

1995 Ky. Op. Atty. Gen. 2-1, Ky. OAG 95-1, 1995 WL 40736 (Ky.A.G.)

Office of the Attorney General
Commonwealth of Kentucky

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January 3, 1995

Re: Vehicles Licensed in County's Name Although Personally Owned by Sheriff or Deputy Sheriff; Liability Concerns; Whether County May Pay Monthly Mileage Expense in Such Circumstance. AGO Corr. No. 94-(O)-539.

Hon. Rodney Kirtley
County Judge/Executive
Muhlenberg County Kentucky
P.O. Box 137
Greenville, Kentucky 42345

Dear Judge Kirtley:

By letter of April 16, 1994, you explain, in substance, that vehicles personally owned by the Muhlenberg County Sheriff and his deputies have been licensed with official plates. You ask, in substance, whether the county would be liable should one other than the sheriff or a deputy sheriff (as, for example, a member of the family of the sheriff or a deputy sheriff, or other person other than the sheriff or a deputy, or one who was a deputy sheriff, but was dismissed from such capacity) operate a vehicle registered in the name of the county and become involved in a traffic accident. You also ask, again in substance, whether the county can pay monthly mileage expense in connection with such vehicles.

Privately Owned Vehicle Under Official Registry

First, Kentucky law does not provide for a vehicle owned by a private party to be registered in the name of a governmental unit. See [KRS 186.060\(1\)](#).

Second, [KRS 186.060\(4\)](#) provides:

No person shall use on a motor vehicle, not exclusively owned by a county, city, urban-county, board of education, or emergency and ambulance vehicles operated by non-profit corporations organized by units of government in the state, or the state or federal government, any license plate that has been issued for use on a motor vehicle owned by such a governmental unit.

(Emphasis added.)

The above quoted statutory provision makes it illegal to equip a privately owned vehicle with an official license plate.

We note also that registration and titling of a vehicle in other than the name of the owner would violate [KRS 186A.065](#).

Additional problems, in licensing a privately owned vehicle in the name of a county or governmental unit, arise in connection with likely exemption of a privately owned vehicle, registered and titled in the name of a county, from requisite taxes.

Liability of County

As we understand your letter, you ask about potential liability of the county under two circumstances involving a vehicle licensed in the name of the county being involved in a traffic accident. One circumstance is that of a former deputy operating a vehicle licensed in the county's name. The other circumstance is where a member of the sheriff's family, or member of a deputy sheriff's family, or person other than the sheriff or a deputy, operates a vehicle licensed in the county's name.

The county itself would probably be immune from liability under the doctrine of sovereign immunity. See, for example, [Carr v. Jefferson County](#), 275 Ky. 685, 122 S.W.2d 482 (1938), and, [Cullinan v. Jefferson County](#), Ky., 418 S.W.2d 407 (1967).

*2 Members of the fiscal court might be exposed to a claim of personal liability where proper steps are not taken to stop operation of a vehicle licensed in the name of the county by one other than an authorized county employee. For liability to be found, however, negligence probably would have to be shown on the part of members of the fiscal court. See, for example, [Shearer v. Hall](#), Ky., 399 S.W.2d 701 (1966), and, [Hall v. Midwest Bottled Gas Distributors, Inc.](#), Ky., 532 S.W.2d 449, 453 (1976).

Monthly Mileage Expense

You ask whether the county can pay "these employees" (sheriff and deputies) "monthly mileage expense." Under the facts as we understand them as related in your letter, the "monthly mileage expense" you ask about would be paid for mileage incurred by a vehicle registered in the name of the county. Your letter does not indicate whether such expense payment would be for documented actual mileage in the course of official business. Because of the absence of specific facts we cannot provide a definitive answer to this question.

In our experience, "mileage expense" is a payment to a government employee for the use of his or her privately owned vehicle for actual documented mileage in the course of official business. We do not know if the "monthly mileage expense" asked about in your letter would be payment for documented actual mileage incurred by an employee in the course of using his or her personally owned vehicle for official business.

Subject to proper budgeting, and any general requirements, the county could lawfully pay "monthly mileage expense" for documented actual mileage incurred by a county employee in the course of official business in the employee's personally owned vehicle. See for example, although related to expenses that may be credited against fees, [Funk v. Milliken](#), Ky., 317 S.W.2d 499, 509 (1958), "reasonable and necessary mileage expenses may be allowed ... upon presentation of a properly itemized and documented claim."

A county employee, in our view, cannot lawfully be paid a “monthly mileage allowance” in connection with use of a county owned vehicle for which the county pays the general expenses of operation and maintenance.

Sincerely,
Chris Gorman
Attorney General

Gerard R. Gerhard
Assistant Attorney General

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