

Investigation of Earlham Community School District Employee's Personal Use of a School Vehicle



Ruth H. Cooperrider

Iowa Citizens' Aide/Ombudsman

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Contributors

Lead Investigator

Andy Teas, Legal Counsel

Ombudsman

Ruth H. Cooperrider

Table of Contents

Ombudsman’s Role.....	1
Complaint.....	1
Findings of Fact	1
Relevant Law and Analysis	3
Iowa Constitution.....	3
Iowa Code Section 721.2	3
Earlham School Board Code Section1004.6	5
Conclusions and Recommendations	6
Appendix A	7
Earlham School Board’s Reply.....	10
Ombudsman’s Comment to School Board’s Reply.....	18

Ombudsman's Role

The Office of Citizens' Aide/Ombudsman (Ombudsman) is an independent and impartial agency in the legislative branch of Iowa state government which investigates complaints against most Iowa state and local government agencies. Its powers and duties are defined in Iowa Code chapter 2C.

The Ombudsman can investigate to determine whether agency action is unlawful, contrary to policy, unreasonable, unfair, oppressive, or otherwise objectionable. The Ombudsman may make recommendations to the agency and other appropriate officials to correct a problem or to improve government policies, practices, or procedures. If the Ombudsman determines a public official has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman may refer the matter to the appropriate authorities.

If the Ombudsman decides to publish a report of the investigative findings, conclusions, and recommendations, and the report is critical of the agency, the agency is given opportunity to reply to the report, and the unedited reply is attached to the report.

Complaint

We received a complaint in late September 2011 that an Earlham School District employee had borrowed a school vehicle for her personal use for one month, with the Superintendent's permission. The school board had discussed the circumstances of the borrowed district vehicle in closed session. The complainant believed this was contrary to Iowa law and also believed no action had been taken against the school employee who borrowed the vehicle or the superintendent who allowed the personal use of the vehicle. He was aware the school district's attorney reviewed the matter and determined the employee and superintendent violated no law or district policies. Since the school board discussed the matter only in closed session, it was unknown what, if any, discipline was taken against the employees and whether such actions were condoned by the district. We agreed to investigate to determine if the actions of school officials or employees violated Iowa law and if the response from the school board was appropriate.

Findings of Fact

We reviewed records that documented the events and the subsequent actions by the school board. Those records included a memorandum from Earlham School Superintendent Michael Wright, open and closed meeting minutes and audio recordings of the Earlham Community School Board (Board), and news articles. We also interviewed school district officials.

The board's secretary, Jodi Stroud, found at the end of the work day on June 30, 2011, that her vehicle would not start. She went back to the office and took the keys for the 1997 Chevy Cavalier owned by the school district. Stroud felt borrowing the district's vehicle was the only viable way get home.

Stroud used the vehicle without permission through July 5, 2011, when she informed Wright about the situation. At that point, Wright verbally approved Stroud's continued personal use of

the vehicle. No written agreement was drafted for the use of the vehicle and no mileage reimbursement plan was drawn up at that time or at any point during the use of the vehicle. Stroud and Wright did not discuss any restrictions on the use of the vehicle, including whether Stroud could use the vehicle for personal transportation not associated with her work.

Stroud used the vehicle over the following weeks, both to and from work as well as during the weekends. Stroud stated to our office that she had intended to reimburse the district for using the vehicle and believed since it was summer, no one would need the vehicle during that time. Therefore, she did not believe her actions were wrong or would raise controversy. However, she said employees did not borrow district vehicles as a regular practice (she only knew of one other case “a long time ago”). She acknowledged no agreement had been reached with Wright on July 5 whether and how she would reimburse the district, just that she would pay whatever Wright deemed appropriate. As no restrictions were discussed, her use over the weekends included personal errands, although Stroud said she tried to walk as much as possible.

Stroud’s use of the vehicle lasted from June 30 until July 26, when she was in an accident with a semi-truck on the interstate. Jodi did not suffer any serious injuries, but the vehicle was a total loss. Only after the crash did Stroud and Wright discuss reimbursement for the vehicle’s use at 55.5 cents per mile, based on IRS rates. Stroud also agreed to reimburse the district for the \$500 deductible and pay for damage to the semi-truck and tow service for the vehicle. In total, this amounted to \$1,108.28. Stroud drove the vehicle for 1,096 miles over a course of 27 days.

The Board held a closed session meeting on August 25, 2011, to discuss the events that led up to the accident and review Wright’s involvement in the events. This closed session was requested by Wright in accordance with Iowa Code § 21.5(1)(i). This exception to the open meetings requirement may be used to discuss the professional competency of an individual whose performance or discharge is being considered by the governmental body. The Board discussed the events at length and each person’s involvement during the 1 hour, 45 minute closed session. We cannot reveal the specifics of the discussion as they are protected under Iowa law.

The Board took no action against Stroud, instead leaving any disciplinary action to Wright, who is her supervisor.

Following the closed-session meeting, the Board sought the opinion of its legal counsel regarding the legality of using a district vehicle for personal reasons and whether the use violated district policy. In a memorandum dated September 1, 2011, which was introduced during a school board meeting, Drew Bracken from the Ahlers & Cooney law firm determined Iowa law was not violated by Stroud’s use of the vehicle. (See Appendix A) Mr. Bracken concluded that Stroud used the vehicle for private purposes, but not personal gain and not to the detriment of the school district. Mr. Bracken also did not find a violation of the school district policy (Earlham Board Policy Code section 1004.6) since the policy only discourages employees from borrowing equipment for personal use, but does not prohibit it.

During our investigation, we were informed about rumors Stroud had used the district’s gas to fill up the vehicle during her use. Our review determined these allegations were unsubstantiated.

Relevant Law and Analysis

We determined Stroud’s and Wright’s conduct involving the use of the vehicle to be covered by three separate sources of law and policy: Iowa Constitution Article III, section 31; Iowa Code section 721.2; and Board Policy section 1004.6.

Iowa Constitution

The Iowa Constitution, Article III, section 31 states “*no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two thirds of the members elected to each branch of the general assembly.*” (Emphasis added.) The Iowa Supreme Court has found this provision applies to cities and we believe it also applies to school districts. See *Love v. City of Des Moines*, 210 Iowa 90, 230 N.W. 373, 378 (1930) (“[N]o power exists in a city council to appropriate public moneys to private use without “public benefit”); see also Attorney General Opinion, 1995 WL 410163 (95-5-1) (“Although we have never addressed the issue whether the constitutional prohibition also encompasses county officers, we have assumed it does . . . Our reasoning rests upon *Love v. City of Des Moines.*”)

The provision prohibits the government from allowing public property to be used by government employees for their own use, and generally prohibits any private use of the property. The Court in *Love* found the fundamental principle under the Iowa Constitution to be “that the power of taxation and of expenditure of taxes shall not be exercised for private benefit or for the purpose of mere gratuities to private interest.” *Love*, 230 N.W.2d at 375. The property, to be valid, “must be utilized by the governing body in the exercise of its governmental functions.” 1994 Iowa Op. Att’y Gen. 86 (94-1-6(L)).

The test to determine if the property is used for a prohibited private purpose is whether there is an absence of public purpose that is “so clear as to be perceptible by every mind at first blush.” *Love*, 230 N.W.2d at 375. The school district has already characterized Stroud’s use of the vehicle as being for “private purpose.” (See Appendix A, Bracken’s Memorandum, pg. 2) The Attorney General has also concluded that allowing a typical employee to use a public vehicle to commute to work or for social purposes does not appear to serve a public purpose. 1983 Iowa Op. Att’y Gen. 47 (83-5-6). We believe it is clear that no public purpose was served by Stroud’s use of the vehicle to commute to and from work and for personal errands during the weekends.

Iowa Code Section 721.2

Iowa Code section 721.2, Nonfelonious Misconduct in Office, states:

Any public officer or employee, or any person acting under color of such office or employment, who knowingly does any of the following, commits a serious misdemeanor:

...

5. Uses or permits any other person to use the property owned by the state or any subdivision or agency of the state for any private purpose and for personal gain, to the detriment of the state or any subdivision thereof.

This section raises three central elements that must exist for someone to be guilty of nonfelonious misconduct in office: Use of public property (1) for private purpose, (2) for personal gain, and (3) to the detriment of the state or any subdivision. The Iowa Attorney General's office reviewed these elements in an opinion and concluded:

It seems clear that the phrase 'to the detriment of the state or any subdivision' should not be construed as words of limitation in the case where the sole use of an automobile is for a private purpose and thus for personal gain. In such a situation, there would be by definition no benefit derived by the State (or county) in the use of its property, and detriment would be presumed through the natural depreciation in value of the property as a consequence of its unauthorized use.

1979 Iowa Op. Att'y Gen 160 (79-5-9).

As previously mentioned, the "private purpose" element is not in dispute. Based on the logic of the Attorney General opinion, the sole use of a vehicle for a private purpose equates to personal gain. In this case, there is no claim or evidence the school district benefitted from Stroud using the vehicle. The Attorney General opinions provide examples where the employee and the agency both experience benefits from the employee's use of a vehicle, including a law enforcement officer on 24-hour call taking a squad car home. This use benefits the agency by allowing the officer to respond quickly to an emergency instead of wasting valuable time driving to the office to change cars. However, Stroud's job duties do not provide circumstances unique from any other typical employee that would allow the district to reasonably argue it received any benefit from her use of the vehicle. Therefore, Stroud's sole use for private purpose satisfies the "personal gain" element under Iowa Code section 721.2.

We believe the "personal gain" element was also satisfied by Stroud not having to rent a vehicle at her own expense. Though Stroud asserted she had intended to reimburse the district when she first took the vehicle, she could not say what amount she intended to pay. Further, Wright and Stroud stated they had not agreed to any specific mileage reimbursement on July 5, when Wright gave his permission to use the vehicle. Wright could not even recall if the agreed-upon reimbursement amount was arrived at before or after the accident on July 26.

As of July 5, the most that Wright and Stroud might have agreed upon was for Stroud to reimburse the district some amount for using the vehicle. We do not believe the "personal gain" element can be negated by an after-the-fact agreement on reimbursement. Further, the Iowa Attorney General has warned against reimbursement in circumstances like this:

Applying the rationale advanced in the preceding paragraphs, use of a public owned or leased vehicle for purely private purposes would not be legitimized by an agency requirement that employees reimburse the agency. The character of the use remains the same, regardless of the reimbursement . . . Under no

circumstances, should this paragraph be interpreted as stating that an employee should be allowed unrestricted use of a public vehicle for private purposes on a reimbursement basis. 1983 Iowa Op. Att’y Gen 47 (83-5-6).

The Attorney General has also stated a detriment is presumed where there is no benefit to the governmental agency and the property depreciates as a result of the private use. There can be little argument even if we were to not consider the obvious depreciation that resulted when Stroud totaled the vehicle, the vehicle would have experienced depreciation when she drove it for 1,096 miles over a course of 27 days.

Considering all of the circumstances surrounding Stroud’s use of the vehicle, including taking the vehicle over the holiday weekend without permission during the first five days, using the vehicle as her transportation to and from work, using the vehicle during the weekends that was unrelated to her work, and depriving the school district access to the vehicle during her use as well as following the accident, we believe Stroud violated Iowa Code section 721.2. Since Iowa law applies not only to those who use public property, but also those who permit another person to use the property, we believe Wright violated Iowa law when he gave Stroud permission to continue using the vehicle on July 5, 2011.

Earlham School Board Code Section 1004.6

At the time Stroud used the vehicle, Earlham School Board Code section 1004.6, “Loan of School Equipment,” stated who could use district equipment and for what purposes. The first paragraph laid out the general limitations, stating that community groups and organizations may be allowed to use district equipment “only upon written approval and only for non-profit purposes by local, non-profit organizations.”

Later, the policy mentions that personal use of equipment is discouraged:

The Central Office staff may authorize equipment loan usages by local non-profit organizations and agencies for local, non-profit activities or purposes. Personal use of equipment by employees or local citizens is discouraged.

While the policy may suggest use of equipment by employees and local citizens, the policy mentions twice that use is limited to only local, nonprofit organizations for non-profit activities or purposes. When the policy dictates how permission for equipment use must be documented, it requires a written contract be signed by a representative of *the local group*, but makes no mention of individuals or employees. Read as a whole, we believe the policy restricts use to only non-profit groups and does not affirmatively allow for personal use of equipment by school employees.

The policy addresses the type of equipment that may be loaned out, stating that usage is *strictly limited* to those items that are *reasonably indestructible*. We need to look no further than the July 26 accident that totaled the vehicle to conclude vehicles are not “reasonably indestructible.” We also believe district vehicles were never intended to be part of the equipment loaned to any person or organization.

Any interpretation of the school board policy allowing the private use of district equipment would make the policy run counter to Iowa Code 721.2. The Attorney General's office has determined that reliance on a local ordinance or policy will offer no defense to someone whose actions are found to violate Iowa law: "[A]n authorization by an agency or department to use public property for other than purely public purposes, if later shown to be erroneous, may subject both the department head and the employee to criminal sanctions." 1979 Iowa Op. Att'y Gen. 160 (79-5-9), citing 1977 Iowa Op. Att'y Gen 191, (77-7-10).

Conclusions and Recommendations

For the reasons stated above, we conclude Stroud and Wright violated the Iowa Constitution, Iowa law, and district policy when Stroud used a school vehicle for personal purposes from June 30 to July 26, 2011.

We note the school district has taken steps to revise its policy to clarify who can use school equipment since we started our investigation. Current policy states "[p]ersonal use of equipment by employees or local citizens is prohibited." Earlham School Board Code section 1004.6(4). We believe this clarification should remove any doubt that public equipment cannot be used for private purposes by any individuals. We commend the school district for taking this action.

Given our findings and conclusion, we believe some additional steps are appropriate. Iowa Code section 2C.16 authorizes the Ombudsman to recommend an agency to consider a matter further or to take corrective action. In addition, Iowa Code section 2C.19 states the following:

2C.19 Disciplinary action recommended.

If the citizens' aide believes that any public official, employee or other person has acted in a manner warranting criminal or disciplinary proceedings, the citizens' aide shall refer the matter to the appropriate authorities.

The Ombudsman makes the following recommendation:

The Earlham Community School Board should consider whether to take any or other disciplinary action against both Ms. Stroud and Superintendent Wright in view of our findings and conclusion.

The School Board left the duty of disciplining Ms. Stroud to Superintendent Wright. Given Wright was personally involved in the actions at issue, the board should assume responsibility for determining what, if any, discipline Stroud should receive.

In addition, the Ombudsman will be providing a copy of this report to the Madison County Attorney. It will be up to the county attorney to decide whether criminal charges should be filed against Ms. Stroud for her personal use of a school vehicle and against Superintendent Wright for permitting her to use the vehicle.

Appendix A

AHLERS & COONEY, P.C.

100 COURT AVENUE, SUITE 800
DES MOINES, IOWA 50309-2231
FAX: 515-243-2149
WWW.AHLERSLAW.COM

Andrew J. Brackon
DBrackon@ahlerslaw.com

Direct Dial:
515.246.0307

MEMORANDUM

TO: Mike Madren, President
Earlham Community School Board of Education

FROM: Drew Bracken

DATE: September 1, 2011

RE: Employee Use of District Owned Property

You forwarded some materials and asked that we address certain issues relative to an employee's use of school-owned property. Specifically, we understand that board secretary Jodi Stroud had trouble with her personal vehicle several weeks ago at the end of the work day. She took a school vehicle home and then subsequently requested and received permission from the superintendent to use a school vehicle to get to and from work, and she continued to use the school vehicle pending the purchase of a new vehicle. Although she and the superintendent expected the purchase to occur promptly, the purchase stretched from days to weeks. During this time, Ms. Stroud continued to use the school vehicle with the understanding between her and the superintendent that she would compensate the District for the use of the vehicle.

Unfortunately, Ms. Stroud was involved in an accident while driving the school vehicle. The vehicle was a total loss, and the District's insurer paid for the value of the vehicle less the District's deductible. Ms. Stroud has agreed to pay for the use of the vehicle and the cost of the deductible.

The Board is concerned that the situation may be cause for concern, especially relative to superintendent's involvement in approving the use of the vehicle. You asked several specific questions:

1. *Legality: Were any laws broken by allowing a school employee to temporarily lease or rent a school vehicle for personal use?*

We have not located a specific statute that prohibits the kind of conduct or decisions made by the superintendent in this case. We have reviewed Iowa Code § 721.2 which provides that public officers or employees may commit a serious misdemeanor for various

kinds of abuses of their public employment including a public employee who "uses or permits any other person to use the property owned by the state or any subdivision or agency of the state for any private purpose and for personal gain, to the detriment of the state or any subdivision thereof."

In the circumstances described above, the superintendent allowed the board secretary to use a vehicle for a private purpose, but it does not appear that she used it for personal gain, or that she used it to the detriment of the District. Therefore, the circumstances above do not describe a violation of Iowa Code § 721.2.

Other than this specific statute, we found no other law or rule that specifically prohibits public employees allowing other employees to use school district vehicles for private use for a fee.

2. Can you provide thoughts and/or examples of board policy relating to employee use of District-owned equipment?

We have been provided with a copy of Board Policy Code 1004.6 relating to the loan of school equipment. This policy specifically authorizes community groups or organizations to use school equipment under certain circumstances. The policy provides certain administrative procedures for determining and allowing the use of school district equipment. These procedures authorize the "Central Office" to act upon requests for use of school equipment. The administrative procedures further provide as follows:

4. The Central Office staff may authorize equipment loan usages by local, non-profit organizations and agencies for local, non-profit activities or purposes. Personal use of equipment by employees or local citizens is discouraged. In the event of an authorized loan, the usage is strictly limited to items which are readily portable, reasonably indestructible, and which cause no building or district inconvenience during the loan schedule.

5. The Central Office staff will clear all questionable requests for equipment loan usage with the superintendent and/or board.

Although the policy and administrative procedure contained in the policy provide that personal use of equipment by employees is "discouraged," it does not say that such use is prohibited. Furthermore, the policy authorizes Central Office staff to clear questionable requests for equipment with the superintendent. Therefore, it would appear that, although use of equipment by employees is discouraged, it could be authorized by the superintendent. It would appear that the superintendent's actions in this particular case were within his authority under board policy, even if circumstances are such that, in hindsight, the superintendent and others may question the wisdom of authorizing this particular use of the school vehicle.

We have reviewed your Policy Code 1004 and we have compared it to other similar policies at other public school districts. We have noted that some other districts have restricted their policies on the use of school equipment to allow such use by other public entities or other private non-profit entities only. These districts have restricted the use of vehicles for personal use regardless of the user. Many policies do not merely "discourage" employee use but affirmatively prohibit it or do not speak to the issue whatsoever. Otherwise, we have observed that some districts have other policies relating to employees and use of vehicles that limit such use to school business only and restrict employees from using vehicles for private purposes. We can recommend specific changes to Earlham's policies if you wish.

3. How the Board could have better handled this situation?

The Board first acts by adopting policy. Applicable policies can be reviewed and revised if the Board seeks to have situations handled differently by the administration going forward.

Otherwise, the Board has an oversight role over the superintendent and administration. The Board can seek information regarding District operations and activities and conduct whatever inquiries it feels are necessary to perform this important function. The Board also can evaluate staff. Adopting policy and supervising the operations may largely be open session items. Evaluation of staff may be a closed session item in typical cases.

We are not aware of any information that would indicate the Board handled this situation improperly. Every situation is different and may require different levels of response. If the Board wants to discourage further incidents of this kind of event, the Board should revise its policies and direct the superintendent as to how to make changes going forward.

4. Lastly, as we look to sharing the findings and reporting the car rental information, what guidance do you have for our board. (1) Should we call a special meeting or wait until next regular meeting scheduled for 9/21? (2) Should you attend?

I encourage you to clear the air about this situation in a public manner. I believe that a regular board meeting will suffice and that a special meeting is not necessary. It would appear that the current situation involves relatively innocent intentions in matter of need that got out of control and the situation got deeper than the parties intended. No deliberate abuse or misuse of district property was intended. I do not perceive a violation of any legal standard, although I can see the concern that the Board has about employees taking advantage of district resources when similar opportunities are not afforded to others. I recommend the Board treat this as a policy issue relating to the good stewardship of district resources and as an employee performance issue and not necessarily a legal issue. I would be happy to provide additional assistance, but I do not believe it is necessary that I attend the meeting in which the Board considers how to respond to this situation.

Earlham School Board's Reply

AHLERS & COONEY, P.C.

100 COURT AVENUE, SUITE 600
DES MOINES, IOWA 50309-2231
FAX: 515-243-2149
WWW.AHLERSLAW.COM

Andrew J. Bracken
DBracken@ahlerslaw.com

Direct Dial:
515.246.0307

May 25, 2012

VIA FACSIMILE AND U.S. MAIL

Ruth H. Cooperrider
Iowa Citizen's Aide/Ombudsman
Ola Babcock Miller Building
1112 East Grand Avenue
Des Moines, Iowa 50319

RE: April 27, 2012 Investigative Report

Dear Ms. Cooperrider:

The Board of Directors of the Earlham Community School District asked that we review and respond to the report of the April 27 report of the Iowa Ombudsman. We take issue with the factual findings and the legal conclusions reached in the report. The Ombudsman's office has ignored or downplayed facts which cannot be disputed, while assuming other facts and making presumptions that are not reasonable.

The complaint received by the Ombudsman's office on September 30, 2011, alleged that a school-owned car was borrowed for a month with superintendent's permission – as if that was the original understanding. In truth, nobody expected at the outset that the use of the vehicle would last a month.

The car initially was used by an employee, Jodi Stroud, when her own vehicle unexpectedly broke down and she had no other way to get home from work. This occurred at the end of the work day when her only supervisor, the Superintendent, was no longer at work. Having no way to get home, and no one to ask about using the school's vehicle, Stroud took one of the school cars to get home. This was just before the Fourth of July holiday weekend. Ms. Stroud reported the situation to the Superintendent as soon as she returned to work following the holiday weekend. At that time, she explained her circumstances from before the weekend. She also explained that she was already in the process of buying a car from a friend to replace her own car. She asked the superintendent if she could continue to use the school vehicle and reimburse the school district for its use while she completed the process of buying the next car. The

superintendent agreed with the understanding that Stroud would make payment of some reasonable compensation to the District for the use.

This arrangement was supposed to be temporary, but it stretched on longer than either Stroud or the Superintendent anticipated because the seller of Stroud's next car had to renew the registration before it could be sold to her. Neither Stroud nor the Superintendent anticipated that the temporary use of the school vehicle would last for a month or that Stroud subsequently would be involved in an accident while driving the school car.

In the investigative report, the Ombudsman's office discounted the fact that Stroud and the Superintendent agreed that Stroud would pay for the use of the vehicle. While it is true that Stroud and the Superintendent did not agree on the specific rate of reimbursement, and they did not memorialize their agreement in writing, this is largely because they both expected that the arrangement would be short-lived and relatively modest. The matter was an informal arrangement between reasonable people who did not foresee that formal negotiations or a written agreement were required. As a matter of fact, they did "settle up" and Stroud paid a substantial sum of money for the use of the vehicle and she paid for damage to the vehicle that was not otherwise covered by insurance. With the full benefit of hindsight, the Ombudsman has not only criticized this arrangement, but disregarded the arrangement as if there was never any real agreement or intention to pay for the use of the vehicle. The Ombudsman cited no evidence to support such a worst case scenario.

The Ombudsman's report also neglected to note the details regarding the car, its value - both before and after the accident - or the revenue generated by the District from the use of the car by the employee. The car was a 1997 Chevy Cavalier. It had 131,415 miles on it before the accident and 132,511 miles at the time of the accident. The value of the car was about \$2,000 according to the Kelley Blue Book before Stroud used the vehicle (assuming the car was in good condition) and the same after Stroud's mileage was added. Stroud paid over \$600 to the school district in reimbursement for the use of the car. Stroud and the Superintendent arrived at this figure by using standard mileage reimbursement rates paid to employees using their own vehicles, multiplied by the number of miles she put on the car. There is no evidence cited by the Ombudsman that the value of the car substantially changed due to the normal use of the car by Stroud, or that the School District lost any money in the use by Stroud.

It is true that the accident resulted in the total loss of the car. (Under the circumstances, given the very low value of the car to begin with, just about any modest damage would result in a total loss.) The vehicle was insured and the employee made up the deductible not covered by insurance. The insurer estimated the value of the vehicle at \$3,100 (which assumed that the car was in excellent condition) and paid the District \$2,600 (\$3,100 less the District's \$500 deductible). Stroud paid the \$500 deductible to

the District. In total, the District was paid \$3,100 for a car that was arguably worth \$2000. Therefore, there is no proof of any net loss to the District following the accident. The Ombudsman's office assumed a loss without considering these facts.

From a cash flow point of view, a compelling argument can be made that the entire course of events worked out to the District's financial advantage. The employee paid a standard reimbursement rate used for reimbursing employees for use of their own vehicles. The reimbursement rate, 55.5 cents per mile, is intended to account for fuel, wear and tear and any depreciation. In this case, the employee also paid for the fuel during her use. Thus, she overpaid for any wear and tear and depreciation. As it turns out in this case, wear and tear and depreciation were negligible. From the District's point of view, the car was put to use and generated revenue in its last month of ownership. This revenue would not have occurred if the car sat idle in the District's parking lot. (There is no evidence that the car would have otherwise been put to use.) Not only did the car generate revenue in the last month of ownership, but it was then "sold" at full value or more to the District's insurer following that accident.

The Iowa Constitution

The investigative report concluded that Stroud's use of the car was a violation of the Iowa Constitution. This conclusion is based on mistaken facts and errors of law.

Contrary to the analysis offered by the Ombudsman's office, not all private use of public property is prohibited. In *Leonard v. Iowa State Bd. of Educ.*, 471 N.W.2d 815 (Iowa 1991), the Court considered a case where a school superintendent used his school district office and facilities for his own private business interests. In that case, the Iowa Supreme Court concluded that the superintendent's use of school property in connection with his private business did not violate constitutional provision prohibiting use of public property for private purposes, given the nature of superintendent's enterprise and the secondary benefit derived by the district. Specifically, the Court noted that the business was done with approval, the superintendent donated work product back to the school district, and the superintendent reimbursed the school for expenses. Ultimately, the Iowa Supreme Court observed:

To be sure, it is an extraordinarily delicate matter to balance the practical and real educational benefit to the public against the incidental private advantage which might accrue to the enterprise by reason of its presence on school property. It seems that the local board and the superintendent struck that balance with utmost care. They went to great pains to extend an educational advantage to the district, and to protect against the expenditure of any public funds on the enterprise. Some might contend the challenged policy was unwise. We cannot find it was illegal.

In other cases, the Court has noted that the concept of “public purpose” is intended to have flexibility and expansive scope required to meet the challenges of increasingly complex social, economic and technological conditions. *John R. Grubb, Inc. v. Iowa Housing Finance Authority*, 255 N.W.2d 89 (Iowa 1977). Any party challenging use of public funds on the ground that they are being used to support private purposes, in violation of Iowa Constitution, has the burden to show there is an absence of all public interest in the purposes for which the appropriation is made. *McMurray v. City Council of City of West Des Moines*, 642 N.W.2d 273, (Iowa 2002). In this case, the Ombudsman failed to even consider that the public interest was served in the receipt of payment by the School District for the use of the vehicle.

The Ombudsman’s report relied on certain opinions of the Iowa Attorney General and not any court when stating that a public employee cannot under any circumstances use a public vehicle for purely private purposes, even when reimbursing the public entity. When we looked at the same authority, we found that the Attorney General was not so absolute:

...use of a public owned or leased vehicle for purely private purposes would not be legitimized by an agency requirement that employees reimburse the agency. The character of the use remains the same, regardless of the reimbursement. However, if the agency determines through departmental rules or resolutions that a public purpose will be served by allowing certain mixed public and private uses of public vehicles, the agency should, when feasible, require that employees reimburse the agency for the miles allocable to the private purposes. Requiring full reimbursement is a means of assuring that authorized mixed usage does not violate the purposes of Art. III, Section 31. The reimbursement rate should reflect the actual cost to the agency of operating the vehicle.

1893 Iowa Att’y Gen. 47 (83-5-6). In this case Stroud used the vehicle for personal purposes and for commuting to and from work. (Her initial use came when her own vehicle failed leaving her stranded at work. She then used the District vehicle to drive to and from work.) Her use arguably would fall into the mixed use category and therefore her full reimbursement would assure there was no violation of the Iowa Constitution, all in compliance with the Attorney General’s recommendation. In any event, her payment to the school district treasury for the use of the vehicle satisfies the some public purpose requirement.

We are also aware that in similar situations, the legislature has authorized private use of school district owned property, subject to reimbursement, and this is a common and widely practiced means of satisfying the public purpose requirement. For example, the Iowa Code specifically authorizes the use of public school facilities by private individuals, subject to reimbursement, as follows:

The board of directors of any school district may authorize the use of any schoolhouse and its grounds within such district for the purpose of meetings of granges, lodges, agricultural societies, and similar societies, for parent-teacher associations, for community recreational activities, community education programs, election purposes, other meetings of public interest, public forums and similar community purposes; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, including that of pupils, except that in the case of community education programs, any compensation necessary for programs provided specifically by community education and not those provided through community education by other agencies or organizations shall be compensated from the funding provided for community education programs.

Iowa Code section 297.9 (2011) (emphasis added).

Even closer to the circumstances in the present case, Iowa Code section 285.10(9) specifically authorizes school boards to lease school-owned buses, subject to reimbursement. (School boards may “furnish a school bus and services of a qualified driver to an organization of, or sponsoring activities for, senior citizens, children, persons with disabilities, or other persons and groups in this state. The board shall charge and collect an amount sufficient to reimburse all costs of furnishing the bus and driver . . .”). These statutes do not require written agreements or payment in advance of such uses.

Obviously, the Ombudsman is mistaken when concluding that the Iowa Constitution prohibits any private use of public property. If that were so, then the statutes cited above would be unconstitutional. The Ombudsman further ignored the fact that the use in this case was followed by reimbursement to the public body. In fact, as is described in more detail above, the public body profited from the use. The payment made to the school treasury satisfies any requirement for public purpose.

Iowa Code Section 721.2

The Ombudsman’s report relative to the alleged statutory violation is premised upon a flawed interpretation of the statute and several unfounded assumptions.

Iowa Code section 721.2 is a criminal statute. Therefore, any exercise in interpretation or construction of the statute must begin with the understanding that courts strictly construe criminal statutes with doubts resolved in the accused's favor. *State v. Gonzalez*, 718 N.W.2d 304 (Iowa 2006); *State v. Allen*, 708 N.W.2d 361 (Iowa 2006). Strict construction of criminal statutes does not permit the definition of a public offense to depend upon implication. *State v. Brighi*, 7 N.W.2d 9, 232 Iowa 1087 (1942).

Finding a violation of Section 721.2 requires proof that the use of the school district vehicle was “for any private purpose and for personal gain, to the detriment of the [school district].” We agree that the statute requires proof of three separate elements: the use must be (1) for a private purpose, (2) for personal gain and (3) to the detriment of the school district. In this case, the Ombudsman points out that the private use is not in dispute and that is true, there was some private purpose use, but the Ombudsman then makes the leap in logic that “private use equates to personal gain.” Such an interpretation requires that the statute be interpreted in such a way as to contain a useless redundancy. If private use equates to personal gain, then there is no sense for the legislature to include the phrase “personal gain” in the statute. In construing statutes, courts presume the legislature does not employ redundant terms, or those which add no meaning. *State v. Ahitow*, 544 N.W.2d 270, 273 (Iowa 1996). Courts will avoid construction of a statute which renders a part of statute superfluous or redundant. Instead, courts will presume that each part of statute has purpose. *State v. Hauan*, 361 N.W.2d 336 (Iowa App. 1984). The Ombudsman ignored these rules of construction by “equating” private use and personal gain.

Instead of ignoring the personal gain element of the statute, a prosecutor would have to provide evidence of “personal gain” and a court would have to give meaning to that phrase in the statute. “Personal gain” must be interpreted as something different and additional to “private use.” There are no published judicial opinions interpreting the phrase “personal gain” in this particular statute, but other sources indicate that “personal gain” connotes profit or additional advantage inuring to the benefit of the user. *See e.g.* Op. Att’y Gen. No. 94-1-6(L), 1994 WL 68692 (when interpreting the section 68B.2A stating that public employees are prohibited from soliciting funds for charity if either they or their families receive a personal gain or advantage).

The Ombudsman further assumed the “personal gain” element is satisfied by the fact that the arrangement allowed Stroud to avoid the necessity of renting a car. This conclusion ignores the facts. Stroud agreed to pay for the use of the school car. Therefore, she did not avoid the necessity of renting a car – she rented this one. Furthermore, Stroud did pay, and she likely paid more than she would have had to pay to rent a comparable vehicle. (We doubt that she could rent a vehicle as old and worn as the District’s Chevy Cavalier.) So the use here was not to Stroud’s personal gain but more likely to her personal detriment. She could have borrowed another car for free or rented a better car elsewhere. Moreover, she paid the District’s deductible following the loss of the car, once again proving that the use was not to Stroud’s personal gain but in fact to her personal detriment. There is certainly no evidence here of profit or other advantage beyond the personal use she obtained and paid for.

Finally, the Ombudsman also presumed a detriment to the School District. As indicated above, no court would allow a prosecutor to presume a mandatory element of the offense. Such a presumption is particularly inappropriate in this case. The

Ombudsman presumed that Stroud denied the School District the use of the vehicle, but there is no evidence that the vehicle would have been used that July. The Ombudsman also presumed depreciation, but offered no evidence to indicate how the 14 year old Chevy depreciated when it was used for one month and its mileage went from 131,000 to 132,000. The evidence from the Kelley Blue Book indicates no measurable depreciation would occur. When the car was totaled, the School District as a matter of fact made out to the good. It was paid more than the book value of the car. This is not a “detriment” to the District but rather a profit. The presumptions by the Ombudsman are contradicted by the facts.

Under the actual circumstances, as opposed to the presumed circumstances, there is insufficient evidence to support the conclusion that a violation of Section 721.2 of the Code occurred.

Board Policy

It is first within the authority of the Board, not the State Ombudsman, to interpret and apply Board policy. *See* Iowa Code section 279.8.

The Ombudsman noted that the policy at issue explicitly stated that use of school equipment by school employees was “discouraged,” but, reading the policy as a whole, the Ombudsman decided that the policy should be interpreted as if use of equipment by employees was prohibited. The Ombudsman overlooked the fact that the term “discouraged” implies that the conduct was disfavored but not absolutely prohibited. We do not believe that it is reasonable to interpret “discouraged” as meaning “prohibited.”

Furthermore, the Ombudsman points out that the policy applies to equipment that is “reasonably indestructible” and concludes that a motor vehicle does not fit this definition. This conclusion begs the question, “Then what equipment is reasonably indestructible?” Obviously, vehicles are not “absolutely indestructible,” but nothing meets that test. Compared to most equipment, we believe that reasonable people can conclude that motor vehicles are indeed “relatively indestructible.”

The Ombudsman next decided that the policy relating to equipment was never intended to cover vehicles. The Ombudsman cites no authority or factual evidence for this conclusion. Miriam Webster defines “equipment” as “all the fixed assets other than land and buildings of a business enterprise.” Applying this commonly accepted meaning, vehicles are indeed equipment, and the policy that broadly applies to equipment also applies to vehicles. If the school board had intended otherwise, the school board would have dealt with vehicles in another policy or ensured that vehicles were explicitly excluded in this policy.

Finally, the Ombudsman bootstraps its argument that there is a violation of District policy by citing to its own erroneous conclusions that there is a violation of Iowa Code section 721.2. Given the errors in that analysis, the bootstrapping argument fails.

Conclusion

For the reasons explained herein, and for the reasons explained in the original opinion from this office, there is insufficient evidence of any violation of law. There is no occasion here for a referral to the County Attorney for consideration of criminal charges.

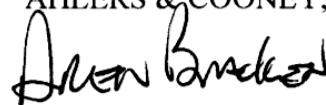
The conclusions expressed herein do not mean that the decisions of the Superintendent and Stroud were wise or prudent. With the benefit of hindsight, both individuals likely regret the decisions they made and the way matters unfolded, but unwise decisions and actions are not the same as illegal acts.

The Board is happy to see that the Ombudsman approved of the Board's amendment of the Board policy. The Board is also happy to see that the Ombudsman discredited the unfounded rumors, and found no violations of the Open Meetings Act or Public Records Act.

The Board does not dispute the Ombudsman's recommendations regarding reconsideration by the Board of the discipline that has been rendered in response to this incident. The Board plans to take up this matter once again with its Superintendent and Board Secretary at the Board's meeting in June. The Superintendent and Stroud will be afforded a due process opportunity to visit with the Board, and the Board will consider whether appropriate disciplinary action has been rendered, whether additional disciplinary action is warranted, and whether additional remedial measure should be undertaken.

Very truly yours,

AHLERS & COONEY, P.C.



Andrew J. Bracken

AJB:as
c: Supt. Mike Wright
00866837-199540-000

Ombudsman's Comment to School Board's Reply

The Earlham Community School District's Board of Directors (Board) replied to our April 27, 2012, letter report of findings, conclusions, and recommendations. In a May 26, 2012, letter from its attorney, Drew Bracken, the Board disputed some findings and conclusions of law in the Ombudsman's report. This comment will address points made by the Board in its reply.

Disputed Facts Do Not Alter Our Conclusions

The Board's response to our report takes issue from the outset with our investigation, claiming we ignored, downplayed, and assumed facts. It becomes clear when reading the Board's version of the key facts that they are nearly identical with the facts we presented. The real issues appear to be the Board simply disagreed with our emphasis on certain facts that were not favorable to the Board's position and thought that we did not highlight certain failures and oversights by Stroud and Wright, as if those oversights should somehow excuse their actions or inactions.

One such oversight the Board raised related to the "agreement" or arrangement Wright and Stroud reached about use of the vehicle. The Board admitted to our findings that no formal agreement was drafted and no specific items or rate for reimbursement were agreed upon when Wright gave Stroud permission to continue using a school vehicle for her own personal use. The Board waved off these formalities, contending that Wright and Stroud expected the arrangement to be short-lived. But, how short lived was unknown. Wright did not tell us the expected timeframe or that it was a condition for him giving permission, nor was any more detail provided in the Board's response. Only after the accident was a specific reimbursement rate set.

The Board also pointed out that we did not gather details about the car and how much money the school district made from Stroud's reimbursement and the insurance payout, as if those payments mitigated the actions by Wright and Stroud. Despite the Board's best argument that the car's Kelly Blue Book reflects the actual value of the car, the insurance company determined the value at \$3,100. The Board offered no explanation why the insurance company would value a vehicle and pay more for it than it is actually worth. We are more inclined to side with the school district's insurance company which had an opportunity to review the specific characteristics of the vehicle over a generic Kelly Blue Book estimation when it comes to the value of the vehicle.

As explained in this comment, these disputed facts do not cause us to change our conclusions.

We Stand By Our Analysis and Conclusions

Prohibition in the Iowa Constitution

The Board mischaracterized our statements on the law when it argued that under our analysis, "all private use of public property is prohibited." In fact, we never stated that all private use is prohibited, and we even highlighted an example case where a mixed use may be allowed. Further, our reference to the Iowa Constitution quoted a portion of the provision that prohibits private use of public property "unless such appropriation, compensation, or claim, be allowed by

two thirds of the members elected to each branch of the general assembly.” We intentionally included this language as the legal exception to the general prohibition.

Statutory Exceptions

As noted by the Board, the Iowa Legislature has authorized private use of school property, subject to being reimbursed, under Iowa Code sections 297.9 and 285.10(9). A review of those Code sections reveals important differences between the limited use of public property that is allowed under Iowa law and the circumstances in our case. In fact, those Code sections support our position under the Iowa Constitution that private use of public property must be approved by two-thirds of the members of the general assembly.

The property under Iowa Code section 297.9 is limited to the “schoolhouse and its grounds” and makes no mention of the readily portable equipment contemplated by the school district’s policy or vehicles as used by Stroud. In addition to what property may be used, this Code section also limits who may use the property. It identifies specific types of public community groups and includes meetings that are of public interest and serve community purposes. It makes no mention of the purely private use of the property by individuals or private businesses. It is worth noting that section 297.9 passed the House of Representatives by a vote of 97 to 0 and passed the Senate by a vote of 33 to 0 in 1917, satisfying the Constitution’s two-thirds requirement.

The Board also cited Iowa Code section 285.10(9); however, that section deals only with school buses, specifically, and not generally to all district-owned vehicles. This section also passed constitutional muster when it was passed the House of Representatives by a vote of 75 to 24 and the Senate by a vote of 42 to 1 in 1973.

Neither Code section addresses the circumstances involving Stroud and Wright and serve only to distract from the real issue in controversy.

“Mixed Use” Argument

The Board attempted to attach the “mixed use” argument to this case in hopes of justifying the reimbursement Stroud made for her private use of the vehicle. Specifically, the Board asserted that Stroud’s use of the vehicle to travel to and from work satisfied a mix of public and private uses, so therefore her own purely personal use of the vehicle was justified when she reimbursed the Board. The Board’s failure to rely on any legal authority or even common sense that use of a public vehicle to travel to and from work—absent exceptional circumstances inherent with the job—leaves us wholly unconvinced that such use is justified under the law.

The Board cited cases in which courts found a mixed use where a public benefit was derived from the private use of equipment, including the Iowa Supreme Court’s decision in *Leonard v. Iowa State Bd. of Educ.*, 471 N.W.2d 815 (Iowa 1991). We chose not to refer to the *Leonard* case in our report because the facts were so substantially different than those involved in our investigation. First, the Court in *Leonard* pointed out that the substance of the superintendent’s private enterprise was educational in nature. Second, the court noted that the school received a benefit from the activity, not in the form of a monetary windfall from reimbursement, but as an

educational advantage. Third, the Court pointed out the delicate matter of balancing the educational benefits to the public against the *incidental* private advantage.

Stroud's private use of the vehicle in this case was not merely incidental. The purpose of her using the vehicle was because her own vehicle had broken down. At no point in our discussions with Wright did he say that his primary focus was on the benefit to the school district. Significantly, the Court in the *Leonard* case pointed out the following:

The local board and the superintendent struck that balance *with utmost care*. They went to *great pains* to extend an educational advantage to the Board and to protect against the expenditure of any public funds on the enterprise.

Id. at 817 (emphasis added).

The use of the school district's vehicle by Stroud neither served an educational purpose nor provided the Board with an educational advantage. Furthermore, the Board cannot claim that the agreement was struck with the "utmost care" or that Wright and Stroud went to "great pains" to extend an educational advantage to the Board. The vehicle usage was not formally authorized, and the agreement was not memorialized in writing and contained no specific details as to what type of expenses and how much would be reimbursed. In addition, Wright and Stroud separately told us that they were either not aware an equipment policy existed or were not aware of the details of the policy at the time of the agreement. Wright also told us that if he had been aware of the policy at the time of the agreement, he would not have loaned the car to Stroud.

The Board also relied on the Iowa Supreme Court's language in *McMurray v. City Council of West Des Moines*, 642 N.W.2d 273 (Iowa 2002), in which the Court stated that a party challenging a governmental body's actions has the burden to show "there is an absence of all public interest in the purposes for which the appropriation is made."

Like the *Leonard* case, the facts in *McMurray* are substantially different than those in our investigation. In *McMurray*, taxpayers challenged a city's power under the urban renewal statute to finance certain public improvement projects in the area of a proposed shopping mall. The court determined that the urban renewal plan merely provided for the development and improvement of public infrastructures and made no reference to the development of a private shopping mall. Specifically, the court determined that public money was being used to construct "a municipal fire and EMS station, a municipal substation, various street improvement, water mains, sanitary sewers, storm water facilities, and public recreational facilities," and concluded that none of those projects could be characterized as a private purpose. *Id.* at 283.

The Board presented no argument for how Stroud's use of the vehicle serves a public benefit. It states that she used the vehicle "for personal purposes and for commuting to and from work." Commuting to and from work is a standard expectation of any employee, and we fail to see how Stroud's commute serves any unique public purpose to justify her use of a school vehicle.

We did find one limited circumstance under which school employees could use school vehicles to travel to and from work. Iowa Code section 285.11(6) allows teachers to use school buses to

travel to and from the teacher's school "when such school is on an established school bus route and such teacher makes arrangements with the district operating such school bus." This option only applies to *teachers* and only allows for pick-up and drop-off at points on that route. This statutory exception to the constitutional prohibition against private use of public property passed each chamber of the General Assembly by at least two-thirds vote in 1951. There is no similar statute that would authorize Stroud's use of a school vehicle in the manner that it was used.

For the foregoing reasons, the Board's "mixed use" argument fails as a defense to our conclusion that the arrangement for Stroud's use of the school district's vehicle was contrary to law.

Elements of Iowa Code section 721.2

The Board took issue with our statement, based on our interpretation of an Iowa Attorney General opinion, that "the sole use of a vehicle for a private purpose equates to personal gain" under Iowa Code section 721.2. The Board quoted only a select portion of our language to mischaracterize our interpretation as saying those two elements are redundant. That is not what we said. We understand that "private purpose" and "personal gain" will be considered separately in each case. We acknowledge there could be a situation where an employee uses property for private use but not for personal gain, such as in a mixed use scenario. However, what the opinion said was that, when the use of property is *solely* for private purposes, (i.e., no "mixed use"), the two elements of "private purpose" and "person gain" under section 721.2 are satisfied.

As explained earlier, there is no reasonable argument that Stroud's use of the vehicle was a permissible mixed use that served a public purpose. We found that Stroud's use of the vehicle was solely for a private purpose and therefore it was for her personal gain.

We also stand by our findings that the personal gain element was satisfied by Stroud not having to rent a vehicle, despite the Board's claim that Stroud had "rented" the school's vehicle. As we previously stated, the "agreement" reached by Stroud and Wright was tenuous at best. The Board would be hard-pressed to find a private rental company willing to loan out a vehicle with a verbal assurance from the customer that she is willing to pay "some amount" to be determined whenever she is finished with the vehicle. The convenience of being able to use the school's vehicle without a written contract or terms of use was clearly to Stroud's personal advantage.

The Board criticized us for using hindsight to see faults with the arrangement; however, we find fault with the arrangement irrespective of what transpired afterwards. It is the Board that is attempting to use hindsight to justify the outcome. The length of time Stroud would have the car, the amount or rate Stroud would pay for its use, the accident resulting in total loss of the car, the insurance payment, and payment of the deductible by Stroud—none of these factors were known when the arrangement was made. Wright could not have foreseen Stroud's accident that totaled the vehicle or the amount the school district would recoup as a result. Had the accident not occurred, Stroud could have negotiated a smaller reimbursement or even refused any payment, since there was only an informal verbal understanding, the terms of which were unclear. Stroud also benefited from the convenience of not having to enter into a contract with a rental car company. Clearly, Stroud personally gained by the arrangement with Wright.

Lastly, the Board argued the school district suffered no detriment, in part, because there is no evidence the vehicle would have been used in July. However, Stroud deprived the school district of the vehicle for much longer than the four weeks. Almost a full year has passed since Stroud borrowed the vehicle and district employees are still without a replacement vehicle to use for the district's business. Regardless of the value of that vehicle, it was still a useable vehicle.

Additional Concern with Vehicle Rental Argument

As an alternative to the failed argument that Stroud's travel to and from work served a public purpose, the Board argued that the money Stroud paid the school district for renting the vehicle served a public purpose. This argument raises a separate legal problem for the school district. If we were to accept the Board's contention that the school district was renting the vehicle to Stroud, we would be compelled to point out that the Board failed to apply to the vehicle a sales tax and a separate rental excise tax, as required by Iowa Code section 423C.3. The total amount of the rental, \$608.28 (\$0.555 x 1096 miles), was never taxed the 6% sales tax (\$36.50) and the 5% excise tax (\$30.41). According to Iowa Department of Revenue officials, these taxes would apply even in cases where no contract was signed and payment was arrived at after the accident.

We also want to point out the Dillon Rule, which restricts the exercise of power by Iowa school corporations only to (1) those granted in express words, (2) those necessarily implied or incident to the powers expressly granted, and (3) those absolutely essential to the objects and purposes of the school corporation. (*See Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, ___ N.W.2d ___, No. 08-2056, *10 (Iowa, Feb. 24, 2012); *Merriam v. Moody's Ex'rs*, 25 Iowa 163 (1868)). None of the Iowa Code sections cited earlier by the Board or our office, specifically sections 297.9, 285.10(9), and 285.11(6), expressly grant the school district the authority to loan or rent district vehicles for private purposes, nor is such activity impliedly authorized. Nor do we find that such activity to be essential to the purposes or objects of the school district.

We do not find the facts support that Stroud "rented" the vehicle from the school district, and we choose to disregard this as a valid legal argument by the Board. If the Board persists with this argument, we reserve the right to refer this matter to the Iowa Department of Revenue.

Appropriate for Ombudsman to Interpret Board Policy

The Board contended it is not within our authority to interpret the school district's former "Loan of School Equipment" policy. We disagree. Iowa Code section 279.8, which authorizes school boards to make rules governing the school district, does not prevent our office from executing its statutory duties over school boards. Under Iowa Code chapter 2C, the Ombudsman is authorized to investigate and make findings and conclusions not only whether an agency's administrative action violates Iowa law, but also if the action is contrary to agency regulation or policy, or is unreasonable, unfair, or based on improper motivation or irrelevant consideration. To perform this function, the Ombudsman makes such determinations independent of the agency and does not necessarily have to accept the legal or policy interpretations or opinions of the agency.

As for the policy itself, the Board again mischaracterized our analysis. In response to our conclusion that employees should not be included as one of the select parties allowed to use

school equipment, the Board stated, “We do not believe it is reasonable to interpret ‘discouraged’ as meaning ‘prohibited.’” We did not state that such use was “prohibited,” but that the policy did not affirmatively authorize use by district employees, in contrast with the stated allowable use by “community organizations” and “local, non-profit groups.” We stand by our belief that the school district’s former policy, in existence during the time the events at issue occurred, was not intended to allow employees to use public property for their own private purposes.

Conclusion and Final Comment

The bulk of the Board’s eight-page reply defended the actions of its employees and touted the monetary windfall that resulted after Stroud totaled the school district’s vehicle in an accident. It viewed the course of events in hindsight “from a cash flow point of view” to claim “they worked out to the District’s financial advantage.” However, the reimbursement and revenue obtained by the school district does not negate the fact that the arrangement made by Wright at the time to allow Stroud to have unrestricted use of the school district’s vehicle was solely for a private use or purpose. We stand by our conclusion that the arrangement was contrary to Iowa law.

The Board does not believe a referral to the county attorney is appropriate. Because use of public property for private purpose is a serious matter and because we found a violation of law, we will provide a copy of our report, together with the Board’s reply and this comment, to the county attorney. It will be up to the county attorney to decide if criminal charges should be filed.

The Board did not dispute our recommendations and said it will convene to reconsider if appropriate disciplinary action has been rendered and if any additional disciplinary action is warranted against Wright and Stroud. We hope the Board’s considerations will not minimize their actions based on any monetary benefit it reaped in the end, but will be based on the law.