

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
_____ DIVISION

JOHNNY RHODA

PLAINTIFF

V. DOCKET NO. _____

**MIKE BEEBE, GOVERNOR OF ARKANSAS;
BILL HALTER, LT. GOVERNOR OF ARKANSAS;
DUSTIN MCDANIEL, ATTORNEY GENERAL OF
ARKANSAS; CHARLIE DANIELS, ARKANSAS
SECRETARY OF STATE; MARTHA SHOFFNER,
TREASURER OF ARKANSAS; JIM WOOD, AUDITOR
OF THE STATE OF ARKANSAS; MARK WILCOX,
COMMISSIONER OF STATE LANDS OF THE STATE OF
ARKANSAS; ROBBIE WILLS, SPEAKER OF THE
ARKANSAS HOUSE OF REPRESENTATIVES FOR
THE STATE OF ARKANSAS**

DEFENDANTS

**COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF AGAINST DEFENDANTS**

Comes now the Plaintiff, Johnny Rhoda, by and through his attorney, Doyle Webb, pursuant to the provisions of Ark. Code Ann. § 16-111-101 through 111 and Rules 57 and 65 of the Arkansas Rules of Civil Procedure and Amendment 70 to the Arkansas Constitution and seeks the entry of an order by this Circuit Court that:

- (1) declares the use of state owned vehicles by the Constitutional Officers of the Executive Department and the Speaker of the Arkansas House of Representatives for any personal purpose, including commuting to and from their homes to their official offices, in violation of Amendment 70 to the Arkansas Constitution,
- (2) enjoins the Defendant Constitutional Officers and the Speaker of the Arkansas House of Representatives from further personal use of state owned vehicles, and
- (3) reimburses the taxpayers of the State of Arkansas for the individual Defendants personal use to date of the state owned vehicles.

For his cause of action brought against the Defendants in their official capacities, the Plaintiff does hereby allege and state as follows:

1. Plaintiff Johnny Rhoda is a resident, citizen and taxpayer of Van Buren County, Arkansas.

2. Defendant Mike Beebe is the duly elected and serving Governor of the State of Arkansas; and in that capacity the head of state government. A state owned vehicle is provided to Defendant Mike Beebe for his official use. The state owned vehicle is also used for personal purposes.

3. Defendant Bill Halter is the duly elected and serving Lieutenant Governor of the State of Arkansas. A state owned vehicle is provided to Defendant Halter for his official use. The state owned vehicle is also used for personal purposes.

4. Defendant Dustin McDaniel is the duly elected and serving Attorney General of the State of Arkansas. A state owned vehicle is provided to Defendant McDaniel for his official use. The state owned vehicle is also used for personal purposes.

5. Defendant Charlie Daniels is the duly elected and serving Secretary of State of the State of Arkansas. A state owned vehicle is provided to Defendant Daniels for his official use. The state owned vehicle is also used for personal purposes.

6. Defendant Martha Shoffner is the duly elected and serving Treasurer of the State of Arkansas. A state owned vehicle is provided to Defendant Shoffner for her official use. The state owned vehicle is also used for personal purposes.

7. Defendant Jim Wood is the duly elected and serving Auditor of the State of Arkansas. A state owned vehicle is provided to Defendant Wood for his official use. The state owned vehicle is also used for personal purposes.

8. Defendant Mark Wilcox is the duly elected and serving Commissioner of State Lands of the State of Arkansas. A state owned vehicle is provided to Defendant Wilcox for his official use. The state owned vehicle is also used for personal purposes.

9. Defendant Robbie Wills is the duly elected and serving Speaker of the Arkansas House of Representatives for the State of Arkansas. A state owned vehicle is provided to Defendant Wills for his official use. The state owned vehicle is also used for personal purposes.

10. Jurisdiction in this matter is proper in the Pulaski County Circuit Court under the provisions of Ark. Code Ann. §16-111-103 and ARCP Rules 57 and 65. The Circuit Court should declare such personal use of state owned vehicles by the Defendants to be actions that should be permanently enjoined by this Circuit Court's Order. Venue for this civil action is proper in Pulaski County Circuit Court pursuant to the provisions of Ark. Code Ann. § 16-60-101 and 16-106-101. This is an action involving the State of Arkansas and its Executive Department officers and the Speaker of the Arkansas House of Representatives. This Court has personal jurisdiction over all the parties as residents of the State of Arkansas.

11. The Executive Department of the State of Arkansas is composed of the following elected officials, known collectively as the "Constitutional Officers," the Governor, the Lieutenant Governor, the Secretary of State, the Treasurer of State, the Attorney General, the Commissioner of State Lands and the Auditor of State.

12. Amendment 70 to the Arkansas Constitution was adopted at the 1992 general election. The Amendment became effective on January 1, 1993.

13. Amendment 70 sets forth the salaries for the Constitutional Officers and members of the General Assembly, it allows additional constitutional amendments to change the salaries for the Constitutional Officers and provides for salary increases annually by appropriations to the General Assembly by an amount not to exceed the average percentage increase in the Consumer

Price Index for all Urban Consumers or its successor, as published by the US Department of Labor, for the two years immediately preceding the year of the salary appropriation.

14. Amendment 70 sets forth certain annual salaries for each Constitutional Officer and the General Assembly members, the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

15. Amendment 70 states that the Constitutional Officers “shall not receive any other income from the State of Arkansas whether in the form of salaries or expenses.”

16. Amendment 70 further states that, “no member of the General Assembly shall receive any other income for service in the General Assembly, whether in the form of salaries or expenses, including, but not limited to public relations funds.”

17. Amendment 70 allows per diem as authorized by law for members of the General Assembly.

18. Under Amendment 70, both Constitutional Officers and members of the General Assembly are allowed reimbursement by the State of Arkansas for expenses documented and reasonably related to their official duties. Such restrictions on expense reimbursements are of a general application and are also intended specifically to prohibit the appropriation and use of public relations funds by the Constitutional Officers.

19. Defendant Governor Mike Beebe is provided a state owned vehicle for his official use. The Arkansas State Police provide drivers and protection for the Governor and the use has a valid law enforcement purpose even for personal purposes. This use is exempt from taxation as income or expenses to the Governor personally under the Internal Revenue Code.

20. Defendant Lieutenant Governor Bill Halter uses his state owned vehicle for personal travel at a minimum to and from the State Capitol to his home for which he has declared its use as income on his personal income taxes and paid taxes thereon.

21. Defendant Attorney General Dustin McDaniel has previously used his state owned vehicle for personal travel at a minimum to and from his place of work and his home for which he has reimbursed the state taxpayers for his personal use. General McDaniel has publicly questioned whether or not his personal use is in violation of Amendment 70 and stopped using his state owned vehicle for personal use.

22. Defendant Secretary of State Charlie Daniels uses his state owned vehicle for personal travel at a minimum to and from the State Capitol to his home for which he has declared its use as income on his personal income taxes and paid taxes thereon.

23. Defendant Treasurer Martha Shoffner uses her state owned vehicle for personal travel at a minimum to and from the State Capitol to her home and for golf outings for which she has declared its use as income on her personal income taxes and paid taxes thereon.

24. Defendant Auditor Jim Woods uses his state owned vehicle for personal travel at a minimum to and from the State Capitol to his home and for vacation travel for which he has declared its use as income on his personal income taxes and paid taxes thereon.

25. Defendant Commissioner Mark Wilcox uses his state owned vehicle for personal travel at a minimum to and from the State Capitol to his home for which he has declared its use as income on his personal income taxes and paid taxes thereon.

26. In addition, Defendant Commissioner Mark Wilcox maintains a state owned vehicle on his farm for personal use for which he has declared its use as income on his personal income taxes and paid taxes thereon.

27. Defendant Speaker Robbie Wills uses his state owned vehicle for personal travel at a minimum to and from the State Capitol to his home for which he has declared its use as income on his personal income taxes and paid taxes thereon.

28. The United States Internal Revenue Service and the State of Arkansas, Department of Finance and Administration consider the use of a governmental or company car for personal use to be income to the user and reported on the user's W-2 for income tax purposes.

29. When previous advisory attorney general's opinions are reviewed, a conflict arises. In commenting on a 1993 and 1995 opinion issued by former Attorney General Winston Bryant, General Dustin McDaniel stated that "the opinions indicate that state vehicle use by Constitutional Officers isn't taxable" but General McDaniel went on to state "the opinions don't address state vehicles or taxes." The opinions say the state wouldn't violate the constitution by providing free housing to elected officials." (Seth Blomeley, "McDaniel cites gray area, but is giving up state car," Arkansas Democrat-Gazette, 7/9/10).

30. Attorney General Mike Beebe in a 1993 opinion stated, "a court would probably rule that an automobile expense allowance is not salary".

31. Attorney General McDaniel has given up his state car and reimbursed the taxpayers for his personal use noting the area of personal use of state owned vehicle is a gray area. While Attorney General Beebe continued using his state owned vehicle for personal use from 2003-2006 prior to running for Governor in 2006 and reported it as additional income on his personal income taxes.

32. The advisory opinions of Attorney Generals Bryant and Beebe and in conflict with the statements and actions of Arkansas present elected Attorney General Dustin McDaniel.

33. Amendment 70 to the Arkansas Constitution is organic law, not a statute, regulation or advisory opinion that was overwhelmingly passed by a vote of the people of Arkansas by a vote of 464,901 for and 305,161 against.

34. The personal use of a state owned vehicle by an elected Constitutional Officer or the Speaker of the Arkansas House of Representatives for travel to and from their offices in Little Rock to their homes, use as a farm vehicle, travel to and from golf outings or for vacations constitutes personal use of a state owned vehicle.

35. The personal use of these vehicles is unlike health and pension benefits which are recognized as non taxable fringe benefits by the Internal Revenue Service and the State of Arkansas, Department of Finance and Administration. This personal use is a taxable fringe benefit, and not a justified expense reasonably connected to their official duties and is therefore supplemental income or expenses in direct violation of the plain language of Amendment 70.

36. There is no law or established policy in the State of Arkansas prescribing a verifiable method for contemporaneously logging, or otherwise recording, the extent of personal use. Moreover, there is no law prescribing the exact amount that Constitutional Officers should reimburse the state for each mile that they use state owned vehicles for personal use. For this reason an immediate injunction should be issued until such laws and policies are in place; otherwise continued personal usage will result in: 1) a daily violation of the express provision of Amendment 70; and 2) a continuing illegal exaction of taxpayer money.

Wherefore, the Plaintiff, Johnny Rhoda, prays that this court 1) declare the use of state owned vehicles by the Constitutional Officers of the Executive Department and the Speaker of the Arkansas House of Representatives for any personal purpose, including commuting to and from their homes to their official offices in violation of Amendment 70 to the Arkansas Constitution; 2) enjoin the Defendant Constitutional Officers and the Speaker of the Arkansas House of Representatives from further personal use of state owned vehicles, and 3) order the Defendants to reimburse the taxpayers of the State of Arkansas for the individual Defendant's

personal use to date of the state owned vehicles, 4) for their attorneys fees and costs herein expended and 5) for all other just and proper relief to which he may be entitled.

Respectfully submitted,

Doyle Webb
Attorney at Law
Ark Bar 82-175
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Little Rock, Arkansas 72201
(501) 372-7301

VERIFICATION

State of Arkansas
County of _____

Johnny Rhoda, Plaintiff, states upon oath that the statements contained in the above and foregoing pleading are true and correct to the best of his knowledge and belief.

Johnny Rhoda, Plaintiff

Subscribed and sworn to before me his _____ day of September, 2010.

My commission expires:

Notary Public