



ALAN WILSON
ATTORNEY GENERAL

May 22, 2012

C. A. Robinson, Chief of Police
City of York Police Department
P.O. Box 500
York, SC 29745

Dear Chief Robinson:

In a letter to this Office you referenced the provisions of S.C. Code Ann. §23-23-120, which provides for reimbursement for training costs when hiring certified law enforcement officers. This provision states:

(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.

(D) If the law enforcement officer is employed by more than one successive governmental entity within the two-year period after the date of satisfactory completion of the mandatory training, a governmental entity which reimbursed the governmental entity that employed the officer during the training period may obtain reimbursement from the successive governmental entity employer for:

(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.

(E) The governmental entity that employed the officer during the training period or a governmental entity seeking reimbursement from a successive governmental entity employer must not be reimbursed for 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.

(F) A governmental entity, prior to seeking any other reimbursement, must first seek reimbursement from the subsequent hiring governmental entity under the provisions of this section. In no case may a governmental entity receive 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.

(G) No officer shall be required to assume the responsibility of the repayment of these or any other related costs by the employing agency of the governmental entity of the employing agency in their effort to be reimbursed pursuant to this section.

(H) Any agreement in existence on or before the effective date of this section, between a governmental entity and a law enforcement officer concerning the repayment of costs for mandatory training, remains in effect to the extent that it

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does not violate the provisions of subsections (E), (F), or (G). No governmental entity shall, as a condition of employment, enter into a promissory note for the repayment of costs for mandatory training after the effective date of this section.

You have questioned whether in circumstances where a law enforcement officer resigned from the York County Police Department (the "Department") where the officer was employed at the time of mandatory training and then was subsequently hired by another law enforcement agency after one year but before the two-year period following successful completion of the mandatory training, what options are available if the successive governmental entity employer refuses to reimburse the Department?

A number of principles of statutory construction are relevant to your inquiry. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the Legislature. *State v. Martin*, 293 S.C. 46, 358 S.E.2d 697 (1987). An enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. *Jones v. South Carolina State Highway Department*, 247 S.C. 132, 146 S.E.2d 166 (1966). Words used therein must be given their plain and ordinary meaning. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991).

It is readily apparent to us that §23-23-120 is intended by the Legislature to create a cause of action for reimbursement where one law enforcement agency hires an officer away from another within a certain period of time after that officer has undergone mandatory training. The obvious purpose of the statute is to insure that the costs incurred for training the officer by one law enforcement agency are reimbursed to that agency by the "subsequent hiring government entity." See *Ops. S.C. Atty. Gen.*, September 28, 1998 [interpreting §23-6-405, now codified as §23-23-120]; August 25, 1997 [same]. Significantly, we note that subsection (A) provides that the law enforcement agency which subsequently hires the officer "must comply with the provision of this section." This reading of the statute is further reinforced by subsection (C)'s language, which states that "[i]f the 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" the officer is subsequently hired by a second entity, that second entity must reimburse in the manner specified in the statute. Therefore, in circumstances where a law enforcement officer is terminated from the law enforcement agency where the officer was employed at the time of the mandatory training and then is subsequently hired by another law enforcement agency within the two year period following successful completion of the mandatory training, the subsequent hiring agency is responsible for the reimbursement training costs pursuant to §23-23-120.

Significantly, we note that the Legislature provided in §23-23-100 as follows:

(A) Whenever the director finds that any public law enforcement agency is in violation of any provisions of this chapter, the director may issue an order requiring the public law enforcement agency to comply with the provision. The director may bring a civil action for injunctive relief in the appropriate court or may bring a civil enforcement action. Violation of any court order issued pursuant to this section must be considered contempt of the issuing court and

punishable as provided by law. The director also may invoke the civil penalties as provided in subsection (B) for violation of the provisions of this chapter, including any order or regulation hereunder. Any public law enforcement agency against which a civil penalty is invoked by the director may appeal the decision to the court of common pleas of the county where the public law enforcement agency is located.

(B) Any public law enforcement agency which fails to comply with this chapter and regulations promulgated pursuant to this chapter or fails to comply with any order issued by the director is liable for a civil penalty not to exceed one thousand five hundred dollars a violation. When the civil penalty authorized by this subsection is imposed upon a sheriff, the sheriff is responsible for payment of this civil penalty.
[Emphasis added].

Accordingly, the Director is granted express authority to order compliance with §23-23-120 by the subsequent hiring agency. We therefore suggest that you contact the Director regarding the particular circumstances presented in your letter. Pursuant to §23-23-100, the Director has discretion to bring a civil action for injunctive relief in the appropriate court, or he may bring a civil enforcement action to compel compliance with §23-23-120. Any subsequent failure by the subsequent hiring law enforcement agency to comply with a court order may be deemed contempt of court and punished accordingly. In addition to pursuit of legal action, the director is authorized to impose a monetary penalty for each violation of §23-23-120. Such penalty may also be enforced by a court. We note the longstanding policy of this Office in the issuance of opinions to defer to the administrative agency charged with the enforcement of a particular area of law. Ops. S.C. Atty. Gen., September 8, 2005; October 27, 1999. Where an administrative decision in this regard has been made by the agency responsible for enforcement, we will defer to the administrative authority or discretion of the officer or agency. See Op. S.C. Atty. Gen., March 30, 1988 [deference given to agency's construction and interpretation].

In the alternative, we advise that a separate civil action by the Department could be brought about through a declaratory judgment action or more specifically, as an action for restitution against the subsequent hiring law enforcement agency to recoup expenditures by the Department. See Verenes v. Alvanos, 387 S.C. 11, 690 S.E.2d 771, 773 (2010) [restitution is an equitable remedy sought to prevent unjust enrichment].¹ A court would likely settle the legal dispute and also determine the rights and liabilities of the parties with regard to reimbursement to the Department. However, we would suggest that you contact your city attorney and seek his/her advice as to the proper course of action. Of course, no comment is intended here as to the legal availability of a declaratory judgment or restitution in any particular situation. Any determination of liability of the subsequent hiring law enforcement agency must be made on a case-by-case basis by a court. This Office is not a fact-finding entity and such a

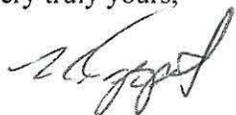
¹See also Niggel Assocs. v. Polo's of N. Myrtle Beach, Inc., 296 S.C. 530, 374 S.E.2d 507, 509 (Ct. App. 1988) [stating that a plaintiff in an action for restitution must show: "(1) that he conferred a nongratuious benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff its value"].

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determination is beyond the scope of an opinion of this Office. See Op. S.C. Atty. Gen., April 6, 2006 (“[T]he investigation and determination of facts are matters beyond the scope of an opinion of this office”).

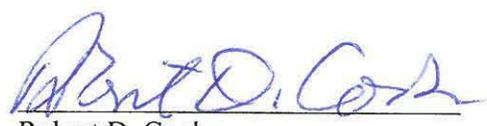
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General