies from its members; team is not supervised, controlled or directed by institution.
   - Requests for use of state vehicles by club teams are not likely to be authorized.
4. Students from a culinary arts class driving state vehicles to deliver food around campus, for campus events for which the class has prepared the food.
   • Depends: For example, depends on whether the class syllabus requires that students prepare and provide the food to specified events, and depends on whether the students who drive the state vehicles have been delegated such a task on behalf of the institution by competent authority.

   NOTE: Only state employees can operate the vehicles. While a “grand opening” of a new building on campus may be official state business, there is still the matter of assigning by competent authority the tasks of operating vehicles to occur in connection with that business.

5. RAs using state vehicles to transport furniture around campus.
   i) The furniture is owned by the institution, and the RAs are moving the furniture as directed by campus officials, to places and for use by students; ii) the furniture is owned by students who are moving into campus housing.
   i) The RA is typically considered an employee of the institution. RA’s duties appear to include moving institution owned furniture around campus to designated sites for use by students. Operation of a state vehicle to accomplish this task appears to be within scope of employment and requests to use state vehicles will likely be authorized.
   ii) The use of state owned vehicles to provide a helpful service to students who are moving onto campus is not likely to be authorized.

6. Residence Life using vehicles to take its employees, specifically the RAs, on team building trips, which may include, for example, ski trips and camping trips.
   • The RAs are employees of the institution, and these outings are apparently provided by the employer as part of employee training. Participation in these outings is mandatory. While such information supports a request to use state vehicles, the institution must give serious consideration to whether such use of state resources and public monies is appropriate or prudent.

7. Culinary Arts Club using vehicles to i) transport off campus high school students who are participating in on-campus summer culinary camps sponsored by the Culinary Arts Club; and ii) transporting members of this Club to an ethnic restaurant in another city for dining experience.
   i. A request to use state vehicles by a Club for an activity which it is sponsoring on campus is not likely to be authorized.
   ii. A request by the Club to use state vehicles for a dining outing by its members is not likely to be authorized.

8. May institutions use state vehicles in order to transport participants in various summer camps which are sponsored, scheduled and staffed by the institution and are held on-campus, but also may involve off-campus sites. Camps include, by way of example, sports camps, technology camps, and space camps, and are most often for students of high school or younger age. May state vehicles be used to transport the campers around the campus and around the community?
   • Requests to use state vehicles will likely be authorized when transportation is a necessary and required component of the camp curriculum; if the use is to transport camp participants to voluntary and recreational purposes, a request to use state owned vehicles will likely not be authorized.
9. Student Life using state vehicles to move supplies around campus, during Homecoming festivities.  
   • Depends: Are Student Life members employees of the institution? If yes, do their duties include preparing campus sites for Homecoming festivities? If yes, then operation of a state vehicle to accomplish this task appears to be within scope of employment and will likely be authorized.

10. Using state vehicles in order for students to attend, at their option (not in connection with a class) and participate in a competition, such as Midwest Instruction and Computing Symposium and SkillsUSA. Additionally, the students are considered to be representing the institution at these competitions, and such institution directive is documented. An institution employee will be accompanying the students, as Advisor. All use of state vehicles will be connected to attendance (transportation to and from) of the scheduled event.  
   • A request to use state vehicles on behalf of these students is likely to be authorized.

11. Drama Club requests to use state vehicles so that its members may participate in regional, out of state College Theatre Festival, which is both a competition (drama club members must present a show) and an educational workshop. The Club is not representing the institution at such event.  
   • A request to use state vehicles on behalf of the Drama Club is not likely to be authorized; see NDUS Guide to Authorized Use of State Fleet Vehicles, and in particular, its discussion on pages 2 – 4, Use of State Vehicles by Student Groups.

12. Use of state vehicles to pick up employment applicants from/to airport, transport them to/from campus and hotel and restaurants, and to provide tours of city/area.  
   • The fundamental question that needs to be asked is whether they are in the vehicle for institution’s benefit or their benefit. Transporting potential recruits, candidates, consultants, job applicants, etc. from/to the airport, if they are being picked up for “official purposes,” would be authorized for purposes of N.D.C.C. chapter 32-12.2. If the reason is not furthering state business or a state objective, but rather for convenience, being helpful, nice or courteous, it would not be authorized.

13. Use of state vehicles to pick up student athlete recruits from/to airport, transport them to/from campus and hotel and restaurants, around community and to games played in vicinity by athletic teams of the institution.  
   • The fundamental question that needs to be asked is whether they are in the vehicle for institution’s benefit or their benefit. Transporting potential recruits, candidates, consultants, job applicants, etc. from/to the airport, if they are being picked up for “official purposes,” would be authorized for purposes of N.D.C.C. chapter 32-12.2. Touring the campus and its facilities would likely be considered official purposes. Other transportation would not be considered official state business.

   For example, a potential recruit for an official campus sport could be picked up at the airport and brought back to tour the campus for the purpose of signing the student athlete. In this situation, the potential recruit is in the vehicle for the State’s official purposes, namely developing a good official sports program and trying to get the student to sign.
14. When employee is driving with student(s) on a properly approved and long trip, and employee becomes too tired to drive, may employee direct that student to assist with driving the state vehicle?

- A student may be delegated by competent authority the task of driving a vehicle in connection with traveling on official state business. Is this employee one with competent authority to delegate such a task to the student? The student would effectively become an employee of the state, for purposes of liability protection when driving the vehicle. The qualification of the particular student to operate a state vehicle must be considered same as any other state employee; at minimum, the student driver must have a valid driver’s license. State Fleet also requires a form to be on file, which lists those proposed drivers of state vehicles; see State Fleet Manual at: [www.dot.nd.gov/manuals/fleet/fsmanual.pdf](http://www.dot.nd.gov/manuals/fleet/fsmanual.pdf). Obviously, the matter of delegating a student to drive a state vehicle by competent authority should be addressed prior to the trip.