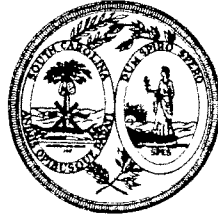


6996 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 26, 2000

The Honorable J. Al Cannon, Jr.
Sheriff, Charleston County
3505 Pinehaven Drive
Charleston Heights, South Carolina 29405-7789

Re: Your Letter of August 28, 2000
S.C. Code Ann. § 23-6-405

Dear Sheriff Cannon:

You have requested two opinions from this Office "regarding section 23-6-405, both of which are related to the reimbursement of training costs for law enforcement officers." Your first question relates to the scope of the section's reimbursement requirement and your second relates to the applicability of the section to local detention facility officers.

Section 23-6-405 provides as follows:

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

(B) After July 1, 1997, 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 article must comply with the provisions of this section.

(C) If 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, a 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:

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(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) Under no circumstances shall the governmental entity that employed the officer during the training period or a governmental entity seeking reimbursement from a successive governmental entity employer 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

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incurred while the officer was attending the mandatory training.

In your first query, you seek guidance in determining the costs which would be subject to reimbursement. Specifically, you ask "[w]hat constitutes 'other training expenses' with regards to this statute?" You state that "It would seem to me that 'other training expenses' would be limited to those expenses that are essential to the officer completing the training and necessary due to the registration and attendance policies and procedures of the South Carolina Criminal Justice Academy. It would also appear to me that these 'other training expenses' would be uniform and would not include costs associated with recruiting, screening and/or hiring practices of individual agencies."

When interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statutes operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

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. It is my opinion that you are correct in your assessment that costs associated with the recruiting, screening and/or hiring of a law enforcement officer would not be expenses for which a subsequent hiring governmental entity would be responsible for reimbursing pursuant to Section 23-6-405.

In your second question you ask specifically:

Under Section 23-6-405, can a government entity which employs detention officers or correction officers demand reimbursement for employees who are hired by other government entities, in the position of law enforcement officer or detention officer, under the same

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criteria and reimbursement schedule the section provides for law enforcement officers?

Section 23-6-400(D)(1) defines a "law enforcement officer" 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." In Op. Atty. Gen., No. 94-61 (October 18, 1994), this Office has noted that "Section 23-1-145 makes ... detention officers peace officers, much as any other certified officer in the state, over inmates during the times they are housed at the facility, or under their 'control.'" Further, this Office stated in Op. No. 86-38 (March 19, 1986), that "[b]y having the status of peace officers, jail employees have the authority to make arrests without a warrant of individuals reasonably suspected of having committed a felony or when the facts and circumstances which are observed by such employees provide probable cause to believe that a crime has been freshly committed."

Given the definition of "law enforcement officer" in section 23-6-400(D)(1) coupled with the provisions of § 23-1-145 and our previous opinions on the subject, it is my opinion that a detention officer would be considered a "law enforcement officer" covered by the provisions of § 23-6-400 et seq., including the reimbursement provisions of section 23-6-405. This determination, however, is not dispositive of the issues raised in your inquiry.

Section 23-6-405(C) provides that reimbursement shall be made by the subsequent hiring governmental entity "[i]f the law enforcement officer has satisfactorily completed his mandatory training while employed by a governmental entity of this state ..." Pursuant to § 23-6-450, the Director of the Department of Public Safety has promulgated regulations pertaining to the Criminal Justice Academy and the enforcement of the mandatory training requirements for law enforcement officers. As part of those regulations, the Director has provided for different classifications of law enforcement officers. For example, candidates for basic certification as law enforcement officers with full powers receive a "class 1 certification," while candidates for certification as local detention facility officers (jailers) receive "class 2 certification." See 23A S.C. Code Ann. Regs. 38-007. Further, Regulation 38-006 provides that "[N]o candidate may be certified in more than one class at any one time and certification shall be required for the most recent employing agency." Further still, 23A S.C. Code Ann. Regs. 38-008(D)(5) provides that "[w]hen a candidate becomes subject to new training requirements, as set forth in R. 38-007, as a result of a transfer from one agency to another with different training requirements, the candidate must successfully complete the training requirements for the class of certification the candidate will occupy with the new agency."

Based on the foregoing, it is apparent that a detention officer who had satisfied his mandatory training requirements and received a class 2 law enforcement certification would not qualify for a class 1 certification allowing him to serve as a law enforcement officer with "full powers" without further training. Accordingly, such an officer would not have "satisfactorily completed his

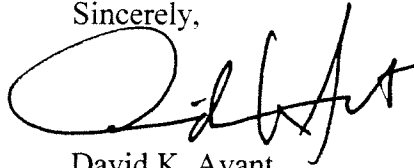
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mandatory training" and the governmental agency hiring that individual would not be required to reimburse the agency who employed the individual at the time of his class 2 training and certification.

The specific answer to your question, therefore, depends on the facts and circumstances of each case. If an agency hires a detention officer with appropriate certification and training for the purpose of serving as a detention officer with the hiring agency, then the hiring agency would owe reimbursement to the original employing agency if the hire comes within two years of the completion of the mandatory training. If on-the-other-hand, the detention officer requires further mandatory training to be properly certified for his position with the hiring agency, that agency would owe no reimbursement.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Avant", written over a horizontal line.

David K. Avant
Assistant Attorney General

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