

## The State of South Carolina



## Office of the Attorney General

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December 6, 1989

The Honorable Joe E. Brown  
Member, House of Representatives  
Post Office Box 11034  
Columbia, South Carolina 29211

Dear Representative Brown:

As you were advised by letter of Attorney General Medlock, your letter of November 8, 1989, has been referred to me for response. You had inquired about your interpretation of two opinions of this Office rendered several years ago about reimbursement of expenses of county council members incurred in the performance of their official duties.

Opinion No. 78-66, issued March 31, 1978, by former Attorney General Daniel R. McLeod, provides that a member of a county council may not be paid a fixed amount as reimbursement for actual expenses incurred in his duties as a member of council. Rather than a fixed amount, the individual must show what expenses were actually incurred so that reimbursement may be made only for those "expenses incurred by the member and for which reimbursement is authorized" by council. (Emphasis mine.) The opinion does not say that a maximum annual amount may be expended; it states that rather than a fixed amount, reimbursement is to be for "actual expenses" which could be more or less than the fixed amount.

Opinion No. 4545, issued December 15, 1976, during Attorney General McLeod's tenure, states that reimbursement must be based on actual expenses incurred rather than on a per diem or other basis. In other words, a flat rate of reimbursement (by the day, for the month, or whatever) is not authorized by the relevant statute; actual expenses must be shown to determine the reimbursement for expenses. Upon review of these two opinions, we are of the view that neither opinion is clearly erroneous; thus, each is still the opinion of this Office.

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I am enclosing, for your information, an opinion of this Office dated April 24, 1987. This opinion considers the statutes relative to reimbursement of expenses incurred by city and county council members. Footnote 2 on page 5 may be helpful to your reading of Opinion No. 78-66: "While municipalities are required to establish limits by ordinance, no such requirement exists as to counties. Adoption of such limits would be a decision left to the discretion of each county council." A fixed amount of reimbursement would not take into account actual expenses, whereas a limit on amounts or types of expenses would take actual expenses into account. The key issue is taking actual expenses into account in determining reimbursement, a matter left up to county councils.

I trust that the foregoing will prove to be of assistance to you. If I may provide additional assistance to you, please advise.

With kindest regards, I am

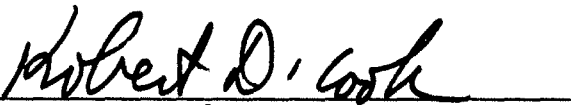
Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/nw  
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions