

The State of South Carolina



Office of the Attorney General

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June 21, 1991

Mr. Robert G. Mauney
Richland County Administrator
Post Office Box 192
Columbia, South Carolina 29202

Dear Mr. Mauney:

By your letter of June 7, 1991, at the request of Richland County Council, you have asked whether Richland County Council is required to reimburse a Council member for travel expenses incurred in his or her duties as a member of Council, regardless of whether funds have been appropriated for such purpose. Further, you have asked whether Council may appropriate a certain dollar amount in the annual budget for travel expenses of Council members and whether said members must restrict their travel activity within that budgeted amount. 1/ You had enclosed various opinions of our Office and the Richland County Attorney with your request; in addition, we have received input verbally from the new Richland County Attorney.

Section 4-9-100, S.C. Code Ann. (1986), provides in relevant part that "Members [of a county council] may also be reimbursed for actual expenses incurred in the conduct of their official duties." This statute has been the subject of numerous opinions of our Office, though the bulk of these opinions have dealt with the amount of reimbursement (flat rate or per diem as opposed to amount of actual expenses incurred); see Ops. Atty. Gen. dated January 17, 1990; April 24, 1987; September 14, 1981; August 19, 1980; and others. In the opinion of September 14, 1981, the Honorable Karen L. Henderson, then a Senior Assistant Attorney General, stated, "In my opinion, a county council may elect not to reimburse its members for actual expenses incurred and, instead, increase the salary of its members." (Emphasis added.) Additionally, in the opinion of April 24, 1987, in footnote 2, we noted that adoption of limits on expenditures "would be a decision left to the discretion of each county council."

1/ As noted by the County Attorney, this question is actually subsumed within the first question.

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The Richland County Attorney, in our conversation, noted the permissive language of § 4-9-100 (members of council "may also be reimbursed"), as well as the lack of a constitutional or statutory mandate that counties must pay for travel expenses of members of its governing body. Conceivably a county council could forbid travel altogether. Too, Art. X, § 8 of the State Constitution requires that monies be withdrawn from a county treasury based only on appropriations; if no money were appropriated for travel, this constitutional provision would be violated if funds were then spent for travel reimbursement. We concur with the thoughts of the County Attorney; we are also under the impression that members of council may be in agreement to limit their travel, given the fiscal crisis currently facing Richland County.

Based on the foregoing, it is the opinion of our Office that:

1. A county council may elect not to reimburse its members for travel expenses incurred in carrying out their duties as members of council, or, in the alternative, may place a limit on the amount to be appropriated for travel expenses.

2. If expenses are to be reimbursed, such reimbursements must be based on actual expenses incurred rather than a per diem or flat rate which would not take actual expenses into account.

3. If no funds are appropriated for travel expenses, Art. X, § 8 of the State Constitution would likely be violated if expenses were then reimbursed (in the absence of a supplemental appropriation or such amendatory ordinance).

With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook
Robert D. Cook
Executive Assistant for Opinions

cc: Ronald M. Childress, Esquire
Richland County Attorney