



ALAN WILSON
ATTORNEY GENERAL

March 21, 2023

Matt Nestberg
High Point Academy
6655 Pottery Road
Spartanburg, SC 29303

Dear Mr. Nestberg:

You have requested an opinion from our office regarding whether charter schools may issue a per diem reimbursement payment to employees for costs associated with employment-related travel and meals.

You provide us with the following information:

As background, the South Carolina Charter Schools Act, S.C. Code Ann. § 59-40-10 et seq. (the “Act”), states that a charter school is considered a public school “for purposes of state law and the state constitution.” S.C. Code Ann. § 59-40-40(2)(a). Further, section 59-40-50 exempts charter schools “from all provisions of law and regulations applicable to a public school, a school board, or a district” except as specifically outlined in the Act. S.C. Code Ann. § 59-40-50(A). The Act provides no specific requirements for how charter schools may reimburse employees for employment-related travel and meal expenses.

While the Act is silent on specific methods of reimbursement, the 2022-23 Appropriations Act does provide for reimbursement of travel and meal expenses to state employees. Specifically, Section 117.20 of the 2022-2023 Appropriations Act provides:

Travel and subsistence expenses, whether paid from state appropriated, federal, local, or other funds, shall be allowed in accordance with the following provisions: (A) . . . [A]ll employees of the State of South Carolina . . . shall, upon presentation of a paid receipt, be allowed reimbursement for actual expenses incurred for lodging, not to exceed the current maximum lodging rates The employee

shall also be reimbursed for the actual expenses incurred in the obtaining of meals except that such costs shall not exceed \$35 per day within the State of South Carolina. For travel outside of South Carolina the maximum daily reimbursement for meals shall not exceed \$50.

The use of the term “actual expenses” in this provision of the Appropriations Act seems to discourage a per diem reimbursement for travel and meal expenses of state employees. It is my understanding that this office has previously opined that “actual expenses require documentation” and “would exclude a per diem reimbursement.” Op. S.C. Atty. Gen., 2013 WL 3479878 (July 2, 2013).

Generally, charter schools have a much smaller staff than traditional school districts and traditional schools. A charter school’s finances and bookkeeping processes and procedures are often handled by only one or two full-time employees. Because of the significant duties placed on these individuals, charter schools would benefit from the simplified reimbursement procedure a per diem system offers as opposed to the submission and processing of receipts for actual expenses. Given that charter schools are exempt from most laws applicable to public schools, except for those enumerated in the Act, we respectfully request your opinion as to whether a charter school has the flexibility to offer per diem reimbursement to its employees for travel and meal expenses.

LAW/ANALYSIS

Section 59-40-50(A) provides: “[e]xcept as otherwise provided in this chapter, a charter school is exempt from all provisions of law and regulations applicable to a public school, a school board, or a district, although a charter school may elect to comply with one or more of these provisions of law or regulations.” S.C. Code Ann. § 59-40-50(A)(1976 Code, as amended). In McNaughton v. Charleston Charter Sch. for Math & Sci., Inc., 411 S.C. 249, 768 S.E.2d 389 (2015), the Court considered whether section 59-40-50(A) exempted a charter school from liability for attorney’s fees under section 15-77-300.¹ The charter school had not elected to be

¹ S.C. Code Ann. § 15-77-300 (1976 Code, as amended) provides: “[i]n any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney’s fees to be taxed as court costs against the appropriate agency . . .”

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covered by section 15-77-300 and the Charter School Act² did not provide that the statute was applicable to charter schools.

The Court determined that the exemption in section 59-40-50(A) did not cover section 15-77-300. Section 59-40-50(A)'s purpose was "to distinguish between charter schools and other public schools, school boards, or school districts by providing charter schools with more flexibility in their operations." McNaughton, 411 S.C. at 268 - 269, 768 S.E.2d at 400. A charter school could not opt out of section 15-77-300 because the statute generally applied to state actors and political subdivisions and it "was not enacted especially for public schools, school boards, or school districts." Id.

Because the Charter School Act and the 2022-2023 Appropriations Act³ do not answer your question, we will rely on an April 24, 1987 opinion of this Office for guidance. From your letter, we understand "employment-related travel and meal expenses" to mean lodging and meal expenses and we will answer accordingly.

In the 1987 opinion, we advised that public officers and employees of a county or political subdivision can only be reimbursed for expenses that were incurred in the performance of their official duties. See Op. S.C. Atty. Gen., 1987 WL 245448 (April 24, 1987). We opined that reimbursement of purely private or personal expenses would most likely violate the South Carolina Constitution and the State Ethics Act.

The South Carolina Constitution provides "[t]he General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law . . ." S.C. Const. art. III, § 30. It also states "[t]he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual . . ." S.C. Const. art. X, § 11.

Based on these constitutional provisions, we determined in our opinion that reimbursements to a public officer or employee can be considered extra compensation if they are for personal rather than public purposes. We explained:

As long as the reimbursement is made for actual and necessary expenses for such items as lodging and subsistence incurred by a public officer in the performance of his official duties, courts do not view such reimbursement as extra compensation. If the public officer is reimbursed for expenses which were in excess of the

² S.C. Code Ann. § 59-40-10 et seq. (1976 Code, as amended).

³ Section 117.20(A) of the 2022-2023 Appropriations Act only addresses a school employee's lodging reimbursement that is paid solely with state funds.

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officer's entitlement, such has been deemed to be extra compensation, which is prohibited by constitutional provisions such as Article III, Section 30 of South Carolina's Constitution.

Op. S.C. Atty. Gen., 1987 WL 245448 at 3 (citations omitted).

The State Ethics Act prohibits a public official or employee from using his official position or office to obtain financial gain for himself. See S.C. Code Ann. § 8-13-700 (1976 Code, as amended). In the 1987 opinion, we cautioned that other jurisdictions required itemization and strict accounting to ensure that a public official was reimbursed for actual money expended in his performance of official duties; moneys received in excess of his entitlement were deemed to be extra compensation or supplements to salary and therefore illegal. Op. S.C. Atty. Gen., 1987 WL 245448 at 3 (citing Op. S.C. Atty. Gen., 1986 WL 192053 (Sept. 9, 1986)).

CONCLUSION

To avoid a potential violation of the South Carolina Constitution or the State Ethics Act, we advise that a charter school should reimburse its employees for actual expenses incurred for employment-related travel, such as lodging and meals. As we stated in a prior opinion, “[p]ayment . . . for actual expenses incurred would exclude a per diem reimbursement.” Op. S.C. Atty. Gen., 2013 WL 3479878 (July 2, 2013).

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

cc: Mary Allison Caudell