

The State of South Carolina



Office of the Attorney General

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September 9, 1986

William K. Charles, III, Esquire
Greenwood City Attorney
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Dear Mr. Charles:

By your letter of July 25, 1986, you have asked whether the ordinances of the City of Greenwood or the laws of the State of South Carolina require that receipts accompany Travel Payment Vouchers signed by the Mayor, City Council members, or City Manager of Greenwood for reimbursement of expenses incurred within the performance of their official duties. You have advised that the City has an applicable ordinance; thus, state and local laws will be addressed herein, as follows.

Section 5-7-170, Code of Laws of South Carolina (1976, as amended), provides in pertinent part that "[t]he mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties within limitations prescribed by ordinance." ^{1/} This statute has been interpreted in Brown v. Wingard, 285 S.C. 478, 330 S.E.2d 301 (1985); according to a footnote in the decision, this case apparently constitutes the entire body of case law on the

^{1/} According to Brown v. Wingard, this statute applies only to "actual expenses incurred by the Mayor and Council members themselves in the performance of their official duties." 330 S.E.2d at 303 (emphasis added). See also Ops. Atty. Gen. dated September 17, 1985; May 30, 1978; December 1, 1976; December 15, 1976; August 10, 1977; and March 31, 1978. Thus, reimbursement of expenses of the City Manager or other persons is not covered by this statute; as to the City Manager, city policy as adopted by Council pursuant to Section 5-13-30 of the Code must govern this question.

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subject within this State. That decision is silent as to receipts being required, however, as is Section 5-7-170 of the Code.

You enclosed with your letter a copy of the Travel Payment Voucher of the City of Greenwood. Section I requires the name of the individual incurring recoverable expenses, his department, dates of departure and arrival, purpose of trip, charge account number and amount of advance (if any). The individual's signature is required. In Section II, the expense accounting is broken into several categories: travel, mileage, carrier; lodging; meals; tips; registration; other, explanation of other; total expense; net returned (from an advance); and net due (if expenditures are greater than an advance). Again, the individual's signature is required.

In an opinion of this Office dated August 10, 1977, construing Section 5-7-170, it was stated that, "[a]s far as itemization of expenses is concerned, ... any itemization which discloses the actual expenses incurred (e.g., itemizations such as lodging, travel, seminar fees, books, etc.) would be appropriate." No opinion of this Office has stated that receipts or other supporting documents would be required, however. By requiring itemization, the Travel Payment Voucher appears to comport with this opinion.

We have located cases from other jurisdictions which have held that, under general statutes permitting the reimbursement of expenses of public officials, itemization is required. See, for example, Funk v. Milliken, 317 S.W.2d 499 (Ky. Ct. App. 1958); Tedford v. Mears, 526 S.W.2d 1 (Ark. 1975); Housing Authority of City of Harlingen v. State ex rel. Velasquez, 539 S.W.2d 911 (Tex. Civ. App. 1976); McWhorter v. City of Richmond, 514 S.W.2d 678 (Ky. Ct. App. 1974); Schanke v. Mendon, 93 N.W.2d 749 (Iowa 1958); and O'Donnell v. Board of Chosen Freeholders of Morris County, 31 N.J. 434, 158 A.2d 1 (1960). At the very least, courts in these jurisdictions have required an itemization or other accounting prior to reimbursement for expenses incurred in the performance of official duties.

In McWhorter, the court noted that "no vouchers, receipts, or itemization of expenditures of any kind" were submitted by the public officials to substantiate their claims for expenses. There the court struck the lump-sum expense payments made to the public officials for their expenses. In Tedford, the court declared that expense money paid in advance to public officials

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without any itemization or vouchers was illegal, not authorized by and contrary to law.

Other courts have required more documentation of expenses, however; for example, the commissioners in the Housing Authority case were to be reimbursed, according to a Texas law denominated §5 of Art. 1269k, for their necessary expenses incurred in the discharge of their duties. In striking the \$50.00 monthly expense allowance paid to the commissioners, the court stated:

The right of a public official to reimbursement for his necessary expenses incurred in the performance of his official duties must be interpreted strictly. It is the view of this Court that the legislature, in enacting §5 of Art. 1269k, intended that the Commissioners be reimbursed for their necessary expenses only upon a satisfactory presentment of each singular expense item. The statute does not permit the payment of an expense allowance, travelling or otherwise. The Commissioners had no discretion in the matter. Any payment that is not supported by adequate evidence of actual money expended can only constitute a gift of public money or compensation to the Commissioner who receives the same, which is prohibited by law.

539 S.W.2d at 916.

Similarly, the court in Funk suggested that, in advance, the governing body could establish

the categories of reasonable official expenses that will be allowed and the maximum amount that will be allowed for each category. In such case, the officer still will be required to submit a detailed account of the expenses, with adequate supporting data, in order to obtain [reimbursement]. ... [I]n order to receive [reimbursement] he must not only show the amount and purpose of each expenditure, and

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that it is reasonable, but must establish that the expenditure is in an allowable category.

317 S.W.2d at 507. The court also took great care to distinguish between those expenses which are beneficial to the public and those which are predominantly personal to the public official. Automobile expenses would not be allowed "without a showing of the purpose and official necessity of each trip, and the distance traveled on each trip." 317 S.W.2d at 507. That court also examined office expenses, professional dues, postage and stationery, cost of a book, temporary stenographic work, and other claimed expenses. Not only did the court require a detailed account of the expenses, but it also required submission of supporting data or satisfactory proof.

Under the laws of this State, receipts do not appear to be expressly required by Section 5-7-170 of the Code for a mayor or member of council to be reimbursed for actual expenses incurred in the performance of their duties. We must point out that our Supreme Court has not considered this issue, and thus we have no guidance on how strict an accounting the courts of this State would require. We further caution that some courts faced with the issue and a statute as general as Section 5-7-170 have required strict accounting, as detailed above.

You enclosed with your letter a copy of Section 2-15 of the Greenwood Code of ordinances. Subsection (c) provides that the

mayor and members of the council shall be reimbursed for their actual expenses incurred in the performance of their official duties upon submission of signed expense reimbursement forms as provided by the city.

The expense reimbursement form was described earlier in this letter. Nowhere on the form or within the Greenwood Code as provided to this office does it appear that submission of receipts is required.

Reimbursement of the expenses of the City Manager is not covered by Section 5-7-170 of the South Carolina Code or Section 2-15(c) of the Greenwood Code since the City Manager is not a member of council. Thus, whatever policy has been adopted by Council for city employees would also apply to him. You have

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advised that at one time city personnel were required to submit receipts; 2/ however, in 1983, the form used to claim reimbursement was apparently changed and receipts have not been required since the change was implemented. On the basis of this information supplied by you, it appears that receipts would not be required for reimbursement of the City Manager's expenses. We must caution, as above for the mayor and council members, that our courts have not yet decided the issue and could impose strict accounting requirements if faced with the issue.

By way of comparison, state employees and officers entitled to reimbursement recoup expenses incurred in the discharge of their duties by following the guidelines within each year's appropriations act. In the 1986-87 act, Section 140 of Part I covers travel and subsistence reimbursement. The only expenses for which receipts are required are lodging and, in some instances,

2/ Instructions on the bottom of the former Travel Request stated:

1. Travel - \$.20 per mile in personal car within the State; Tourist Air Travel outside the State or within the State. If other means of travel at no cost to the City or to you, indicate above under carrier.
2. Lodging - Total amount - attach paid bills.
3. Meals - Total amount - attach paid bills.
4. Tips - Total amount.
5. Registration - Total amount - if paid directly by City indicate above.
6. Other - Total amount with full explanation and attach paid bills.

Exactly how or when this Travel Request was adopted or changed has not been detailed to this Office. Because this Office is not empowered to investigate such facts, Op. Atty. Gen. dated November 15, 1985, we assume for purposes of this opinion that adoption and change of the policy were effected in an appropriate manner by the appropriate policy-making authority.

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parking. No receipts are required for meals, though certain limits are defined, depending on whether the claimant incurred the expense within the State, outside the State in a large urban area, and so forth. (Constitutional officers are reimbursed for their actual expenses for subsistence.) Thus, at the state level, receipts must be produced to support very few claimed expenses when filing for reimbursement. We further note that the provisions of Section 140 of Part I of this act apply to state employees, constitutional officers, and similar persons at the state level, and not to officials and employees of cities and counties. Submission of receipts may be required by a particular state agency's policy, it should be noted.

One final point to be mentioned is the State Ethics Act. In particular, Section 8-13-410(1) prohibits a public official or employee from using his office for financial gain for himself. In the cases cited above from other jurisdictions, one reason often cited for requiring itemization and strict accounting was to ensure that the 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. This is another issue which has not been addressed by our courts and thus the decisions of other jurisdictions may be helpful.

In conclusion, we advise that no state statutory or City Code provision explicitly requires submission of receipts to support the claim for reimbursement of actual expenses of a mayor or council member incurred in the performance of their public duties. Further, while Section 5-7-170 of the South Carolina Code and Section 2-15 of the City Code do not apply to the City Manager, it appears that the present city policy does not require submission of receipts by that individual either. We have, however, found several cases from other jurisdictions which have required submission of receipts to support claimed expenses even though those states' statutes were as general as our statute is. These cases notwithstanding, and until a court rules otherwise, submission of receipts appears to be more of an administrative or policy matter, rather than a legal requirement, which policy matter remains within the discretion and exercise of good judgment by City Council. We also note that submission of receipts is not prohibited either and could be required by the General Assembly or City Council if either body found that such would be advisable. The institution of such a policy or law might well increase accountability of public funds or the confidence of the public in fiscal management; however, this Office has been asked to comment only upon the applicable law and not upon policy considerations.

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This Office has not examined the expense vouchers of the Mayor and City Manager and thus makes no comment as to the reasonableness or necessity of any of the expenses claimed therein. Such fact-finding is not within the purview of this Office. Op. Atty. Gen. dated November 15, 1985. We have instead addressed only the relevant state and local laws, as well as decisions from other jurisdictions to give guidance to City Council on this issue. Please advise if you should need additional assistance or clarification.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
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