

# State of South Carolina

## Office of the Governor

MARK SANFORD  
GOVERNOR

POST OFFICE Box 12267  
COLUMBIA 29211

August 26, 2009

The Honorable David L. Thomas  
410 Gressette Building  
Columbia, South Carolina 29201

Dear Senator Thomas:

In response to your letter of August 19, 2009 the Governor's Office is providing you with information and supporting documents that will illustrate that previous governors, the Department of Commerce, other agencies, and legislators have long-standing practices of purchasing business class airfare for foreign travel, and in some cases, domestic travel. This information strongly supports our view that Governor Sanford and the Department of Commerce during his administration have complied with the applicable travel laws and regulations because the consistent interpretation and application of them by different agencies for over three decades is directly relevant to interpreting those laws and regulations. As our Supreme Court has stated, "Where an administrative agency has consistently applied a statute in a particular manner, its construction should not be overturned absent cogent reasons." *Gilstrap v. South Carolina Budget & Control Bd.*, 310 S.C. 210, 215, 423 S.E.2d 101, 104 (1992); *see also, Stuckey v. State Budget & Control Bd.*, 339 S.C. 397, 401, 529 S.E.2d 706, 708 (2000) ("In construing an ambiguous statute, we give great deference to the government agency's consistent application of the statute.")

Moreover, the information we are providing will show that legislators have acquiesced to the consistent application of these travel laws and regulations. In fact, in some cases it appears that legislators either participated in or knowingly approved of the travel practices that are now being questioned under this administration. We raise this point because it is a well-established principle of statutory construction that the legislature's acceptance of the consistent application of the laws and regulations should be given "great weight" in interpreting such laws and regulations. *Stone Mfg. Co. v. South Carolina Employment Sec. Com'n*, 219 S.C. 239, 64 S.E.2d 644, 648 (1951) ("the construction of a statute by the officials charged with its administration, which has been acquiesced in by the Legislature for a long period of time, should be given great weight"); *Marchant v. Hamilton*, 279 S.C. 497, 500, 309 S.E.2d 781, 783 (Ct.App. 1983) ("Administrative interpretations of statutes, consistently followed by the agencies charged with their administration and not expressly changed by Congress, are entitled to great weight.")<sup>1</sup>

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<sup>1</sup> We offer the above recitations of law out of concern that your public statements have inaccurately stated the applicable legal principles relevant to your investigation. For example, a recent news story reported that you likened

Accordingly, we are providing you documentation and analysis we have collected about the past application and interpretation of the travel laws and regulation (See enclosed information). A summary of this information is provided below.

Additionally, in response to your request for "documentation that will authenticate" the flight hours flown by previous governors, we received this information from the Aeronautics Division which keeps quarterly records of all flight hours flown by all public officials. We have enclosed the Aeronautics records that are available for Governors Campbell (second term), Beasley (full term), and Hodges (quarterly statements for full term). Governor Sanford's quarterly statements for his full term thus far are also available from the Aeronautics Division which we can provide at your request.

### First Class/Business Class Travel

- Spreadsheet indicating all foreign air travel expenses over \$2,000 by the Department of Commerce or its predecessor, the State Development Board, under previous Governors since 1984. We believe the high costs of these travel expenses in combination with inflationary factors indicate that the Department of Commerce purchased either business class or first class tickets on at least 230 occasions. Moreover, Commerce bought foreign airfare over \$3,000 on more than 160 occasions; over \$4000 on more than 100 occasions; over \$5,000 on more than 80 occasions; and over \$6,000 on 50 occasions. This spreadsheet was derived from travel records supplied by the Comptroller General's office, which we have attached as an electronic file on a compact disc. The spreadsheet cross-references the page number of the Comptroller General's travel report from which the travel information was taken. The travel code for foreign air travel is 0523. (See Exhibits A & B)
- Spreadsheet of all air travel expenses paid by the Department of Commerce or its predecessor, the State Development Board, on behalf of Governors Riley, Campbell, Beasley, and Hodges. This spreadsheet is also derived from the attached travel records supplied by the Comptroller General's Office. (See Exhibit C)
- A letter from the Department of Commerce's legal counsel responding to a request for documents related to Governor Hodges's European Trade Mission from June 12-22, 1999. The letter indicates that the individuals in attendance were Governor & Mrs. Hodges; Senator & Mrs. John Land; Mr. & Mrs. Charles Way; Eleanor Savage (Gov. Hodges's security); Warren Bacote (Gov. Hodges's security); Harold Gregory (Gov. Hodges's security); Wayne Sterling (Commerce staff); Beth Braswell (Commerce staff); Frank Newman (Commerce staff); Will Lacey (Commerce staff); Vic Robertson (Commerce staff); and Hugh Owens (Commerce staff). The Comptroller General's travel records indicate that the Department of Commerce purchased foreign air travel for this trip as follows:

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our Office's argument regarding the Budget & Control Board's past application of the travel regulation to a speeding driver that is finally ticketed by stating, "Suppose you've been driving 70 mph down a 45 mph stretch and getting away with it for years. You can't say the city of Columbia waived the law because it failed to enforce it before. That's how ludicrous the argument is." However, the South Carolina Supreme Court has expressly declared that the "failure of an administrative agency to exercise a power it claims to possess is a significant factor in determining whether the power was actually conferred." *Gilstrap v. South Carolina Budget & Control Bd.*, 310 S.C. 210, 215, 423 S.E.2d 101, 104 (1992). Accordingly, the Board's history of enforcing and applying its travel regulations is relevant to the inquiry of whether the Board actually has such regulatory authority over the travel of state officials.

- Way - \$6,668.86;
- Savage - \$6,684.86
- Bacote - \$6,684.86 x 2 tickets
- Gregory - \$6,684.86
- Sterling - \$6,994.80
- Braswell - \$6,684.86 x 2 tickets
- Lacey - \$6,196.13
- Newman - \$6,772.43
- Owens - \$6,409.44

The total cost of the mission was \$98,391. Although there are no invoices for these purchases, the cost of the air travel for this mission suggest that the tickets included either first class or business class seating. Moreover, this would have been consistent with Department of Commerce practice, as evidenced by the several invoices showing that Commerce purchased first class and business class seats for Charles Way and Wayne Sterling during the Hodges administration.

Also, according to the Department of Commerce letter, "Sen. Land's airfare was funded through the Senate Clerk's Office." Presumably, Sen. Land and his wife traveled with the rest of the delegation and would have sat in first and/or business class seats. The Senate Clerk's Office should have records regarding these travel arrangements. (See Exhibit D)

- Itinerary of Governor Hodges's Investment and Trade Mission to Europe from June 24-30 2000. The itinerary notes that Governor Hodges departed June 30 from Charles de Gualle Airport on June 30 at 11 a.m. (or 5 a.m. eastern standard time) on an Air France flight and arrived at JFK Airport in New York at 8:45 a.m., indicating that the flight lasted 3 hours and 45 minutes. The Comptroller General's travel records indicate that the Department of Commerce posted the purchase of foreign air travel for Gov. Hodges on July 11, 2000 of \$4,311.53. Based on the flight time and the purchase price, it is safe to assume that Gov. Hodges returned from his mission on an Air France Concorde. (See Exhibit E)
- Itinerary of Governor Beasley's European Mission from March 11-22, 1996. The itinerary indicates that the delegation flew either first or business class as it notes that "Delta First Class and Business Class Lounges are available for use if time permits." The Comptroller General's travel records indicate the cost of Governor Beasley's airfare was \$8,358.59. (See Exhibit F)
- Itinerary and accompanying documents from Governor Campbell's trade mission to Japan and South Korea in September and October 1989. The Group Travel Registration Form for this mission, which was completed by Governor Campbell's Senior Legal Counsel Mark Elam, states that the "cost of the entire round trip ticket to Tokyo and Seoul is \$2,903.00. This is the business class fare on the particular days of travel." (See Exhibit G)
- An interoffice memorandum from Vic Robertson to Debbie Bass written on September 23, 1991 regarding Governor Campbell's Asian Trade Mission. The memo states, "The Chairman [of the State Development Board] and Mrs. Warren have been upgraded to First Class from Columbia to Atlanta, and from Portland to Tokyo. We are still on standby for upgrade from Atlanta to Portland. The same is true for the Campbells." The information and

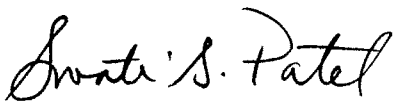
instructions for this mission, which is also attached, indicate that Commerce initially purchased business class tickets for this flight. (See Exhibit H)

- Letter showing the Budget & Control Board approved the foreign travel of Wayne Sterling and Victor Robertson of the State Development Board in advance of Governor Campbell's Asian Trade Mission in September 1991. This indicates that the Board had a practice of reviewing foreign travel for approval at the time, and presumably approved the first class/business class purchased by the State Development Board/Department of Commerce during the Campbell administration. (See Exhibit I)
- Invoice of air travel purchased by the Department of Commerce for Charles Way, Commerce Secretary under Gov. Hodges, for an economic development mission to Asia in September and October 1999. The invoice indicates that the air tickets included first class and business class seats, which cost Commerce a total of \$5,972.87. (See Exhibit J)
- Invoice of air travel purchased for Way by the Department of Commerce for an economic development mission to Europe in January and February 2000. The invoice indicates that the air tickets included first class and business class seats. (See Exhibit K)
- Invoice of air travel purchased for Way by the Department of Commerce, for an economic development mission to Asia in July 2000. The invoice indicates that the air tickets included first class and business class seats. (See Exhibit L)
- Invoice of air travel purchased for Wayne Sterling, a Department of Commerce employee, for an economic development mission to Japan and South Korea in September and October of 1999. The invoice indicates that the air tickets included first class and business class seats, which cost Commerce a total of \$6,328.42. Senator Nikki Setzler was also on this trade mission, and the Comptroller General's records indicate that Sen. Setzler's ticket cost \$6,177.33, which suggests Sen. Setzler also flew first class and business class. (See Exhibit M)
- Invoice of air travel purchased for Sterling by the Department of Commerce for an economic development mission to Europe and Asia in July 2000. The invoice indicates that the air tickets included first class and business class seats, which cost Commerce a total of \$6,343.73. (See Exhibit N)
- Invoice of air travel purchased for Sterling by the Department of Commerce for an economic development mission to Europe in June 2001. The invoice indicates that the air tickets included business class seats, which cost Commerce a total of \$6,385.00. (See Exhibit O)
- A boarding pass for Wayne Sterling for first class flights from Chicago to Atlanta and from Atlanta to Columbia on Delta Airlines on June 29, 2001. (See Exhibit P)
- Invoice of air travel purchased for Sterling by the Department of Commerce for an economic development mission to Europe in September 2001. The invoice indicates that the air tickets included first class and business class seats, which cost Commerce a total of \$6,641.05. (See Exhibit Q)

- Invoice of air travel purchased for Sterling by the Department of Commerce for an economic development mission to China in March 2000. The invoice indicates that the air tickets included first class and business class seats, which cost Commerce a total of \$5,208.80. (See Exhibit R)
- Invoice of air travel purchased for Dr. James Morris by the Department of Commerce for an economic development mission to Europe in November 2001. The invoice indicates that the air tickets included first class and business class seats, which cost Commerce a total of \$6,364.30. (See Exhibit S)
- Invoices of air travel purchased for Douglas McKay and Patrick O'Shea by the Department of Commerce for an economic development mission to South Korea in September 2001. The invoice indicates that the air tickets included first class and business class seats. (See Exhibit T)
- Invoice of air travel purchased for Sterling by the Department of Commerce for an economic development mission to Europe in August 1999. The invoice indicates that the air tickets included first class and business class seats, which cost Commerce a total of \$6,191.66. (See Exhibit U)

Please let me know if you have any questions regarding this information.

Sincerely,



Swati S. Patel  
Chief Legal Counsel