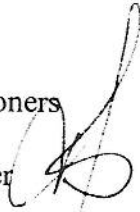




COUNTY OF LEHIGH
OFFICE OF THE CONTROLLER

LEHIGH COUNTY GOVERNMENT CENTER
17 SOUTH SEVENTH STREET
ALLENTOWN, PA 18101-2400
(610) 782-3082 FAX: (610) 820-3335

TO: Lehigh County Board of Commissioners
FROM: Thomas Slonaker, County Controller 
DATE: January 16, 2009
RE: Special Request Audit – Sheriff's Use of a County Vehicle

We have completed a special request audit of the Sheriff's use of a county vehicle for the period July 2007 to June 2008. Our audit report number 09-5 is attached.

The results of our audit are:

- Use of the Sheriff's vehicle has not been recorded in sufficient detail to determine if the Sheriff is in full compliance with the county vehicle policy.
- A committee should be formed to study and make recommendations to update and improve the county vehicle policy.
- The commissioners should establish a centralized authority to replace individual department authority for new or replacement vehicles.

Attachment

AUDITS/SHERIFF'S USE OF COUNTY VEHICLE

COUNTY OF LEHIGH, PENNSYLVANIA
SHERIFF'S USE OF A COUNTY VEHICLE

Special Request Audit
For the Period July 2007 to June 2008

REPORT NO. 09-5

COUNTY OF LEHIGH, PENNSYLVANIA
SHERIFF'S USE OF A COUNTY VEHICLE

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Lehigh County Board of Commissioners
Lehigh County Government Center - Room 408
17 South Seventh Street
Allentown, PA 18101-2400

RE: Special Request Audit – Sheriff’s Use of County Vehicle
Compliance to the County Vehicle Policy – Lehigh County Ordinance 1995-145

Background:

Assignment of 24-hour use of a county vehicle is limited. Only the Coroner, District Attorney, and Sheriff Offices have these “special use” vehicles. Prior to the establishment of the county vehicle policy, passed by ordinance 1995-145, two other county administrative positions had 24-hour vehicles assigned (County Executive and Director of Property Services). The County Executive voluntarily gave up the use of a county vehicle at the beginning of 1994. The enactment of the county ordinance clarified and limited county vehicle usage including 24-hour use.

As of the most current vehicle report (2007-2008) prepared by the Department of General Services, special use vehicles are assigned to:

<u>Office</u>	<u># of Vehicles</u>	<u>24-Hour Use</u>	<u>Confidential</u>	<u>Unmarked</u>
Coroner Office	1	Yes	No	No
District Attorney’s Office (County Detectives, Insurance Fraud, Auto Theft, Drug Task Force)	41	Yes	Yes	Yes
Sheriff’s Office:				
Sheriff	1	Yes	Yes	Yes
Warrants	3	Yes	No	Yes

Audit Request:

On September 19, 2008, our office received an email from Commissioner Andy Roman to formally request an audit of the Sheriff's Department to determine if the Sheriff is in compliance with the County vehicle policy:

1. Compliance with documentation confirming 5 emergency calls per month.
2. Compliance with County vehicle being used for County Business Only and documentation to that effect.
3. Compliance with Decal Markings and Decal "For Official Business Only".
4. Compliance with all reporting requirements, mileage logs, etc.

The request was specifically directed at the Sheriff's use of a county vehicle.

As to Commissioner Roman's specific questions:

1. **The Sheriff is not in compliance with 5 emergency calls per month.** This standard although measurable is arbitrary and may be indefensible. All agree the absence of emergency situations is a good thing that does not preclude the continuation of having the Sheriff and his Deputies ready to act in case their presence is required.
2. **There is no documentation as to the Sheriff's vehicle being used solely for county business.** After more detailed records are available, the county administration should determine whether providing a county vehicle to Sheriff is in the best interest of county taxpayers. Decisions on vehicle replacement needs to be centralized (not up individual department heads or elected officials – discussed below).
3. **The Sheriff's car is not marked with the County of Lehigh decal or Sheriff Office decal, nor is it marked "For Official Business Only".** The policy allows for county cars designated by the Sheriff to be used for surveillance or warrant service to be unmarked. There was no documentation as to the Sheriff's car being used for surveillance or warrant service.
4. **The Sheriff did comply with reporting requirements, however, daily detail of the use of his car was not provided.** The monthly reports submitted were inadequate as to detail of the car usage.

Controller's Opinion:

Our audit included an examination of county records, discussions with the affected personnel, and such other auditing procedures we considered necessary to evaluate the Sheriff's vehicle usage and policy compliance. We focused our audit on the period July 2007 to June 2008. To facilitate fact-finding and discussion, we utilized a questionnaire, a copy of which complete with the Sheriff's response is attached to our report.

Based on our audit, we concluded:

- Use of the Sheriff's vehicle has not been recorded in sufficient detail to determine if the Sheriff is in full compliance to the county vehicle policy;
- The current policy, originally issued in 1995, should be updated; and
- Centralized authority for vehicle decision making should be established.

We believe the Commissioner's Administrative Committee should request the Administration update the vehicle policy. The Administration should consider forming an adhoc committee to study and make recommendations to update and improve the county vehicle policy. The committee should include among others, representatives from the Department of General Services and other affected county vehicle users. As always, we remain available to assist in this effort.

We suggest the adhoc committee consider establishing an overall centralized authority replacing individual department authority for new or replacement vehicles. We suggest the county's Department of General Services be responsible for all matters relating to county vehicle assignment and allocation, budget requests for the purchase, leasing, maintenance, retirement, and data collection for the county's fleet of cars, trucks, and other vehicles (DA Office excluded).

Other topics for discussion to update and revise the current vehicle policy could include:

- Reconsider the value of the current assigned vehicle thresholds (800 miles per month, five emergency calls per month, etc.).
- Realignment of vehicle classes by type/alternate use rather than department.
- Establishment of a larger "pool" system. Establishment of central pool versus department assignment except for the 24-hour use vehicles.
- Highest mileage/repair cost replacement policy regardless of assigned department user. Centralized reporting of vehicle breakdowns.
- Periodic re-determination of special use vehicles / need for 24-hour assignment.
- Include accident reporting to incorporate current practices.
- Compilation and reporting of employee use of personal vehicle (miles charged) to the county. Quarterly reporting of employees using their personal vehicle (identification of high mileage - employees using their personal vehicles).
- Evaluate use of GPS technology for selected vehicles.
- Establish a "go green" initiative (biodiesel, emission standards, mpg standards for new vehicles, etc.).
- Establish centralized request / payment for EZPASS.
- Establish system to periodically verify employees PA driver license is valid.
- Establish rules for immediate reporting of PA traffic violations, points assessed, license suspension.
- Establish policy on the use of cell phones/texting while operating a county vehicle.

Report to the Sheriff:

We addressed two specific findings and recommendations to the Sheriff under separate cover. A copy of the final report and his response will be distributed to you when completed. The findings are:

1. Daily Detail Recordkeeping

Condition: The vehicle reports prepared by the Sheriff lack any description of the business use of the vehicle. The Sheriff notes "Official Business" rather than a daily log. Daily travel logs are necessary to provide adequate documentation as to business use.

Recommendations: The Sheriff should keep a daily detail log for mileage and destination(s) using the county form – Monthly Vehicle Report". Daily beginning and ending odometer readings, specific trip descriptions, including commuting mileage, should be clearly recorded by the Sheriff. If others use the vehicle for Sheriff Office duties, the operator should be indicated.

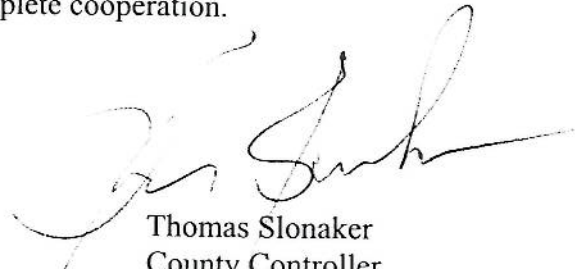
2. EZPASS Traffic Violations

Condition: Vehicles assigned to the Sheriff Office have received five traffic violations in 2007 and 2008 for failure to display the EZPASS transponder when passing through a toll plaza. None of the violations were attributable to the Sheriff's assigned vehicle. These fines were paid by Lehigh County against vehicle policy regulation. The vehicle policy states, "*Employees shall be responsible for all traffic violations including parking tickets.*"

Recommendation: Cease the practice of paying for employee traffic violations. Reconsider the need for EZPASS on Sheriff Office vehicles. The transponders are portable and can be subject to misuse.

This report is intended for the information and use of the Lehigh County Board of Commissioners and other affected county offices. However this report is a matter of public record and its distribution is not limited.

We wish to thank the Sheriff for his complete cooperation.



Thomas Slonaker
County Controller

January 14, 2009
Allentown, Pennsylvania

Attachments: Sheriff Questionnaire
Legal Opinion dated January 6, 2009

xc: Donald T. Cunningham, Jr., County Executive
Brian L. Kahler, Fiscal Officer
Thomas S. Muller, Director of Administration
Ronald W. Rossi, Sheriff

bxc: Jan K. Creedon, Director of General Services
Richard Brent Somach, Esquire, Solicitor to the Sheriff

/County of Lehigh
Sheriff's Office
Interview Questions

Use of County Vehicle.

1. Please confirm the attached list – Chronological County Car Assignment to the Sheriff

This appears to be correct.

2. Do you typically get use of new vehicles assigned to the Sheriff Office?

As the Sheriff, I always take the 1st new arriving car assigned to this office. I prefer to break in the new car according to the Owners Manual, which ensures a longer vehicle life. The next year this car has a cage installed and is turned over to the transport division. Over the years, as the vehicle gains mileage, I reassign it to our local civil process serving division which uses it for its duration of service.

3. When a new vehicle is delivered to your office, what happens to the vehicle you were driving?

The car is put into the transport division for prisoner trips across the state.

4. The total number of vehicles assigned to the Sheriff has remained constant at 16 since 2004. What happens to the old vehicles when new vehicles are assigned to the Sheriff Office?

The highest mileage vehicles are evaluated by Edward "Rusty" Fegely, an expert in his field, and goes to the county auction sale.

5. Monthly vehicle reports show 16,707 miles driven from July 2007 through June 2008.

This appears to be correct.

6. Do you keep a daily log of miles driven, destination(s), repairs etc? If so, are copies available for review?

Yes.

7. Where is the county vehicle parked after normal working hours? Is the vehicle parked on a public road or parking lot overnight?

In the garage at my house or in the parking lot of my apartment.

8. Can you list examples of use of the vehicle for county "official business"?

When I use the vehicle, day or night, the county police radio is on, keeping me abreast of all activities within my office, in addition to the other activities going on countywide. I often attend early meetings with a variety of groups and programs pursuant to my duties as an elected Sheriff. During the day, my assigned car is utilized for the daily bank run of collected county funds, and other activities where an unmarked car is needed. During hospital details one of my deputies or I visit the hospital and speak with the hospital personnel in an attempt to return the defendant to the prison as soon as possible to control overtime expenses. My early evenings are often spent with community groups and programs who have requested my appearance as the elected Sheriff.

9. Can you describe a typical day of use (yesterday for example), can you list, starting in the morning from your personal residence and ending when you returned to your residence to park the car for the evening, the county car usage?

A typical day would start with my driving to the courthouse unless I am scheduled for a meeting elsewhere. On my drive in I monitor the county radio which keeps me abreast of all activities in my office in addition to other law enforcement activities throughout the county. Depending on the circumstances of the day, I may be diverted to another destination if my presence is required. Otherwise, the car remains parked on the LCP lot until I go to the next meeting I may have during the day whether it be at a school, a civic association or a governmental office. My car is also used during the day by my chief deputy to make bank runs and may also be used by other deputies who may be required to transport a prisoner or serve process when other vehicles are not available. This happens often. In the evening I use the car to attend meetings where my presence is requested or required and then I return home.

10. Are you willing to initiate a daily log of use for your county vehicle?

Yes.

11. Are you on-call for county emergencies 24/7?

Yes.

12. Is your car equipped with a radio to stay informed in case of an emergency?

Yes.

13. How do you stay connected if you are away from your car?

Cell phone and/or police radio.

14. What other special equipment is your assigned vehicle equipped with to perform your county duties (cage, emergency lights, sirens, high performance equipment, etc.)?

Police radio and portable red light.

15. Can you list specific emergency situations that occurred in 2007 and 2008 to-date that required your involvement? County policy defines emergencies as: "Emergencies shall be considered calls to an official or employee for immediate response to a situation where failure to quickly respond will result in a life-threatening situation, serious property damage, or a significant disruption to major county services."

Since I would never know in advance when an emergency might occur, I have to be prepared to respond immediately. The county car and radio would be the most effective way to be prepared to respond and assist or resolve the incident.

16. How would your response time be affected if your assigned vehicle was not assigned to you on a 24/7 basis?

Valuable time would be lost responding to an emergency situation if a vehicle was not assigned to the Sheriff on a 24/7 basis. I would have to first obtain a car from the Sheriff's fleet which may or may not be readily available and I would not have access to communication devices such as the police radio in the interim. Also, an official car might better enable me to access a controlled location in an emergency.

17. What vehicles have you owned or leased from January 2007 to the present? If you had a personal vehicle, can you provide copies of auto insurance coverage (declaration page showing you as an insured driver)?

Three vehicles are owned and insured by me.

18. Do other individuals in your household own/lease personal vehicles? Do you have access to other personal vehicles?

Yes.

19. Do you regularly use the county vehicle to commute to and from the courthouse?

Yes.

20. Do you report any commuting mileage to the county Fiscal Office?

No.

21. Do you regularly use the county vehicle to (if yes, please give 2008 examples.):
Travel to county-sponsored events? Yes, The car is used to attend meetings, crime prevention and other programs and commissioners meetings.

Transport prisoners? Not prisoners but this car has been used to transport juveniles during child custody cases in an attempt to minimize their stress.

Conduct surveillance? No

Serve warrants? Yes, This car is always available to be used by any deputy when I am not using it.

Travel outside the county? Yes to attend schools, meetings and programs all of which are work related.

22. If your vehicle is used for surveillance, do you have written approval from the County Administration to be exempt from vehicle marking?

No, however, my car has an official PennDOT confidential license plate.

23. Do you ever use the county vehicle for:

Transporting your family members? Rarely, I will use this car to transport my son if there is an emergency during my work day and his normal caregiver has an emergency and is unable to respond. After handling the emergency I usually return to work.

Going on vacation? No

Picking up groceries or running personal errands? No

Any personal use? Rarely

24. Does anyone else (employee or non-employee) ever drive your assigned county vehicle? (if yes, please give the details, names.)

Yes, County employees only. Other deputies may use the vehicle for bank runs and to serve process or transfer juveniles when it is needed.

25. County records show your personal county gas card (0765) and vehicle gas card (0428) being used for gas at the county utility garage for 832.8 gallons during the July 2007 to June 2008 period.

This appears to be correct.

26. Do you pay for any gas for the county vehicle?

Occasionally when I have used the vehicle on those rare occasions for my personal use.

27. Odometer readings posted at the utility garage gas pump don't always match your assigned vehicle. Do you sometimes also use other Sheriff Office vehicles?

Yes. I will use another vehicle if my assigned vehicle is used by another deputy and I need one prior to mine being returned.

28. How many Sheriff Office vehicles have use of an Easy Pass transponder? Did you utilize any of the Easy Pass transponders during 2007 / 2008? If so, can you provide a copy of statements for 2007 and 2008?

Six vehicles have E-Z Pass transponders. All records for use with E-Z Pass transponders are maintained by the Fiscal Office and available to the Controller.

29. During 2007 or 2008 to-date, did you ever pay any tolls or parking fees while using your assigned county vehicle? (If so, do you have any receipts and were these costs reimbursed by the county?)

Yes, I have paid for tolls and parking fees during 2007 or 2008. I do not use Ez Pass or get receipts or submit for reimbursement.

30. Is your assigned vehicle marked with the county seal on two sides of the vehicle with lettering at least eight inches in diameter ?

Completely unmarked Sheriff law enforcement vehicle. When I am on official business around the county, the car is often parked in areas which, if marked, could provide an opportunity for vandalism or theft.

31. Is your vehicle marked with the Sheriff seal?

No.

32. Is your vehicle marked with the words "Official Use Only".

No.

33. During 2007 or 2008 to-date, have you had any traffic violations while driving your assigned county vehicle (if yes, please describe the details)?

No.

34. Where you ever involved in an accident with your assigned county vehicle (if yes, please describe the details)?

Yes. Approximately ten years ago there was a minor accident with no injuries caused by the other party involved.

JAF 09/30/2008

COUNTY OF LEHIGH
Sheriff's Office
Commissioner's Request

Chronological County Car Assignment to the Sheriff:

			<u>PO #</u>
06/24/04 to 01/26/06	#589	2004 Ford Taurus	
01/26/06 to 11/15/06	#624	2006 Ford Taurus – Grey	121273
11/15/06 to 06/01/07	#631	2007 Ford Taurus – Red	127680
06/01/07 to 06/02/08	#651	2007 Chevrolet Impala – Black	133190
06/02/08 to present	#664	2008 Ford Taurus – Burgundy	139640



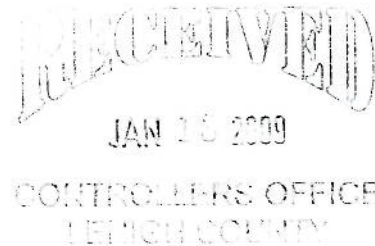
COUNTY OF LEHIGH
Department of Law

Matthew R. Sorrentino
County Solicitor

To: John Falk, Deputy County Controller
Thomas Slonaker, County Controller

From: Matthew R. Sorrentino
Lehigh County Solicitor

Richard Brent Somach
Assistant County Solicitor



Date: January 6, 2009

Re: Sheriff of Lehigh County

RESPONSE TO LSR

Pursuant to the Controller's request, the following response has been prepared, as follows:

Query No. 1: Does the Pennsylvania Sheriff's Association have a view on sheriff car assignments in Pennsylvania?

Response to Query No. 1: In response to an inquiry made of the Solicitor to the Pennsylvania State Sheriff's Association, they were unaware of any sheriff in the Commonwealth that did not have a car provided by the county and that in several of the counties, chief deputies as well as other sheriff deputies were provided with vehicles and many of these vehicles were in their custody and control 24/7/365. This was somewhat of an informal response since apparently this is not a subject that has been thoroughly documented or reviewed, at least in recent years. Therefore, although I believe the information to be substantially accurate, only a survey of all 67 counties would provide better information. Clearly, there is no statutory requirement that the sheriff have a car at his disposal merely by virtue of his office any more than there was a requirement to provide the sheriff, historically, with a horse. On the other hand, it is clear that the sheriff must be given the tools to perform the duties of sheriff which by necessity would require the availability of transportation for the sheriff who is on call 24/7/365.

Query No. 2: Is the Sheriff a "law enforcement officer" by merit of his elected position?

Response to Query No. 2: In a recent line of cases considered by the appellate courts of Pennsylvania, the sheriff's powers have been discussed at length. Starting with the Supreme Court of Pennsylvania decision in 1994 in Commonwealth vs. Leet, the majority of the court

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found that the sheriff has almost limitless powers under common law from before the Norman Conquest and Magna Carta where “the sheriff was chief law enforcement officer of the shire or county” to the present time unless by specific statute the common law power of the sheriff was abrogated. In 1999, Commonwealth v. Kline, opined that where a deputy sheriff had received sufficient training, he could be considered a “police officer” under the Motor Vehicle Code. In 2002, the Supreme Court in Commonwealth vs. Lockridge, unanimously held that a sheriff and his deputies are law enforcement officers as defined by the Pennsylvania Rules of Criminal Procedure (Rule 103) which defines a “Law Enforcement officer” as “any person who is by law given the power to enforce the law when acting within the scope of that person’s employment.” In a Supreme Court decision decided February 28, 2006, Kopko v. Miller, the majority opinion recited that although the Pennsylvania Constitution establishes the office of sheriff, it does not describe the duties of a sheriff and that the powers and duties of sheriffs should be limited to those “authorized or imposed upon them by statute.” Although this case has often been referred to as the case limiting the sheriff’s role as a law enforcement officer, the court made it abundantly clear that the sole question the court was addressing was whether or not sheriffs were investigative or law enforcement officers pursuant to the Wire Tapping Act and should not be considered a reversal of the trilogy of cases referred to above. Finally, in the fifth and most recent Supreme Court decision clarifying the breadth of county sheriff’s authority, the Court in Commonwealth vs. Dobbins, decided November 20, 2007, reviewed the prior four significant cases while deciding that absent specific statutory authorization, sheriffs lacked authority to conduct independent investigations under the Controlled Substances Act.

Thus, it appears that the current state of the law is that a sheriff and his deputies are “law enforcement officers” but that there may be limitations as to the extent of their law enforcement powers if not specifically recognized in certain statutory situations which did not exist at common law such as investigations dealing with wire tapping and controlled substances.

Query No. 3: How do the duties of the Sheriff affect the application of Internal Revenue Service regulations regarding taxable income implications

Response to Query No. 3: It should be noted at the outset with regard to the response to this query that the discussion above regarding whether or not the sheriff and his deputies are law enforcement officers was determined solely through an analysis of state statutes, court rules and appellate case law. With regard to how the federal government, and therefore the Internal Revenue Service, as a part of the federal government, defines law enforcement officer, extensive research was not necessary since the United States Department of Justice considers the Sheriff as the “chief law enforcement officer” in the county (with all due respect to the District Attorney), and reminiscent of the court’s decision in *Miracle on 34th Street*, if no less an authority than the U.S. Department of Justice concludes that the sheriff is the chief law enforcement officer of the county, then it must be so. (See attached ATF E-Form 1). For further analysis of the issue presented, reference is also made to the response to an LSR dated January 26, 1995, authored by the Honorable Madaline Palladino, Lehigh County Solicitor and Emil W. Kantra, II, Esquire, Assistant County Solicitor, regarding IRS Interpretation of Regulation §1.274. This author sees no reason to contradict the analysis of the aforementioned LSR Response, but notes for the

reader that the IRS issued Proposed Regulations on June 6, 2008, that expand the definition of qualified non-personal use vehicles to include clearly marked public safety officer vehicles. Should these Proposed Regulations be adopted, the response to the 1995 LSR should be modified appropriately.

Under the current law, clearly marked police or fire officer vehicles are treated as qualified non-personal use vehicles if the employee must always be on call, the employee must be required to use the vehicle for commuting and the employer must prohibit personal use (other than commuting) for travel outside of the officer's or firefighter's jurisdiction. The proposed regulations would add public safety officer vehicle to this provision and a public safety officer's defined in the United States Code as "an individual serving a public agency in an official capacity, with or without compensation, as a **law enforcement officer**, a firefighter, a Chaplin, or as a member of a rescue squad or ambulance crew." If there was previously any question as to whether or not the sheriff was included in the term "police", it is now irrelevant since the sheriff is clearly a law enforcement officer which is specifically enumerated in the definition of "public safety officer."

Attachments included:

- 1) Commonwealth vs. Leet
- 2) Commonwealth vs. Kline
- 3) Commonwealth vs. Lockridge
- 4) Kopko vs. Miller
- 5) Commonwealth vs. Dobbins
- 6) United States Department of Justice ATF E-Form 1
- 7) IRS Proposed Regulations
- 8) Judge Palladino's Opinion dated January 26, 1995