

SUPREME COURT OF APPEALS  
STATE OF WEST VIRGINIA

EXHIBIT

14

GARY L. JOHNSON  
ADMINISTRATIVE DIRECTOR



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March 8, 2018

Joint Committee

MAR 09 2018

Post Audit Committee

Mr. Denny Rhodes, Director  
WV Legislative Auditor's Office  
1900 Kanawha Blvd., East  
Building 1, Room W-329  
Charleston, WV 25305-0610

Dear Mr. Rhodes:

I have reviewed the summary notes from our meeting on Monday, March 5, 2018. There are a few items which I wish to clarify in the meeting notes:

1. *"Ms. Racer-Troy informed Mr. Steve Canterbury that the commuting by Justice Ketchum in a state vehicle was a taxable event under the IRS Taxable Fringe Benefit Guidelines sometime soon after being aware of the commuting. Mr. Canterbury informed her that it was none of her business and not to treat it as taxable. Mr. Canterbury also frequently reminded Ms. Racer-Troy he could terminate her employment at any time for any reason. Ms. Troy felt some pressure due to this statement and in turn, allowed this to go on without being taxed per IRS rules".*

This statement is not entirely accurate. Mr. Canterbury did tell me that it was *"none of my business"*. However, he did not tell me to *"not treat it as taxable"*. At that time, I had no involvement in payroll or the production or accuracy of employee W-2's. Human Resources/Payroll was a separate division which operated independently of Finance. I told Mr. Canterbury that commuting was taxable event because I knew that was an accurate statement. Whether or not it was reported on Justice Ketchum's W-2 was not known to me, since I did not produce or review any employee W-2's.

It is also not accurate that I *"allowed this to go on without being tax per IRS rules"*. Since Human Resources/Payroll group was an independent division, I had no power to require that the mileage be reported. It's simply not true that I allowed it to go on.

2. *"Some circuit judges used the US General Services Administration (GSA) rate over the \$0.15 rate allowed per W.Va.Code".*

This statement is true but requires clarification. The circuit judges who claimed the GSA rate did so when they were traveling between courthouses in different counties. Some circuit judges are in multi-county circuits and are required to travel between two or more courthouses. This would be allowed under the accountable plan as business travel from a primary work location to a secondary work location.

WV Code §6-7-5 allows reimbursement from a circuit judge's residence to the "place of holding any term of court in a county other than that of his residence". Circuit judges who claimed the GSA rate did not claim mileage from their place of residence. The GSA rate was used when they traveled between work locations. A copy of the code is attached.

3. *"Ms. Racer-Troy confirmed that Justice Ketchum would use the \$0.15 reimbursement rate for general commuting but would charge the GSA rate for attending conferences".*

This statement is true but I wish to clarify why different rates were claimed. WV Code §6-7-5 allows for commuting reimbursement for justices and circuit court judges when holding court. Justice Ketchum claimed the commuting reimbursement when traveling to Charleston for court.

When Justice Ketchum traveled for conferences or other engagements, he claimed the GSA rate. In my opinion, this is proper since the travel is not related to holding court, as described in WV Code §6-7-5. See attached memorandum from Sara Thompson which addresses the mileage reimbursement for the fall 2017 Circuit Judge's Education conference.

4. *"The Court did not directly inform the IRS of the commuting by Justice Ketchum".*

Since I did not have any involvement in the production or review of employee W-2's, I cannot verify that statement. The Director of Human Resources would be able to verify what was reported on Justice Ketchum's W-2's.

5. *"The court used the Fixed Asset Inventory Management system in WVFIMS, but from her inspection it appears that the Court had not updated or utilized it since 2010. Mr. Canterbury had informed her this was intentional because he did not want others knowing the Court had. Since 2010, even IT inventory such as server, routers, computers, etc. had*

*not been recorded. The IT department of the court may have kept an internal record in an Access database”.*

After returning to the office on Monday afternoon, I reviewed the fixed assets in FIMS. The last acquisition date for technology equipment (servers, routers, computers, etc.) is 07/09/2010. No technology equipment was added after that date. The last acquisition date for vehicles is 09/24/2013. No vehicles were added after that date.

*“Mr. Canterbury had informed her this was intentional because he did not want others knowing the Court had”.* I don't recall that Mr. Canterbury told me this specifically related to the fixed asset inventory. He often referred to being an third branch of government and the independence that came with that. I felt that best practices were not always followed due to wanting to exercise independence. Keeping fixed asset records in a separate internal database is, in my opinion, not a best practice.

6. *“Ms. Racer-Troy was aware that Connie Toney, a secretary of the Court, was allowed to commute to work in a state vehicle. Ms. Racer-Troy was uncertain about the length of time she was allowed to do so but stated that Ms. Toney was afforded special treatment by Mr. Steve Canterbury during his time as Court Administrator.”*

This statement is not entirely accurate. I heard other employees in the breakroom discussing Ms. Toney and her use of a state vehicle. Apparently someone in the group had observed her getting out of a state vehicle one morning and believed that she driven the vehicle to work. She had no work-related reason to have the vehicle so there was a discussion of why she was allowed to use the vehicle. I had no firsthand knowledge of Ms. Toney using a state vehicle. My only knowledge of this was “gossip” that I heard in the breakroom.

Sincerely,



Sue Racer-Troy, Chief Financial Officer