



ALAN WILSON
ATTORNEY GENERAL

July 2, 2013

The Honorable Robert Williams
Member, House of Representatives
2512 Holly Circle
Darlington, South Carolina 29532

Dear Representative Williams:

Attorney General Alan Wilson has referred your letter of February 5, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: Would you please clarify what documentation your Office believes is the minimum documentation required for travel reimbursement by a municipality for a municipal councilman? When one looks at South Carolina law, it seems that the minimum requirement for vehicular travel reimbursement should be a detailed travel log containing:

- 1) The purpose of the trip;
- 2) The destination;
- 3) The mileage; and
- 4) Any fuel receipts.

Short Answer: While a municipality may choose to specify more specific requirements for reimbursement, this Office has previously opined that itemization such as what you suggested (a travel log containing the purpose of the trip, the destination and mileage) would be appropriate. While fuel and other such receipts may not be always required, they may be a prudent means to verify any such expenditures.

Law/Analysis:

As you mentioned in your letter, this Office has previously addressed similar questions concerning municipal and county councils and compensation. By way of background, the right of a public officer to salary or compensation should be authorized by statute, constitution or ordinance. *Op. S.C. Atty. Gen.*, 1980 WL 120651 (February 4, 1980) (citing 63 AM.JUR.2d Public Officers and Employees §361 at 845 (1972)). Therefore, let us first look to the portion of South Carolina law discussing reimbursement for municipal councils. It says:

The council may determine the annual salary of its members by ordinance; provided, that an ordinance establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next

general election following the adoption of the ordinance, at which time it will become effective for all members whether or not they were elected in such election. The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties within limitations prescribed by ordinance.

S.C. Code of Laws § 5-7-170 (1976 Code, as amended). Payment to municipal council officers for actual expenses incurred would exclude a per diem reimbursement. Op. S.C. Atty. Gen., 2012 WL 5266017 (October 16, 2012) (citing Op. S.C. Atty. Gen., 1977 WL 24591 (August 10, 1977)). Actual expenses incurred by municipal council members would presumptively entail the ability to substantiate such expenses. Op. S.C. Atty. Gen., 1981 WL 157961 (September 14, 1981). By definition actual expenses require documentation. If there were no such documentation, the expenses would be estimated instead of actual. In addition, our State Supreme Court has confirmed common sense interpretations of reimbursement for actual expenses pursuant to S.C. Code Section 5-7-170. Brown v. Wingard, 285 S.C. 478, 330 S.E. 2d 331 (1985). However, the Brown case was silent as to whether receipts are required under S.C. Code Section 5-7-170. Op. S.C. Atty. Gen., 1986 WL 192053 (September 9, 1986). This Office also previously opined that “[a]s far as itemization of expenses [for a City Council pursuant to S.C. Code Section 5-7-170] is concerned, ... any itemization which discloses the actual expenses incurred (e.g., itemizations such as lodging, travel, seminar fees, books, etc.) would be appropriate.” Op. S.C. Atty. Gen., 1977 WL 24591 (August 10, 1977). Additionally, this Office has clearly stated for a City Council pursuant to S.C. Code Section 5-7-170 “[n]o opinion of this Office has stated that receipts or other supporting documents would be required, however. By requiring itemization, [a travel payment voucher with the name, department, dates, purpose of trip, charge account number, any advance and expenses broken down by travel, mileage, carrier, lodging, meals, tips, registration, other, explanation of other, total expense, net returned (from an advance) and net due, along with signatures] appears to comport with this opinion.” Op. S.C. Atty. Gen., 1986 WL 192053 (September 9, 1986).¹

The test for determining whether an expense should be reimbursed is:

[W]as the act done by officer relative to a matter in which the local [political subdivision] had an interest, or have an affect [sic] upon [the political subdivision’s] rights or property, or the rights or property of the citizens which the officer was charged with an official obligation to protect and defend. No expenditure can be allowed legally except in a clear case where it appears that the welfare of the community and its inhabitants is involved and direct benefit results to the public.

Op. S.C. Atty. Gen., 1987 WL 245448 (April 24, 1987) (citing McQuillin, Municipal Corporations, § 12.190.). As the Kentucky Court of Appeals said, “reimbursement ‘may be allowed for expenses that are reasonable in amount, beneficial to the public, and not predominantly personal to the officer in the sense that by common understanding and practice they are considered to be personal expenses.’... To receive reimbursement, the officer was required to show the amount and purpose of each expenditure, reasonableness, and that each expenditure was in an allowable category as determined by the political subdivision. To determine the latter factor, the ‘court will be governed by the consideration of whether the expense is official rather than personal in nature.’” Op. S.C. Atty. Gen., 1987 WL 245448 (April 24, 1987) (citing Funk v. Milliken, 317 S.W.2d 499, 506, 507 (Ky. Ct. App. 1958)).

¹ However, please note that the State Ethics Act gives specific requirements for state employees and officers to receive reimbursement and therefore, may be helpful as a guide. Id.

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Conclusion: Though it may be prudent to keep receipts for reimbursement, this Office has consistently opined that they are not required each time for reimbursement for members of a municipal council unless otherwise required. However, a municipality may choose to specify more specific requirements for reimbursement. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General