

The State of South Carolina



Office of the Attorney General

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September 26, 1986

Ms. Teresa Justice
Internal Auditor
Winthrop College
Rock Hill, South Carolina 29733

Dear Ms. Justice:

In a letter to this Office you requested an opinion regarding payments to members of the Winthrop College Board of Trustees for compensation and reimbursement of expenses. In our telephone conversation you agreed that because of our difficulty in providing responses to the various specific situations outlined in your letter, due to the various factors which could influence a response, a general interpretation of what type payments could be made is being requested.

In making your request, reference was made to Section 59-125-40 of the Code, a provision last amended in 1942, which particularly provides as to members of the Winthrop College Board of Trustees that

(e)ach member of the board shall receive as compensation for services and attendance on the meetings of the board his actual expenses which shall be paid out of the funds of the institution.

Also, reference was made to Section 140, Provision E of the 1986-87 General Appropriations Act which states:

(m)embers of the State Boards, Commissions or Committees whose duties are not full-time and who are paid on a per diem basis, shall be allowed reimbursement for actual expenses incurred at the rates provided in Paragraph A and I of this Section while away from their places of residence on official business of the State.

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You stated that Winthrop board members are currently paid on a per diem basis. Pursuant to Section 141 of Provision E, the per diem allowance of boards, commissions, and committees is set at the rate of thirty-five dollars per day.

Referencing the above two provisions, it appears that the provision in the Appropriations Act noted above provides a greater basis for reimbursement than the provision particular to the Board of Trustees inasmuch as it authorizes reimbursement to a Board member for actual expenses while on official business away from the member's residence. The provision particular to the Winthrop Board of Trustees only authorizes reimbursement of actual expenses for attendance at board meetings. As to which of the two provisions should be considered controlling, the better argument would appear to support the construction that the provision in the Appropriations Act controls. Such an interpretation is consistent with a previous opinion of this Office dated June 22, 1973 which construed a provision in another general appropriations act dealing with compensation for members of boards and commissions as superceding a special statutory provision applicable to a particular board. The opinion stated that while the provision in the appropriations act was temporary in nature, having force and effect only for a particular fiscal year, during the period of its application, such provision supercedes any permanent law provision. See also: State ex rel. Buchanan v. State Treasurer, 68 S.C. 411, 47 S.E. 683 (1904); Opinion of the Atty. Gen. dated August 24, 1976. Also, we would assume that the General Assembly intended that members of the Board of Trustees of Winthrop should receive the same reimbursement as members of other boards whose reimbursement would be governed by the provisions of the Appropriations Act.

Generally, implied repeals are not favored. See: 1A Sutherland Statutory Construction, Section 23.09. Also, it is generally considered that special laws are given priority over general laws in cases of conflict. Supra at Section 23.15. However, when a comprehensive revision of a particular subject is promulgated, any special laws may be deemed to have been repealed by implication. Supra. Therefore, an argument may be made that the general comprehensive provision in the Appropriations Act controls over the referenced special law pertaining to the Winthrop Board of Trustees. Furthermore, this conclusion is arguably strengthened by the rule of construction that where there is a conflict between statutes, the last legislative expression typically governs. South Carolina Electric & Gas Co. v. South Carolina Public Service Authority, 215 S.C. 193, 54 S.E. 2d 777 (1949). As noted, the provision particularly applicable to the Winthrop Board was last amended in 1942.

While the provision in the 1986-1987 Appropriations Act is arguably controlling, thereby authorizing members of the Winthrop Board of Trustees

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to be reimbursed for actual expenses while away from their residences on official business of the College, any policy on reimbursement for such expenses must be strictly construed. Generally, the law does not favor the compensation of public officers for the performance of official duties. Ridgill v. Clarendon County et al, 188 S.C. 460, 199 S.E. 683 (1938). Also, although no ironclad rule can be established which would provide absolute guidelines in this instance, any reimbursements can only be provided for expenses incurred while the member attends to official business of the College. The obvious reason for this is that public funds should not be expended for private purposes. See, Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967).

As to what might constitute "official business" in such regard, a prior opinion of this Office dated May 14, 1979 may be of some assistance. The provision allowing reimbursement which was construed in such opinion stated:

(t)he members of the district shall receive no compensation, but shall be reimbursed for any actual expenses incurred in connection with the business of the district.

As to the intent of such provision, the opinion stated:

(i)n general, the test of whether or not a given expenditure is incurred "in connection with the business of the district" is whether the welfare of the community served is involved and whether a direct benefit to the public results. Travel expenses such as gasoline and oil costs may or may not be reimbursed depending on the nature of and reason for the travel. See also: Louisville and Jefferson County Board of Health v. Steinfeld, 215 S.W.2d 1011 (Ky., 1948); Ward v. Frohmiller, 100 P.2d 167 (Az. 1940).

Opinions of other attorneys general may also be helpful. An opinion of the Alaska Attorney General dated October 3, 1984 indicated that the question of what constitutes the "official business" of a board is a question to be resolved by the members of the board themselves. The Attorney General of Texas in an opinion dated November 10, 1977 dealt with the question of what constitutes "official business" within the requirement that any flight taken on state aircraft be one taken on "official business." Noting that an "exhaustive definition" could not be provided, the opinion concluded that the official business of the state "...signifies the accomplishment of a governmental function; it requires that the means and method be reasonably

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necessary...". We would also note, by way of analogy, that one authority has stated that in order to justify the expenditure of money by a governmental entity in the indemnity of one of its officers for a loss incurred in the discharge of their official duty, three things must appear:

First, the officer must have been active in a matter in which the ...[government entity] had an interest. Second, he must have been acting in discharge of a duty imposed or authorized by law. And third, he must have acted in good faith.

McQuillin, Municipal Corporations, §12.137. Of course, as referenced earlier, there is no ironclad rule applicable to every situation.

Referencing the above, it is clear that the better argument supports the construction that the provision in this year's Appropriations Act provides the basis for reimbursement of expenses of members of the Winthrop College Board of Trustees. However, any such reimbursement can only be made for actual expenses incurred while on official business. Hopefully the above discussion has provided some insight as to what might constitute official business. Also, as suggested, the Board itself may wish to consider defining such concept so as to better inform its members as to when reimbursement might be available.

With best wishes, I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/rhm

REVIEWED AND APPROVED BY:



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