



ALAN WILSON
ATTORNEY GENERAL

June 28, 2019

Angela B. Mulholland, Esq.
College of Charleston
Attn: Office of Legal Affairs
66 George St.
Charleston, SC 29424-0001

Dear Ms. Mulholland:

We received your request seeking an opinion on reimbursement for salary and benefit costs of mandatory law enforcement training pursuant to Section 23-23-120. This opinion sets out our Office's understanding of your question and our response.

Issue:

Your request letter quotes Section 23-23-120(C)(1) and (2), and then explains:

While a number of other police agencies within the State have had no problem interpreting this statute and have routinely reimbursed the full expense incurred by the College, which includes the expense of fringe benefits to the College associated with the officer's salary and in some cases also includes the cost and expense of overtime engaged in (with associated fringe benefits) and actually incurred by the College as an expense during the training of some of its officers; the present issue concerns a police agency which, despite being presented with evidence of these actual expenses being incurred, has arbitrarily chosen to offer reimbursement for only 489.5 hours for a 100% request and half of that for a 50% request, which is less than the actual expenses incurred by the College for salary, overtime and associated fringe benefits

This other police department appears to want to impose a flat rate, as opposed to actual expenses incurred by the College's police department, and insists on ignoring overtime and associated fringe benefit expenses, even when presented with proof that they were actually incurred as an expense during the training of the officer.

Law/Analysis:

A court most likely would conclude that Section 23-23-120(C) requires reimbursement of the actual salary cost for the officer to attend the mandatory training required by Chapter 23 of Title 23. *See Op. S.C. Att'y Gen.*, 2013 WL 861299 (February 26, 2013). Therefore a court most likely would reject a reimbursement based on a fixed "flat rate" of a specific number of hours when the evidence demonstrates that the officer actually was paid for more or for fewer hours spent to complete the mandatory training. *See Op. S.C. Att'y Gen.*, 2000 WL 1803608 (September 26, 2000).

Section 23-23-120 reads, in relevant part:

(A) For purposes of this section, "governmental entity" means the State or any of its political subdivisions.

(B) After July 1, 2007, every governmental entity of this State intending to employ on a permanent basis a law enforcement officer who has satisfactorily completed the mandatory training as required under this chapter must comply with the provisions of this section.

(C) If a law enforcement officer has satisfactorily completed his mandatory training while employed by a governmental entity of this State and within two years from the date of satisfactory completion of the mandatory training a different governmental entity of this State subsequently hires the law enforcement officer, the subsequent hiring governmental entity shall reimburse the governmental entity with whom the law enforcement officer was employed at the time of attending the mandatory training:

(1) one hundred percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired within one year of the date of satisfactory completion of the mandatory training; or

(2) fifty percent of the cost of training the officer, which shall include the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training, if the officer is hired after one year but before the end of the second year after the date of satisfactory completion of the mandatory training.

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S.C. Code Ann. § 23-23-120(A)-(C) (Supp. 2018). This author's research has not identified any reported South Carolina case or prior opinion of this Office which addresses your question directly, although several of our opinions do provide some guidance. *See discussion, infra*. It appears that a court faced with this question would rely upon the rules of statutory construction to give effect to the intention of the Legislature in codifying the various statutes set out above. As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005).

Before turning to our prior opinions, we note that the text of the statute requires reimbursement of “one hundred percent of the cost of training the officer” if hired away within one year, which expressly includes the “salary paid during the training period” without limitation or modification. S.C. Code Ann. § 23-23-120(C)(1) (Supp. 2018). A court probably would conclude that a plain reading of this text unambiguously reflects a legislative intent that the subsequent hiring agency must “make whole” the original agency when the officer is hired by a new agency within a year. Such a court would therefore conclude that the statute requires full reimbursement of the salary actually paid. *See id.* As additional support for this conclusion, we discuss several prior opinions of this Office which addressed reimbursable expenses pursuant to Section 23-23-120.

One such prior opinion issued in 1998 considered whether the cost of “two weeks of training as a basic instructor for the training of other officers in the Department” required reimbursement. *Op. S.C. Att'y Gen.*, 1998 WL 261416 (April 3, 1998). That particular opinion construed the predecessor version of the law enforcement training reimbursement statute, which was then codified at Section 23-6-405 and contained language substantively similar to that in the current version quoted above. *Id.*, *see also* S.C. Code Ann. § 23-6-405 (repealed by Act No. 317, 2006 S.C. Acts 2449). There we opined that non-mandatory training was not covered under the reimbursement statute, observing that “the Act throughout speaks of the ‘mandatory training as required under this article.’” *Op. S.C. Att'y Gen.*, 1998 WL 261416 (April 3, 1998).

Subsequent opinions of this Office have provided additional guidance which is relevant to this question. In an opinion issued in 2000, we were asked to construe the meaning of the term “other training expenses.” *Op. S.C. Att’y Gen.*, 2000 WL 1803608 (September 26, 2000). There we observed:

In reviewing Section 23-6-405 it is apparent that no specific definition has been given to the phrase “other training expenses.” Accordingly, the statute could not be read to include a “uniform” list of expenses which would require reimbursement. The Legislature has, however, placed language in the statute which would limit the expenses which could be claimed for reimbursement. Specifically, Sections 23-6-405(C)(1) and (2) provide that the subsequent hiring governmental entity shall reimburse “the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training ...” Further, § 23-6-405(E) provides that under no circumstances shall a governmental entity be reimbursed “more than one hundred percent of the cost of the officer's salary paid during the training period and other training expenses incurred while the officer was attending the mandatory training.”

Accordingly, even though there is no laundry list of reimbursable “other training expenses,” those expenses subject to reimbursement would be limited to those incurred while the officer was attending the South Carolina Criminal Justice Academy's mandatory training.

Id. (emphasis added).

Another opinion issued in 2012 concluded that any determination of whether an expense is reimbursable “must be made on a case-by-case basis and involves numerous questions of fact which are beyond the scope of an opinion of this Office.” *Op. S.C. Att’y Gen.*, 2012 WL 4711425 (September 20, 2012). That same 2012 opinion affirmed that “the statute would not require reimbursement . . . for non-mandatory training expenses, or ‘other training expenses’ incurred by the previous law enforcement agency that were unrelated to mandatory training.” *Id.* Conversely, a 2013 opinion of this Office observed that the “other training expenses” described in the statute included “vehicle mileage and use necessary to travel to and from the [mandatory training].” *Op. S.C. Att’y Gen.*, 2013 WL 861299 (February 26, 2013). In summary, our Office has consistently concluded that the controlling inquiry is whether a particular expense was incurred for the purpose of the officer attending the mandatory training required by Chapter 23 of Title 23. *Id.*

Consistent with these prior opinions, we believe that the phrase “salary paid” in Section 23-23-120 is intended to encompass the cost of the salary actually paid to the officer to attend the mandatory training required by Chapter 23 of Title 23. We believe a court most likely would hold that this calculation need not be limited to only the hours spent “in the classroom,” and in theory could include time spent traveling, for example. *See Op. S.C. Att’y Gen.*, 2013 WL 861299 (February 26, 2013) (concluding that vehicle mileage and use necessary to travel to and from the mandatory training could be reimbursable under the statute). We believe that this construction of the statute would help capture “one hundred percent of the cost of training the officer” as contemplated by Section 23-23-120(C)(1), or “fifty percent of the cost” as contemplated by Section 23-23-120(C)(2). *See S.C. Code Ann. § 23-23-120(C)(1)-(2)* (Supp. 2018). Therefore a court most likely would reject a reimbursement based on a fixed “flat rate” of a specific number of hours when the evidence demonstrates that the officer actually was paid for more or for fewer hours spent to complete the mandatory training. *See Op. S.C. Att’y Gen.*, 2000 WL 1803608 (September 26, 2000).

Conclusion:

In conclusion, it is the opinion of this Office that Section 23-23-120(C) requires reimbursement of the actual salary cost for the officer to attend the mandatory training required by Chapter 23 of Title 23. *See Op. S.C. Att’y Gen.*, 2013 WL 861299 (February 26, 2013). We anticipate that the precise number of hours will vary on a case-by-case basis. Our Office has opined that Section 23-23-120 “could not be read to include a “uniform” list of expenses which would require reimbursement,” and neither could it be read to set a uniform number of hours when the officer is actually paid for more or for fewer hours spent to complete the mandatory training. *See Op. S.C. Att’y Gen.*, 2000 WL 1803608 (September 26, 2000). We observe without opining that this salary might include the cost of overtime or fringe benefits in certain cases.

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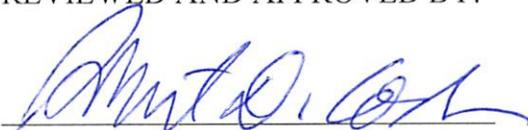
We also reiterate that “any such determination must be made on a case-by-case basis and involves numerous questions of fact,” and we defer a determination of whether salary and benefits actually were paid to a court of competent jurisdiction or the Director of the South Carolina Criminal Justice Academy *Op. S.C. Att’y Gen.*, 2012 WL 4711425 (September 20, 2012).

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General