

## NDUS GUIDE TO AUTHORIZED USE OF STATE FLEET VEHICLES

This document supplements Risk Management's Vehicle Coverage FAQs at [www.nd.gov/risk/risk-management-fund/vehicle-liability](http://www.nd.gov/risk/risk-management-fund/vehicle-liability).

### STATUTORY RESTRICTIONS ON USE OF STATE VEHICLES:

North Dakota law ([N.D.C.C. § 39-01-03](#)) strictly prohibits the private use of motor vehicles that belong to the State. The intent of this statute is clear: state vehicles must be used exclusively for state business. In addition, liability coverage for the state of North Dakota, its agencies and employees is provided through the ND Risk Management Fund (RMF). The RMF is administered according to statute (State Tort Claims Act, [N.D.C.C. ch. 32-12.2](#)) and it specifies that coverage is only for claims against the State and State employees while acting within the scope of their employment. This means that the operation of a state vehicle, other than within the scope of authorized State employment, may expose the driver to: personal liability; employment consequences; and even criminal responsibility for unauthorized use of a motor vehicle and misapplication of entrusted property. ([N.D.C.C. §§ 12.1-23-06 and 12.1-23-07](#))

SBHE Policies [1910.2](#) and [512](#) address the use of state vehicles also, and are aligned with State law. To comply with State law and to control vehicle liability exposures to the State (meaning claims by third parties for personal injuries or property damages caused by the operation of the state vehicle), each institution has responsibility for establishing and implementing a systematic process to determine permitted: 1) activities for which a state vehicle may properly be used, 2) drivers of a state vehicle, 3) passengers within the state vehicle, and 4) type of vehicle an employee is qualified to use.

Regardless of differences in the purpose and mission of higher education in comparison to other state agencies, the same state law(s) and standards that apply to other state agency apply equally to higher education's use of state vehicles.

Although questions of who may operate a state vehicle and for what purposes are ordinarily straightforward and obvious, there are occasional situations that arise that require a more in-depth analysis. In these situations, there are essentially four interrelated items to consider:

1. Driver must be a state employee;
2. The purpose of the trip/travels must be for State business;
3. Operation of the vehicle must at all times remain within the scope of employment; and
4. Any passengers must be state employees also engaged in official state business or others whose presence is necessary to fulfill state business as determined by competent authority.

### DRIVER MUST BE A STATE EMPLOYEE:

Liability coverage under the RMF only applies to the State and state employees. State law defines a state employee as an employee of the state or any person acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. [N.D.C.C. § 32-12.2-01\(8\)](#). A volunteer employee may be considered a state employee under the RMF even though they are unpaid, as long as the activities are under the direction and control of the State through competent authority to the same extent as for regular employees.

"Competent authority" means an employee who has been delegated or provided specific authority by formal policy or job description to perform certain functions for the State, such as: to hire/supervise/direct a person to serve as a volunteer employee for specific purposes, and to authorize

certain activities within the scope or course of their duties. An employee may be held accountable for the persons and activities he/she has so authorized. This means that it is possible for an employee and/or the institution to be responsible for losses, if there is deliberate indifference or disregard to the applicable laws and procedures.

Past scenarios involving a *volunteer employee* within the higher education realm have included: an instructor who has been provided the authority to hire a student to drive to a local supplier to pick up supplies necessary for the class; and the instructor who is delegated authority by formal policy to hire a student to drive a state vehicle to transport other students on a field trip that is a part of the class syllabus. In these situations, the student is providing a service to the institution and is under the direction and control of the instructor/institution. The student is not acting as a student, but is rather acting on behalf of and providing a service to the institution, as an unpaid employee. Always, the student hired as a volunteer employee must be confirmed to be a lawful driver and oriented to the driving/vehicle procedures prior to providing the service to the institution.

**DRIVING MUST BE FOR STATE BUSINESS:**

The parameters of State business are established by and through various sources including: the constitution, the legislature through the laws of this State; and agency and department officials through implementation of administrative policies. State business must, by its very nature, be controlled by the State. Its purpose is to fulfill the functions of the governmental entity. Although State business often involves providing a public service or benefit, the recipients of those benefits cannot be designated as actors engaging in State business merely by virtue of receipt of those benefits. The identification of some public benefit alone is insufficient to make an activity State business. Rather, the activity must be directed or authorized pursuant to the legal structure and controls that govern the institution.

**OPERATION OF THE VEHICLE MUST BE WITHIN THE SCOPE OF EMPLOYMENT:**

State vehicles may be driven only to conduct state business and only by state employees in the course of the duties of their employment. Pursuant to state law, scope of employment means that the state employee was acting on behalf of the state in the performance of duties or tasks of the employee's office or employment lawfully assigned to the employee by competent authority or law. [N.D.C.C. § 32-12.2-01\(6\)](#). The employee's use of a state vehicle must be done to serve the interests of their employer and the operation of the vehicle must be under the direction and control of their employer. The same standard applies to any occupants in the vehicle: they must be performing duties of their employment for the State or their presence must be necessary to fulfill the state activity in question, as determined by competent authority.

**USE OF STATE VEHICLES BY STUDENT GROUPS:**

Questions about use of state vehicles by student groups have been numerous and ongoing. There are a multitude of student organizations: academic or discipline-related clubs, religious, political, service, professional, social, fraternity, sorority, intramurals, honor societies, etc., that engage in travels around the country. Although these travels are "educationally enriching and beneficial to students, and thereby also beneficial to the institutions" and they "contribute to the students' holistic development," they are not State business conducted by state employees or agents.

Students are not employees of the State. Rather, students pay fees to institutions so they can receive services (in the form of education) for their personal benefit. The institution has the responsibility to provide certain services to the students, which if required or authorized, are formally established and set forth in a program, curriculum, syllabus, schedule, etc.

Similarly, student clubs, groups, organizations (student groups) are not agents or agencies of the State. Activities of student groups are not selected by the institution, nor are the activities conducted at or under the direction, supervision and control of the institution. Therefore, activities of student groups are not considered State business and will not be covered by the RMF.

Student groups are considered private, independent organizations that are governed by students; they are *student driven*; they can be created at the option of students; and they can be disbanded at the option of students. The fact that the groups may be: *associated with* or *sanctioned* by the institution; eligible for some level of funding with student fee revenues allocated by student governments; and subject to compliance with the governing rules for that particular student organization, it does not make them state employees or agents, nor does it make their activities official State business.

Many student groups have an institution employee as an advisor. The assigned duties of that employee may include “serve as advisor” to a particular student organization. However, the majority of the time, it is not an assigned duty, but rather an activity taken on voluntarily by the employee. Even if the employee assists with planning travels of a student group, and accompanies the group or drives a vehicle on the trip and in doing so provides a certain amount of supervision to the group’s activities, it does not make the trip official State business.

It is only when a student group is not a student driven group, but rather is controlled by the institution in its activities, that the student group may be deemed to be engaged in State business. In such situations, the determination to engage in an activity is made and controlled by the institution pursuant to the same legal structure and controls that govern any other activity of the institution. The activity is selected, directed, supervised and controlled by the institution, not the student group and its members. Examples, based upon specifically described situations, have included Student Senate activities, and certain competition events in which students participated as representatives of the institution.

#### **CONSIDERATIONS WHEN ANALYZING REQUESTS FOR VEHICLE USE BY STUDENT OR STUDENT GROUP:**

1. Whether the institution controls the activity requiring the proposed travel.
  - Has the institution determined that it will be participating at an activity or event? Is it that the institution is supporting or encouraging an activity, but that activity is not required or scheduled by the institution and it is pursued voluntarily by the students or student group? If this latter is the situation, it is unlikely that the activity is State business.
  - What is the status of the proposed driver of the vehicle? Only state employees may operate a state vehicle. If the person is not an employee, whose job duties routinely include driving to and attendance at the event or activity, or who has been previously assigned by competent authority the additional task of driving to and attending the event, it is unlikely that the activity is State business.
2. Whether student or student group’s involvement in the planned activity can occur without the institution’s involvement.
  - If the answer is yes, then it is unlikely the activity is State business.

3. Whether the student or student group, in connection with the proposed use of the vehicle, is providing public services to or on behalf of the institution, or is actually receiving services from the institution.
  - Students and student groups are recipients of educational services provided by the institution and do not become state actors who are authorized to operate state vehicles in the course of receiving public benefits.

Virtually all officially determined and controlled state business activities that necessitate use of a state vehicle, by or on behalf of students and student groups, are planned well in advance. Ad hoc requests should always raise a red flag as to whether the activity is official state business or is in actuality a request for activities that are student driven and controlled and/or for which the student is receiving services, rather than providing services.

#### **STUDENT CLUBS ARE NOT THE SAME AS COLLEGIATE ATHLETIC TEAMS:**

Collegiate athletic programs are different from student organizations. Unlike student clubs and organizations, collegiate athletic programs and teams are official state business. Some of the reasons include:

- These are activities that the institution controls and directs representation to occur through students.
- The team schedules (games and practices) are determined and governed entirely by the institution; their membership rules are promulgated and enforced by the institution, as well as national and regional regulatory entities (for example, NCAA, NJCAA, Big Sky Conference, NSIC).
- The conduct of their members is largely or entirely controlled and supervised by the institution through institution employees, whose employment consists of coaching, training and supervising the members.
- Only the institution can start up or eliminate an athletic team.
- The collegiate athletic teams are funded by the institution and income produced by their activities is that of the institution.
- Driving associated with such activities is fulfilled by regular full-time state employees or outside entities that are contracted by the institution.

#### **WHAT ABOUT VISITING DELEGATIONS?**

North Dakota state and local governmental agencies and its higher education institutions informally host or sponsor numerous visitors. These visitors, from other states or countries, are here at the invitation of, for example, the campus or a local or state government agency, or in connection with a national or international relations or business program. The campus has a part in providing educational and informational events or excursions to these visitors. These visitors: have no connection to the State, other than being guests; they are not state employees or agents of the State; their visit to the State of North Dakota is not State business or in furtherance of the business purpose of the program, agency or State. The trip is for their benefit and is not for the benefit of the State of North Dakota, even if there is some indirect benefit to the State, such as fostering trade relations. As a general rule, using state vehicles to transport these guests to sites, hotels, restaurants and other activities is not permissible.