



ALAN WILSON
ATTORNEY GENERAL

November 10, 2015

Mr. Frank A. Rainwater
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South Carolina Revenue and Fiscal Affairs Office
1000 Assembly St. Suite 425
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Dear Mr. Rainwater:

We are in receipt of your opinion request concerning the interpretation of Section 23-47-65 of the South Carolina Code. Specifically, you ask whether the South Carolina Revenue and Fiscal Affairs Office (“RFAO”) and its’ “authority to provide reimbursements” to certain entities involved in the Wireless 911 Program under S.C. Code of Laws § 23-47-65(C)(1)(b) “includes the flexibility to allow direct payments to vendors for purchases approved by a local PSAP [Public-Service Answering Points].” Our response follows.

I. Law/Analysis

As indicated in your letter, your question requires us to interpret Section 23-47-65; particularly whether subsection (C)(1)(b)’s “reimbursement” language can be interpreted in a manner which would authorize direct payment to vendors for certain approved purchases. We believe it cannot.

Section 23-47-65 of the South Carolina Code establishes, via subsection (A), the South Carolina 911 Advisory Committee. The role of the Committee, pursuant to subsection (A), is “to assist the [RFAO] in carrying out its responsibilities in implementing a wireless enhanced 911 system” S.C. Code Ann. § 23-47-65(A)(1) (2014 Supp.). Continuing, subsection (B) of the statute highlights the Committee’s responsibilities, while subsection (C) details those of the RFAO. One of the RFAO’s responsibilities, as detailed in Section 23-47-65(C)(1)(b), is “to direct the State Treasurer in the management and disbursal of the funds in and from an interest-bearing account” including the duty to:

hold and distribute not more than fifty-eight and two-tenths percent of the total monthly revenues in the interest-bearing account solely for the purposes of complying with applicable requirements of FCC Docket Number 94-102. These funds may be utilized by the PSAP and the CMRS providers licensed to do business in this State for the following purposes in connection with compliance with the FCC requirements: upgrading, acquiring, maintaining, programming, and

Mr. Frank Rainwater
Page 2
November 10, 2015

installing necessary data, hardware, and software. Invoices detailing specific expenses for these purposes must be presented to the Revenue and Fiscal Affairs Office in connection with *any request for reimbursement*, and the request must be approved by the Revenue and Fiscal Affairs Office, upon recommendation of the committee. Any invoices presented to the Revenue and Fiscal Affairs Office *for reimbursements of costs* not described by this section may be approved only by a unanimous vote of the committee, *but in no event shall reimbursement be made for costs unrelated to compliance with applicable requirements* of FCC Docket Number 94-102[.]

S.C. Code Ann. § 23-47-65(C)(1)(b) (2014 Supp.). As noted above, it is the meaning of the term “reimbursement” within the context of the RFAO’s responsibility to direct the State Treasurer to expend funds derived from E911 user fees that serves as the basis for your question.

“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will” and “courts are bound to give effect to the expressed intent of the legislature.” Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). When determining the effect of words utilized in a statute, a court typically looks to the “plain meaning” of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). Nevertheless, courts do not focus on isolated portions of the language contained within a statute, but instead consider the statute’s language as a whole. See Mid-State Auto Action of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (“In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.”). This is because “[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent.” 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction, § 46.5 (7th ed. 2007). However, courts will reject the plain and ordinary meaning of the words used in a statute when doing so would defeat the intent of the legislature. Greenville Baseball v. Bearden, 200 S.C. 363, 368, 20 S.E.2d 813, 815 (1942).

Here, when reviewing the entirety of the statute in conjunction with the plain meaning of the term “reimbursement” we believe Section 23-47-65(C)(1)(b) cannot be read in a manner that would allow the RFAO to direct the State Treasurer to disburse payment directly to vendors for expenses incurred in complying with FCC Docket Number 94-102. Specifically, a review of Section 23-47-65(C)(1)’s other provisions reflect that had the Legislature intended for the RFAO to disburse payment directly to vendors, it would have said as much. See Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (explaining with respect to statutory construction that, “to express or include one thing implies the exclusion of another or the alternative.”).

For instance, Section 23-47-65(C)(1)(a) explains that the RFAO is empowered to direct the Treasurer to “distribute” funds to “PSAP administrators” based on expenses incurred in “answering, routing, and proper disposition of [Commercial Mobile Radio Service] 911 calls.” Unlike Section 23-47-65(C)(1)(b), Section 23-47-65(C)(1)(a) does not require the submission of “[i]nvoices detailing specific expenses” nor does it discuss procedures related to “reimbursement.” See S.C. Code Ann. § 23-47-65(C)(1)(b) (describing that “[i]nvoices detailing specific expenses” for upgrading, acquiring, maintaining, programming, and installing necessary data, hardware and software “*must be presented* to the [RFAO] . . . and the . . . request *must be approved* by the [RFAO], upon recommendation of the committee.”) (emphasis added). Similarly, it does not premise the distribution of funds upon the approval of the RFAO at the recommendation of the 911 Advisory Committee as is required by Section 23-47-65(C)(1)(b). See S.C. Code Ann. § 23-47-65(C)(1)(b) (describing that “[i]nvoices detailing specific expenses” for upgrading, acquiring, maintaining, programming, and installing necessary data, hardware and software “*must be presented* to the [RFAO] . . . and the . . . request *must be approved* by the [RFAO], upon recommendation of the committee.”) (emphasis added).

Likewise, Section 23-47-65(C)(1)(c), unlike Section 23-47-65(C)(1)(b), enables the RFAO to direct the Treasurer to “distribute” funds to an “independent auditor[.]” Notably, and like Section 23-47-65(C)(1)(a), it does so without requiring the submission of “invoices detailing specific expenses” to the RFAO or mandating review by the 911 Advisory Committee as is required by Section 23-47-65(C)(1)(b). Compare S.C. Code Ann. § 23-47-65(C)(1)(a) (2014 Supp.) (enabling RFAO to direct the Treasurer to distribute funds to an independent auditor “for expenses which the [RFAO] is authorized to incur by contract, or otherwise, for provision of any administrative, legal, support, or other services to assist the [RFAO] in fulfilling its responsibilities under this act[.]”) with S.C. Code Ann. § 23-47-65(C)(1)(b) (describing that “[i]nvoices detailing specific expenses” for upgrading, acquiring, maintaining, programming, and installing necessary data, hardware and software “*must be presented* to the [RFAO] . . . and the . . . request *must be approved* by the [RFAO], upon recommendation of the committee.”) (emphasis added).

In light of these differences, we believe Section 23-47-65(C)(1)(b) is unique in that it provides a specific process that PSAPs and Commercial Mobile Radio Service (“CMRS”) providers must follow in order to receive payment from the interest-bearing E911 account; namely the submission of “invoices detailing specific expenses” to the RFAO and RFAO approval of the payment at the recommendation of the 911 Advisory Committee. See S.C. Code Ann. § 23-47-65(C)(1)(b) (describing that “[i]nvoices detailing specific expenses” for upgrading, acquiring, maintaining, programming, and installing necessary data, hardware and software “*must be presented* to the [RFAO] . . . and the . . . request *must be approved* by the [RFAO], upon recommendation of the committee.”) (emphasis added). Indeed, it is this structure in conjunction with the use of the term “reimbursement” and its plain meaning that lead us to conclude that “reimbursement” is the only approved method of distribution of funds under the terms of Section 23-47-65(C)(1)(b). Again, had the Legislature intended to use a different means

Mr. Frank Rainwater
Page 4
November 10, 2015

of distributing E911 funds it could have done so. Instead, by using the term “reimburse” we believe the legislative intent in enacting Section 23-47-65(C)(1)(b) is clear—to reimburse PSAPs and CMRS providers for expenses that are approved by the RFAO with the consent of the Committee rather than permitting the RFAO to direct the Treasurer to disburse funds from the account directly.

Were we to interpret Section 23-47-65(C)(1)(b)’s reimbursement language in any other way, doing so would render the term superfluous. As our Supreme Court recently noted in Freeman v. J.L.H. Investments L.P., --- S.C. ---, --- S.E.2d --- (2015), the plain meaning of the word “reimburse” means to “pay back, to make restoration, to repay that expended, to indemnify; or make whole.” Id. (quoting Black’s Law Dictionary 1157 (5th ed. 1979)). Accordingly, we must construe Section 23-47-65(C)(1)(b) with the plain meaning of the word “reimbursement” in mind. See City of Rock Hill v. Harris, 391 S.C. at 154, 705 S.E.2d at 55 (explaining that when ascertaining a statute’s legislative intent, courts must look to the “plain meaning” of the words used within the statute). As a result, it is the opinion of this Office that Section 23-47-65(C)(1)(b)’s reimbursement language cannot be construed as authorizing the RFAO to direct the Treasurer to disburse funds directly to vendors.

II. Conclusion

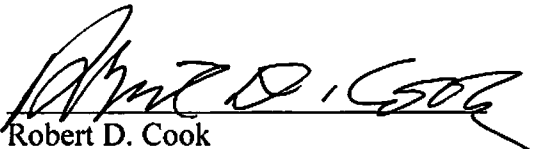
In conclusion, we believe that when reviewing the entirety of the statute in conjunction with the plain meaning of the term “reimbursement,” Section 23-47-65(C)(1)(b) cannot be read in a manner that would allow the RFAO to direct the State Treasurer to disburse payment directly to vendors. Specifically, both the structure of Section 23-47-65(C)(1) as well as the plain meaning of the term “reimbursement” reflect that the Legislature did not intend for such a construction of Section 23-47-65(C)(1)(b). Therefore, while the RFAO, in conjunction with the Committee certainly possesses the power to authorize the reimbursement of PSAPs and CMRS providers pursuant to the terms of Section 23-47-65(C)(1)(b), this authority should not be read as further authorizing the direct payment of vendors.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General