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September 19, 2011

Judith Wheatley
Executive Director
VI Taxicab Commission
Bldg No. 1 Subbase
St. Thomas, VI 00802

Re: *Registration of Safaris, Surreys and Other Tour Buses after December, 2003*

Dear Director Wheatley:

On August 15, 2011 you sought the Office of Attorney General's advice concerning the above-captioned matter. Specifically you raised the following issues:

1. What is the proper interpretation of Act No. 6570, Section 11, Act No. 6595, Section 3, and Act No. 6635, Section 2, when read and considered together subsequent to December 2003?
2. How to proceed with the request of an individual who claims to have owned a safari prior to the enactment of the aforesaid Acts, but is unable to provide proof of such ownership?

To begin with, the words *Director of Motor Vehicles* should be understood and substituted for Police Commissioner where cited in the 2002 and 2003 legislative language of the Acts referred to below.

Firstly, Act No. 6570 allows applicants to apply for "registration and inspection of *safaris*", *surreys or other tour-bus type vehicles ... except that after the date [September 5, 2002] of enactment [Act No. 6570], the Police Commissioner may not register a "safari", "surrey" or other bus type vehicle with a seating capacity **greater than twenty passengers**, unless such a vehicle was a registered vehicle on the date of the enactment of this Act [No. 6570]. Act 6570, Section 11 (a)*. Emphasis and bracketed language supplied.

Subsequently the Legislature passed Act No. 6595 on July 24, 2003. This Act specifically amended the former Act No. 6570. In pertinent part, Act No. 6595, Section 3 (a) struck the word "not" from the language contained in Act 6570 along with the words "unless such a vehicle was a registered vehicle on the date of this Act". The following wording replaced the deleted words: "*only if the owner of a 'safari', 'surrey' or other tour bus-type vehicle to be registered was the owner of such a vehicle on*

the effective date of this Act." Emphasis supplied. The type vehicle referred to is a vehicle with a seating capacity of greater than twenty (20) passengers.

Act No. 6595 goes on to read:

"(b) Nothing in subsection (a) may be construed as prohibiting the owner of a 'safari', 'surrey' or other tour-bus type vehicle that was registered on the effective date [July 24, 2003] of this Act [No. 6595] from registering another such vehicle of equivalent seating capacity anytime after the effective date of this Act." Emphasis and bracketed language supplied.

Thereafter, presumably to clarify its language at Act No. 6595, the Legislature passed Act No. 6635, Section 2 and amended Act No. 6595 by deleting the phrase *"of equivalent seating capacity"*; deleting the word *"such"* in the second instance where it appears and also deleting the words *"and inserting in lieu thereof, only if the owner of a 'safari', 'surrey' or other tour-bus vehicle to be registered was the owner of such a vehicle on the effective date of this Act [No. 6595]."* Emphasis and bracketed language supplied. Act No. 6635 was passed by the Legislature of the Virgin Islands November 24, 2003. On December 23, 2003 the Governor of the Virgin Islands signed Act No. 6635 along with certain objections. (We note that Act No. 6635 does not make reference to the date the statute takes effect. However, the effective date for legislation to take effect in the Virgin Islands is generally understood to be the date the Governor signs the legislation unless otherwise stated).

What we are left with is amendatory language, though confusing, that leads back to Act No. 6570, Section 11 (a). Essentially the language now reads:

"Notwithstanding any law rule (sic), regulation, or administrative order to the contrary, the Police Commissioner shall allow applicants to apply for registration and inspection of "safaris", surreys or other tour bus- type vehicles pursuant to title 20 of the Virgin Islands Code, except that after the date of enactment of this Act, the Police Commissioner may register a "safari", "surrey" or other tour-bus (sic) type vehicle with a seating capacity greater than twenty passengers.

(b) Nothing in subsection (a) may be construed as prohibiting the owner of a 'safari', 'surrey' or other tour bus-type vehicle that was registered on the effective date of this Act from registering another vehicle anytime after the effective date of this Act."

Although the wording of the original Act, i.e., Act No. 6570, and the following amendatory statutes may seem confusing and unclear, generally courts do not ascribe to the legislature an intention that conflicts with law, the Constitution or the Revised Organic Act of 1954, as amended. It appears that Act No. 6635 amendments sought to place in the hands of the Police Commissioner, presently the Director of Motor Vehicles, the *discretion* to determine whether safaris, surreys and other tour bus type vehicles with seating capacity greater than 20 passengers could be registered and licensed to operate as automobiles for hire. Further, the Legislature, by statutory amendments and deletions discussed here, had decided that persons who owned safaris, surreys and other tour bus type vehicles with a capacity

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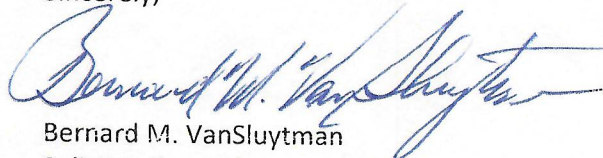
greater than twenty on the effective date of the amendatory legislation could apply to register and license another vehicle at anytime thereafter. Of course, as the legislation is written, permission is with the discretion of the Director of Motor Vehicles.

This brings us to the second issue – how does the Taxicab Commission decide the issue of one who claims to have owned a safari vehicle prior to the effective date of the law, but has no proof thereof. As noted above, the Director of Motor Vehicles is given the discretion to decide whether a safari, surrey, or other tour bus type vehicle can be registered and licensed. This discretion is not given the Taxicab Commission. The law as presently written allows anyone to “*apply for registration and inspection of safaris...*” The Director of Motor Vehicles “*may*” permit the registration of a safari with a seating capacity greater than twenty after the effective date of the Act No. 6635. The law does not require an applicant for registration and licensure of safaris to have been a prior owner of such a motor vehicle for for application to obtain registration and licensure of such a motor vehicle for hire. Anyone can apply under Virgin Islands law to register and license an initially owned safari or subsequently owned one, whether the seating capacity is less or greater than twenty.

We understand that this may not be the result that is desired by the Taxicab Commission; however, based on the current law, the door is open for any “applicant” to apply for a “safari” to be registered subject to the discretion of the Director of Motor Vehicles. If the Taxicab Commission wants a different result, you will need to have the legislature pass a more strict process.

Thank you for your attention. Should you have any further questions or comments, do not hesitate to contact me.

Sincerely,



Bernard M. VanSluytman
Solicitor General

cc: Vincent F. Frazer, Esq.
Attorney General