

The State of South Carolina



Office of the Attorney General

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September 17, 1985

John L. McGowan, Esquire
Timmonsville Town Attorney
Post Office Box 1461
Florence, South Carolina 29503

Dear Mr. McGowan:

By your letter of August 27, 1985, you have requested the opinion of this Office as to the legality of an ordinance of the Town of Timmonsville which received first reading on August 19, 1985. The ordinance provides for an increase in the fixed amount of money paid as reimbursement for the expenses incurred by the Mayor and members of Town Council in the performance of their official duties. Based on numerous prior opinions of this Office, we would advise that the practice of paying a fixed amount as reimbursement of actual expenses is not authorized by statute.

Section 5-7-170, Code of Laws of South Carolina (1984 Cum. Supp.), provides the following:

The council may determine the annual salary of its members by ordinance; provided, that an ordinance establishing or increasing such salaries shall not become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members whether or not they were elected in such election. The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties within limitations prescribed by ordinance.

Pursuant to ordinance, the Mayor presently receives a salary of \$3,600.00 and a monthly expense allowance of \$125.00 plus actual expenses for trips out of town on town business. See ordinance

Continuation Sheet Number 2

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No. 183 of 1984. The Mayor's monthly expense allowance would be increased to \$500.00 plus actual expenses for out of town trips by the proposed ordinance. Council members receive no salary but are paid \$35.00 for each meeting attended plus actual expenses for trips out of town of town business; this expense allowance would be changed to \$100.00 per month plus actual expenses for out of town trips by the proposed ordinance.

The term "actual expenses" normally means the actual outlay or payment of money for some specified purpose, Mombert v. Bannock County, 9 Idaho 470, 75 P.239 (1904), and usually includes such items as meals, lodging, seminar fees, and mileage when incurred in the course of official business. Ops. Atty. Gen. dated May 30, 1978 and August 10, 1977 (copies enclosed). This Office has consistently opined that payment of a fixed amount for expenses is not authorized where a statute provides for payment or reimbursement of actual expenses incurred in the performance of official duties. Ops. Atty. Gen. dated March 31, 1978; December 1, 1976; December 15, 1976; and August 10, 1977, copies of which are enclosed. As stated in Opinion No. 78-66, dated March 31, 1978, "the amount of actual expenses incurred may be greater or may be less [than the fixed amount to be paid], but these amounts vary in accordance with the expenses incurred by the member and for which reimbursement is authorized."

Thus, based on the numerous prior opinions cited above, we would conclude that Section 5-7-170 of the Code does not authorize payment of a fixed amount for expenses of a mayor and council members but instead contemplates the reimbursement of the amount of expenses actually incurred in the performance of official duties, within limitations prescribed by ordinance.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg
Enclosures

REVIEWED AND APPROVED BY:

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