



ALAN WILSON
ATTORNEY GENERAL

February 26, 2013

Michael A. Cochran, Ed.D.
Chief of Police
Hanahan Police Department
1255 Yeamans Hall Road
Hanahan, SC 29410

Dear Chief Cochran:

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 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.

By way of background, you inform us that the Hanahan Police Department (“Department”) recently hired, as a police officer, a “public safety officer” from the City of Folly Beach (“Folly Beach”), where she was employed more than one year but less than two years. The Department subsequently received an invoice for reimbursement from Folly Beach for training costs, which also included expenses related to her fire academy training. In your letter, you request an opinion from this Office to address whether the Department is required to reimburse Folly Beach for the expenses related to the officer’s fire academy training. You also question the method used by Folly Beach to calculate expenses for “vehicle mileage and use” related to the officer’s training.

Law/Analysis

It is axiomatic that when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the Legislature in their usual and ordinary significance, without subtle or forced construction in an attempt to limit or expand a statute's scope. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts will apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

The obvious intent of Chapter 23 of Title 23 is to ensure that individuals controlling or directing members of the public or exercising the power of arrest have the proper training and maturity. 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 Criminal Justice 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.” “Law enforcement officer” for purposes of this Chapter is defined in §23-23-10(E)(1) as “an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions,

who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed. . .”

As we have previously advised, §23-23-120 is intended by the General Assembly 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 law enforcement training. The obvious purpose of the statute is to insure that the costs incurred for training the certified law enforcement officer by one law enforcement agency are reimbursed to that agency by the “subsequent hiring government entity.” See *Ops. S.C. Atty. Gen.*, September 20, 2012 (2012 WL 4711425); May 22, 2012 (2012 WL 1964397); April 3, 1998 (1998 WL 261416) [interpreting §23-6-405, now codified as §23-23-120]. 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. It is thus readily apparent to us that §23-23-120 is intended by the General Assembly to be limited to reimbursement for mandatory training costs related to law enforcement officer training and certification at the State Criminal Justice Academy and as determined by the Law Enforcement Training Council pursuant to the provisions of §§23-23-10 *et seq.* See *Op. S.C. Atty. Gen.*, May 31, 1984 (1984 WL 249696) [advising that a fire marshal, who was also a commissioned constable, was not subject to the above training provisions, because such provisions only apply to a “law enforcement officer” as defined under then-§23-23-60(D)(1)].

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 §23-23-120.¹ 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 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

¹We considered the question based upon former §23-6-405. The same language appears in §23-23-120, as cited above.

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.

Significantly, we concluded 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. [Emphasis added].

Based on the foregoing, in our judgment §23-23-120 would not require reimbursement by a “subsequent hiring governmental entity” for training expenses or “other training expenses” incurred by the previous law enforcement agency unrelated to mandatory “law enforcement officer” training and certification as determined by the Law Enforcement Training Council pursuant to §§23-23-10 *et seq.* Op. S.C. Atty. Gen., September 20, 2012; see also Ops. S.C. Atty. Gen., September 26, 2000 [advising costs associated with recruiting, screening and/or hiring of a law enforcement officer would not be expenses for which a subsequent hiring government agency would be responsible for reimbursing]; April 3, 1998 [advising that the voluntary training of officers to train other officers with the police department is not the “mandatory training” contemplated by this legislation].

To address your second question, we note that, pursuant to our previous interpretation of §23-6-405 (now §23-23-120) in the latter opinion, all costs associated with mandatory law enforcement training, including “other training expenses” incurred while the officer is attending the mandatory training such vehicle mileage and use necessary to travel to and from the Criminal Justice Academy, is subject to reimbursement by a “subsequent hiring governmental entity” under the formula provided by the statute. We are, however, unable to determine for the Department the amount to be reimbursed to Folly Beach for such “other training expenses” as explained in your letter. It is necessary to restate the position and policy of this Office concerning factual determinations. We have repeatedly stated that, because this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions. Unlike a fact-finding body such as a court, we do not possess the necessary fact-finding authority and resources required to adequately determine the difficult factual questions. See, e.g., Ops. S.C. Atty. Gen., September 12, 2012 (2012 WL 4283913); May 21, 2003 (2003 WL 21212007). We must, therefore, adhere to the longstanding policy of this Office and respectfully decline to issue an opinion determining the Department's financial liability in this particular situation. *Id.*

We further advise that, because the minimum standards for training of law enforcement officers in South Carolina are determined by the Law Enforcement Training Council and administered by the Criminal Justice Academy, we would defer to them to determine whether the expenses in dispute

constitute “mandatory training” expenses entitled to reimbursement to Folly Beach pursuant to §23-23-120. See *Op. S.C. Atty. Gen.*, September 8, 2005 (2005 WL 2250210) [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, as previously stated 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.

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.² We would, therefore, suggest that you contact your city 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.

Conclusion

The General Assembly intended in §23-23-120 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 a law enforcement officer by one law enforcement agency are reimbursed to that agency by the “subsequent hiring government entity.” Based upon our review of §23-23-120, it is the opinion of this Office the statute would not require reimbursement by a “subsequent hiring governmental entity” for mandatory training expenses or “other training expenses” incurred by a previous law enforcement agency that are unrelated to training and certification of a “law enforcement officer” while attending the Criminal Justice Academy and as determined by the Law Enforcement Training Council pursuant to §§23-23-10 *et seq.*

Of course, any specific determination of liability for such “other training expenses” as discussed in your letter is beyond the scope of an opinion of this Office. In addition, we defer to the Criminal Justice Academy to determine whether the expenses in dispute constitute “mandatory training” expenses entitled


²See 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”].

Chief Cochran
Page 7
February 26, 2013

to reimbursement pursuant to §23-23-120. The director is further granted express authority to seek compliance with the statute. Liability pursuant to the statute may also be determined through a declaratory judgment action in a court of competent jurisdiction.

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
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