



A SELECTED READING

© Alabama League of Municipalities

Expenses of Municipal Officers and Employees

Generally, in the absence of any legal provision to the contrary, municipalities are not liable for the expenses their officers and employees incur. *McQuillin, Municipal Corporations*, 3rd Edition, Section 12.190. Most states, however, have enacted laws authorizing municipalities to reimburse officers and employees for expenses they incur in the performance of their official duties.

In Alabama, Sections 36-7-1 through 36-7-5, Code of Alabama 1975, provide a method for municipalities to reimburse officials and employees for expenses incurred while traveling beyond the municipal limits on official business. In addition, the Attorney General's office has consistently held that officials may be reimbursed for all expenses incurred in the performance of official duties.

This article discusses expense allowances and some of the issues which have arisen concerning reimbursement of municipal officials and employees for their expenses.

Expense Allowances

While there is no express statutory or judicial requirement that municipalities in Alabama reimburse employees and officials for their expenses, most municipalities do so. By the same token, there is no prohibition on reimbursement, provided that the actions of the municipality do not violate Sections 68 and 281, or Amendment 92, of the Constitution of Alabama 1901, or Sections 11-43-9 and 11-43-80, Code of Alabama 1975. These sections prohibit granting extra compensation to officers and employees after a service is rendered and also prohibit increasing or decreasing the salaries of municipal officials during the term in which they serve. Additionally, to advance travel expenses, the municipality and the official receiving the advance must comply with Section 36-7-3, Code of Alabama 1975, which sets out mandatory procedures to account for travel advances.

Clearly, the reimbursement of actual expenses does not violate these laws. The municipal official or employee is not receiving any extra compensation when reimbursement is received for expenses. Instead, the official or employee is left in the same position which he or she occupied prior to incurring any expenses.

Similarly, a municipality may establish a flat expense allowance for its employees or officials. In an opinion addressed to Hon. W. W. Malone, Jr., city attorney for Athens, dated October 20, 1965, the Attorney General's office stated "this office has consistently held ... that a flat expense allowance, if based upon a reimbursement to the officer concerned for expenses incurred by him in the performance of his official duties and bearing a reasonable and substantially accurate relationship to the actual expenses incurred, is not considered as an increase in compensation." See, also, AGO 2008-038.

Thus, a municipality may, by ordinance, establish a flat expense allowance to be paid to its officials on a periodic basis provided the allowance bears a reasonable and substantially accurate relationship to the actual expenses incurred. To the extent an expense allowance exceeds actual expenses; however, it is an unauthorized increase in salary and violates the sections of the constitution and code cited above. AGO 1981-187 (to Hon. E. W. Patton, Jr., January 28, 1981). Also, amounts above actual expenses must be treated as income by the official or employee for income tax purposes.

Similarly, the Attorney General has ruled that a park board, formed and operating pursuant to section 11-86-1, et seq., of the Code of Alabama may create an expense account to pay travel and other expenses incurred by the director and staff of the Board while in performance of their official duties if the expense allowance bears a reasonable and substantially accurate relationship to the expenses incurred. To the extent an expense allowance exceeds actual expenses, however, it is an unauthorized increase in salary and violates sections 68 and 281 and Amendment 92 of the Constitution of Alabama. AGO 2008-016.

Recognizing the difficulty of determining whether an expense allowance is reasonably related to actual expenses incurred, the Attorney General's office pointed out in its opinion to Mayor Patton that the better practice is for municipalities to adopt a policy of reimbursing their officers for the actual expenses incurred while performing their duties only after receiving an affidavit from the officer listing the expenses. This method helps avoid the potential legal and tax problems encountered when

a municipal official is paid a fixed periodic sum for expenses. However, the Attorney General's office pointed out that no law is violated when a municipality authorizes paying its officials a fixed expense allowance.

A \$100 per diem provided to members of a board that is in addition to the reimbursement for travel expenses is considered a salary or compensation. An expense allowance, however, is not compensation. AGO 2008-038.

Items Allowed in Expense Allowances

Regardless of whether a municipality chooses to reimburse its officials only for their actual expenses or to authorize paying them a fixed expense allowance, the general rule appears to be that municipal officers are entitled to reimbursement for all reasonable and necessary expenses legitimately incurred in the performance of their official duties. Regarding the specific items which may be considered as legitimate expenses, the Attorney General's office has stated that this determination must ultimately be made by the municipal governing body.

However, some guidance was provided in the opinion to Mayor Patton cited above. In that opinion, the Attorney General stated that expenses for phone calls, gasoline and automobile repairs may be included in the expense allowance, provided that the expenses were incurred in the performance of official duties. AGO 2001-046. The time spent performing these official duties cannot be included in the expense allowance. Municipal officials are compensated for their time by salary and any extra money received for their time equates to an impermissible salary increase.

In an opinion to Hon. George W. Ivy, Jr. and Hon. John M. Anthony, Jr., dated December 2, 1974, the Attorney General ruled that municipalities have no authority to furnish telephone service at a city commissioners business or residence, even if he or she establishes his or her official office at either location.

The provision of telephone service is particularly appropriate for demonstrating the difficulties of using a flat monthly expense allowance. If the official is allotted a certain amount of money for telephone expenses yet does not make enough official calls to justify this amount, the official would be required to refund the extra funds to the city. Similarly, if the official spends more money for telephone calls than is allotted, reimbursement would be requested from the city. Reimbursing the official for actual expenses removes these difficulties.

Finally, in the opinion to Ivy and Johnson, the Attorney General ruled that municipalities may not pay the civic club dues of their officers or employees. However, municipalities may furnish city officials with automobiles, provided the automobiles are used solely for official municipal business. AGO to Hon. John M. Franklin, January 28, 1974. A municipality has the power to reimburse volunteers for mileage they incur on municipal business, if the council determines that reimbursing mileage serves a municipal purpose. AGO 1995-134.

Travel Expenses

While flat expense allowances are permissible for municipal officials who incur expenses in the performance of their official duties while in the municipality, in an opinion to Hon. Emory Folmar, mayor of Montgomery, dated May 19, 1980, the Attorney General stated that this allowance cannot "include reimbursement for expenses incurred while traveling or remaining beyond the limits of the municipality." Instead, reimbursement for expenses "beyond the limits of the municipality" is governed by Sections 36-7-1 through 36-7-5, Code of Alabama 1975.

Procedure for Approval

Section 36-7-1 provides that no officer or employee of a municipality or county in Alabama shall be reimbursed from the treasury of the municipality or county unless an itemized statement of expenses is presented and is approved as provided in Section 36-7-2.

Section 36-7-2 requires the officer or employee, immediately upon return, to present the statement to the municipal comptroller in a commission-governed municipality and to the treasurer in a council-manager municipality. This statement must be presented to the council or commission at a regular meeting held within 30 days after it is presented to the comptroller or treasurer. If the governing body disallows the statement, the official or employee cannot be reimbursed. It is the opinion of the League that if the governing body finds only certain items should be disallowed, those items may be deleted from the statement and the statement approved as amended.

In an opinion to Hon. B. R. Winstead, Jr., director of finance for Birmingham, dated October 31, 1973, the Attorney General ruled that, although Section 36-7-2 requires the official who incurred the expenses to present the itemized statement of expenses immediately upon returning from his or her trip, the official must simply present the statement as soon as is practicable after returning. Then, in order for the official to receive reimbursement for those expenses, the municipal governing body must, at a regular meeting within 30 days after the statement is presented, approve the statement of expenses.

The Attorney General has held that a town council may require its municipally sanctioned volunteer fire department to provide the town with unredacted copies of fire and emergency medical services reports to keep on file for use in determining the reimbursement of expenses of department personnel making fire and medical calls. AGO 2007-111

Advances

Section 36-7-3 states that no sum shall be advanced from the municipal treasury to defray the travel expenses of a municipal official or employee unless the governing body passes a resolution allowing the expense. This resolution must state the purpose and object of the proposed trip.

The Court of Civil Appeals of Alabama has held that a city council may not retroactively approve an advance of travel expenses which were not properly made pursuant to Title 36, Chapter 7, Article 1, Code of Alabama 1975. *Cassady v. Claiborne*, 590 So.2d 339 (Ala. Civ. App. 1991).

When funds are advanced to a municipal official or employee, an itemized statement, as specified in Section 36-7-1, must be presented immediately upon the return of the official or employee. Section 36-7-4, Code of Alabama 1975. Failure to present this statement and to have it approved renders the officer or employee personally liable to the municipality for the advanced funds. If the officer or employee receives a salary for services, the amount of the advance can be deducted from any future salary received from the city.

The provisions of the code which deal with reimbursement of expenses for traveling beyond the municipal limits – including the provisions relating to advancement of funds – do not apply to the use of a municipal credit card beyond the corporate limits on official municipal business. *See* Section 36-7-1, Code of Alabama 1975. Thus, a municipal council does not have to approve, by resolution in advance, the use of a credit card issued in the name of a municipality for trips outside the municipality by municipal officers and employees.

Reimbursable Travel Expenses

While no Attorney General's opinions or Alabama cases deal with the question of what items may be claimed as travel expenses, it seems clear that items such as gasoline, business-related phone calls, automobile expenses, hotel rooms and meals are permissible. In addition, traveling officials and employees can probably participate in special planned events, assuming that the events are part of a convention or meeting the official or employee is attending. Again, however, the time the official spends away from the municipality is generally not reimbursable. These are questions that must be answered on a case-by-case basis with the ultimate decision on the items which are allowable resting solely with the municipal governing body.

In addition, no opinions or cases explain what trips are reimbursable. The general rule is that if the trip is related to official municipal business, the officer or employee is entitled to be reimbursed for expenses.

However, it is clear that a municipality may not pay the expenses incurred by the spouse of an official or employee while traveling. AGO to Hon. George W. Ivy, Jr. and Hon. John M. Anthony, Jr., December 2, 1974. Further, a city may adopt a personnel policy that provides for the reimbursement of travel expenses for select candidates for employment with the city and for the reimbursement of moving expenses for select new employees, subject to restrictions to prevent abuse and promote fiscal responsibility. AGO 1999-278.

Some boards or municipalities have legislative acts that specify the items which can be included as reimbursable expenses or which limit the amount of expenses an official can claim. These acts would govern the amount or the type of expenses which can be claimed in these instances. Officials should be aware of the acts and code sections which govern their operation.

Penalties

Any officer or employee drawing or approving any warrant drawn on the municipal treasury in violation of these provisions shall be guilty of a misdemeanor and punished as provided by law. Therefore, proper care should be taken before deciding what items to allow as part of the expense allowance and the municipal governing body must ensure that the expenses which are being claimed by the officer or employee are legitimate.

Additionally, officers and employees who fail to account for travel advances may be convicted for a violation of the Ethics Law. *Langham v. State*, 662 So.2d 1201 (Ala. Crim. App. 1994).

Recommended Accounting Procedures

There appears to be a conflict in the Attorney General's opinions regarding flat expense allowances and actual expense reimbursements. The opinions indicate that officials may receive a flat expense allowance, but this allowance may not exceed actual expenses incurred. The better practice seems clear – municipalities should reimburse officials for the actual expenses incurred. This satisfies all the requirements of the various code sections as well as the accounting requirements of the Internal Revenue Service.

In deciding which expenses to allow, one requirement is common to both the IRS and state laws – the expense must be both reasonable and necessary. Reimbursing officials only after they present a list of actual expenses helps the municipality ensure that this requirement is met.

Regarding travel expenses, in most cases, an official or employee will request an advance from the municipal treasury to help defray expenses. As noted above, the Code of Alabama permits this practice, provided a resolution to this effect is passed by the governing body of the municipality. This resolution should include detailed instructions concerning the accounting to be made by the official or employee upon his or her return. When the accounting, in written form, is made to the municipality, it relieves the employee from making an accounting to the IRS, provided the procedure is done properly. The League suggests enlisting the aid of the city auditor to ensure that the proper procedure is followed.

Revised 2020