



ALAN WILSON
ATTORNEY GENERAL

September 20, 2012

The Honorable Steve Mueller
Sheriff, Cherokee County
312 East Frederick Street
Gaffney, SC 29340

Dear Sheriff Mueller:

In a letter to this Office you reference the provisions of S.C. Code Ann. §23-23-120, which provides for reimbursement of 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

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 inform us that the Cherokee County Sheriff's Department ("Department") recently hired a certified law enforcement officer employed by another law enforcement agency as a police officer. The Department subsequently received an invoice for reimbursement for training costs from the previous law enforcement agency "over and above the required mandatory training." You wish to know whether the Department is required to reimburse the previous law enforcement agency for non-mandatory training.¹

Law/Analysis

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).

In an opinion of this Office dated April 3, 1998, we addressed whether civil action could be filed regarding reimbursement for expenses for a basic instruction certification course incurred by the former employer so that the former law enforcement officer could train other officers in that department. Interpreting §23-6-405 (now codified as §23-23-120), we advised that:

[this statute] throughout speaks of the "mandatory training as required under this article." It is apparent from reading the [statute] in its entirety and in accord with its plain language that the General Assembly intended 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 type of training which is referenced in your letter, however, is not the "mandatory training" contemplated by the [statute], but is, instead a voluntary training of officers to train other officers within that Department. Thus, I must agree with the sheriff in this instance that the [statute] does not cover the type of training to which you refer and thus it is doubtful whether the [statute] would create a cause of action for reimbursement of the monies expended by your Department for the type of training of the officer which is referenced in your letter [*i.e.*, additional courses taken beyond mandatory training].

¹According to your letter, the law enforcement officer in question falls within the time window set forth in §23-23-120(C)(2), *i.e.*, the previous government entity may seek reimbursement for 50% of the cost of training the officer from the "subsequent hiring governmental entity."

To further support our conclusion, we note an opinion of this Office dated September 26, 2000, wherein we addressed what constitutes "other training expenses" with regards to the statute.² The requestor asked whether these expenses would be limited to those that are essential to the officer to complete the training and necessary due to the registration and attendance policies and procedures of the South Carolina Criminal Justice Academy ("Academy") rather than any costs associated with recruiting, screening and/or hiring practices of the individual law enforcement agencies. We observed that, although no specific definition of "other training expenses" is provided for in the statute:

[t]he 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.

We advised, therefore, that:

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.

Based on the foregoing, we advise that in our judgment, §23-23-120 would not require reimbursement by a "subsequent hiring governmental entity" for non-mandatory training expenses, or "other training expenses" incurred by the previous law enforcement agency that are unrelated to mandatory training.

Further, various provisions of §§23-23-10 *et seq.* reference the establishment of a course of training at the Academy. Section 23-23-10(A) states, in part, that "[i]n order to insure the public safety and general welfare of the people of this State, ... a program of training for law enforcement officers ... is hereby proclaimed and this article shall be interpreted so as to achieve such purposes principally through the establishment of minimum standards in law-enforcement selection and training." Further, §23-23-10(C) provides that "[i]t is the intent of the General Assembly in creating ... [the Academy] and [the South Carolina Law Enforcement Training Council] to maximize training opportunities for law enforcement officers and criminal justice personnel, to coordinate training, and to set standards for the law enforcement and criminal justice service, all of which are imperative to upgrading law enforcement to professional status." Pursuant to §23-23-20, administration of the Academy is vested in a director

²We considered the question based upon §23-6-405. The same language appears in §23-23-120, as cited above.

responsible for the content of the courses taught at the Academy, and the enforcement of minimum standards for certification of law enforcement officers and such other matters as agreed upon by the Training Council. Section 23-23-40 states that "[n]o law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the [Training Council]. . ." The Training Council is directed to make the determination that an applicant has met the requirements for certification by the Academy. See §23-23-60. Without the certification of completion of the training provided by the Training Council, a law enforcement officer cannot be employed by a law enforcement agency to enforce the laws or ordinances of this State. It is clear that one of the primary purposes of the law enforcement training legislation was to insure that the caliber of individual serving as a law enforcement officer was closely regulated so as to upgrade the status of those individuals serving as law enforcement officers. In establishing such regulations, it was recognized that certain minimum standards must be established and adhered to so as to accomplish the intentions of the legislation.

Because the minimum standards for training of law enforcement officers in South Carolina are determined by the Training Council and administered by the Academy, we defer to the latter to determine whether the expenses shown in your attached invoice constitute "mandatory training" expenses entitled to reimbursement to the previous law enforcement agency, pursuant to §23-23-120. See Op. S.C. Atty. Gen., September 8, 2005 [noting 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]. Moreover, any such determination 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. See Op. S.C. Atty. Gen., May 25, 2010.

We also note that the director is granted express authority to determine compliance with §23-23-120. For example, the director is authorized to order compliance with the statute. He 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. In addition to pursuit of legal action, the director is authorized to impose a monetary penalty for each violation of §23-23-120. We therefore suggest that you contact the director regarding the particular circumstances presented in your letter.

In the alternative, an appropriate civil action through a declaratory judgment action may resolve the dispute. 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]; see 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 nongratuitous 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"]. We would, therefore, suggest that you contact your county or Department 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 of competent jurisdiction. This Office is not a fact-finding entity and such a determination is beyond the scope of an opinion of this Office. See Ops. S.C. Atty. Gen., May 22, 2012; April 6, 2006.

Conclusion

Section 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 ensure that the costs incurred for mandatory training of the officer by one law enforcement agency are reimbursed to that agency by the "subsequent hiring government entity." Based upon our review of the statute, it is the opinion of this Office that the statute would not require reimbursement by a "subsequent hiring governmental entity" for non-mandatory training expenses, or "other training expenses" incurred by the previous law enforcement agency that were unrelated to mandatory training. Of course, any determination of liability for mandatory expenses in this regard is 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