

Following the Legal Issues class presented as part of the Institute of Government at the SCAC Annual Conference, I received a number of requests for information and the code cite that prohibits the paying of a per diem to council members and other elected officials. The following information may be useful in answering those questions.

Payment of actual expenses incurred by county council members.

SECTION 4-9-100. Council members shall not hold other offices; salaries and expenses of members.

No member of council, including supervisors, shall hold any other office of honor or profit in government, except military commissions and commissions as notaries public, during his elected term. After adoption of a form of government as provided for in this chapter, council shall by ordinance prescribe the salary and compensation for its members. After the initial determination of salary, council may by ordinance adjust the salary but the ordinance changing the salary is not effective until the date of commencement of terms of at least two members of council elected at the next general election following the enactment of the ordinance affecting the salary changes at which time it will become effective for all members. A chairman of a county council who is assigned additional administrative duties may receive additional compensation as the council may provide. The additional compensation becomes effective with the passage of the ordinance increasing the compensation of the chairman. **Members may also be reimbursed for actual expenses incurred in the conduct of their official duties.** The restriction on salary changes does not apply to supervisors under the council-supervisor form of government whose salaries may be increased during their terms of office but supervisors shall not vote on the question when it is considered by council.

HISTORY: 1962 Code Section 14-3707; 1975 (59) 692; 1980 Act No. 300, Section 5; 1985 Act No. 114, Section 1.

Extra compensation to elected officials prohibited.

S.C. Constitution - Article III. SECTION 30. Extra compensation not permitted; appropriations for repelling invasion.

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrection.

2013 WL 3762704 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 8, 2013

*1 The Honorable MaryGail K. Douglas
Representative
District No. 41
56 Kabbard Road
Winnsboro, South Carolina 29180

Dear Representative Douglas,

You seek an opinion of this Office concerning the propriety of the allocation of funds by the County Council to individual council members for certain purposes. Specifically, your questions concern:

- 1) The appropriateness of county council members receiving, under separate payment, costs associated with health insurance premiums. Currently, the county reimburses these premiums to several council members who have coverage from other entities, such as state, county or private sources.

- 2) The propriety of county council authorizing payment of college tuition for a council member out of public funds.

Law/Analysis

Both of your questions regarding the use of county funds for the benefit of individual council members raise serious constitutional concerns. [Article III, § 30 of the South Carolina Constitution](#) provides:

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrection.

Although the language of this provision expressly prohibits only the General Assembly from taking any such action, we have repeatedly advised that it also serves to limit political subdivisions, such as counties and municipalities, at least in the powers delegated to them by the General Assembly. [Ops. S.C. Att’y Gen., 2012 WL 6218333 \(Dec. 4, 2012\)](#); [2002 WL 1340428 \(May 9, 2002\)](#).

Our Supreme Court has defined “extra compensation” for purposes of [Article III, § 30](#) as “any compensation over and above that fixed by law or contract at the time the service was rendered.” [State ex rel. McLeod v. McLeod, 270 S.C. 557, 559, 243 S.E.2d 446, 447-48 \(1978\)](#). This Office has repeatedly advised that the “[u]se of public funds to provide any form of compensation (extra compensation, insurance payments, pension payments, etc.) for public employees is unconstitutional if it is greater than that which the State [or political subdivision] has a contractual or legal obligation to provide.” [Op. S.C. Att’y Gen., 2012 WL 6218333 \(Dec. 4, 2012\)](#); [see also Op. S.C. Att’y Gen., 1999 WL 397927 \(Feb. 17, 1999\)](#). In addition, we have consistently advised that municipal corporations are generally prohibited by law from bestowing a gratuity on an officer or employee. [Ops. S.C. Att’y Gen., 2012 WL 6218333 \(Dec. 4, 2012\)](#); [1997 WL 205801 \(Feb. 3, 1997\)](#).

Our State Constitution grants the Legislature the power to “provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties” [S.C. Const, art. VIII, § 7](#). Consistent with this authority, the General Assembly has authorized members of a county council to receive “salary and compensation” set by ordinance. [§ 4-9-100](#).

Thus, the salary a member of county council is entitled to receive is set not by contract but by local ordinance. See [62 C.J.S. Municipal Corporations § 474](#) (“An officer whose salary is fixed by law is entitled to that salary not as under a contract of employment but as incident to the office”). In addition, § [4-9-100](#) states “[m]embers may also be reimbursed for actual **expenses** incurred in the conduct of their official duties.” As we stated in a previous opinion, “[c]ourts interpret strictly the right of public officials to be reimbursed for their necessary expenses incurred in the performance of their official duties.” [Op. S.C. Att’y Gen., 1987 WL 245448 \(April 24, 1987\)](#). The general test for determining whether a public officer may be reimbursed for any particular expenses has been described as follows:

*2 The true test in all such cases is, was the act done by the officer relative to a matter in which the local corporation had an interest, or have an affect upon municipal rights or property, or the rights or property of the citizens which the officer was charged with an official obligation to protect and defend. No expenditure can be allowed legally except in a clear case where it appears that the welfare of the community and its inhabitants is involved and direct benefit results to the public.

[4 McQuillin Mun. Corp. § 12:213 \(3d ed.\)](#).

With the above in mind, we look to your specific questions concerning certain uses of county funds to the benefit of individual council members. Your first question concerns cash payments made to individual members in lieu of, or as reimbursement for, health insurance premiums where the individual member has opted not to participate in the group health insurance plan offered by the county to its officers and employees. We note that the Legislature has expressly authorized county governments to participate in the South Carolina Employee Insurance Program (EIP)¹ which makes group health, dental, and other insurance plans available to “active and retired employees of this State and its public school districts.” § 1-11-710(A)(1). Under the EIP, the employing entity and the employee share the responsibility for making contributions toward health insurance premiums at a rate set by the South Carolina Public Employee Benefit Authority (PEBA). § 1-11-710(A)(2). Pursuant to § 1-11-720(A), the employees of counties are expressly made eligible to participate in the EIP and thus receive coverage under the state health and dental insurance plans.² However, a county must comply with the requirements established by PEBA in order to be eligible to participate in the state health and dental insurance plans. § 1-11-720(B). Referencing the EIP guidelines, we advised in a prior opinion that any participating county or municipality is required to contribute toward the premium of a participating officer or employee at least as much as the State contributes for its officers and employees. [Op. S.C. Att’y Gen., 2011 WL 3918183 \(Aug. 3, 2011\)](#).

The validity of such legislation authorizing political subdivisions to participate in group insurance programs for the benefit of their officers and employees is generally discussed in [3 McQuillin Mun. Corp. § 12:173.82 \(3d ed.\)](#):

[A]n act empowering a [political subdivision] to contribute to premiums on group life and hospital insurance policies of officers or employees **who desire to take out the insurance** is not unconstitutional as granting the [political subdivision] power to increase the compensation of public officers, servants or employees during their term of office or as an attempt to authorize the [[political subdivision] to lend credit or grant public money in aid of individuals.

*3 (Emphasis added); see also [Op. S.C. Att’y Gen., 2011 WL 3918183 \(Aug. 3, 2011\)](#) (concluding a municipality’s decision to participate in EIP pursuant to § 1-11-720 does not violate § 5-7-170³).

Consistent with the above, a member of county council is authorized under the law to receive, as part of his or her compensation, insurance benefits in the form of payments made by the county on the member’s behalf toward a group health insurance plan the county has elected to participate in. However, such payments can only be made on behalf of a member who elects to participate in the plan offered; no provision of law of which we are aware permits a member who opt out of such a plan to receive cash payments in lieu of the amount that would have been paid toward the premiums on their behalf. Furthermore, we do not believe that members of council who opts out of participating in such group insurance plans may, in the alternative, be reimbursed by the county for expenses incurred in obtaining separate health insurance coverage. Such reimbursements are not, for purposes of § [4-9-100](#), “actual **expenses** incurred in the conduct of their official duties” under the rule of strict construction applicable to such provisions. Accordingly, it is our opinion that the only compensation a member

of council may lawfully receive for the purposes of obtaining health insurance are payments made by the county on the member's behalf toward the premiums for a group health insurance plan in which the county participates. To otherwise make cash payments directly to members who opt out of such a group plan in lieu of payments toward their premium, or in the form of reimbursements for expenses incurred in obtaining separate insurance coverage, violates both [Article III, § 30](#) and [§ 4-9-100](#).⁴ In short, such payments to the members are not authorized by the General Assembly and, we believe are a departure from the law for the county to pay these members in such a manner

The same conclusion applies to the use of county funds to pay the college tuition costs of an individual member of county council. The use of public funds in such a manner clearly bestows upon the individual member extra compensation in violation of [Article III, § 30](#). Furthermore, such payments could not reasonably be construed as reimbursements for "actual expenses incurred in the conduct of ... official duties" under [§ 4-9-100](#). See [4 McQuillin Mun. Corp. § 12:213 \(3d ed.\)](#) ("a public officer may not inform or educate him or herself generally at public expense"). Accordingly, it is our opinion that a county is prohibited by law from paying the college tuition costs of an individual member of council.

In addition, the use of county funds for the purposes specified in your letter is constitutionally suspect for other reasons. As we have previously stated, under our State Constitution "it is well-settled that the expenditure of public funds must be for a public, not a private purpose." [Op. S.C. Att'y Gen., 2012 WL 1036301 \(March 20, 2012\)](#); see also [Elliott v. McNair, 250 S.C. 75, 86, 156 S.E.2d 421, 427 \(1967\)](#) ("All legislative action must serve a public rather than a private purpose"). This principle is recognized in several constitutional provisions. See [S.C. Const. art. X, § 14\(4\)](#) ("General obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision"); [S.C. Const. art. X, § 5](#) ("Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied"); [S.C. Const. art. X, § 11](#) ("The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual"). As we stated in a prior opinion, [Article X, § 11](#) "has been construed by the Court to prohibit the expenditure of public funds 'for the primary benefit of private parties.'" [Op. S.C. Att'y Gen., 1983 WL 182057 \(Nov. 16, 1983\)](#) (citing [State ex rel. McLeod v. Riley, 276 S.C. 323, 278 S.E.2d 612 \(1981\)](#); [Feldman & Co. v. City Council of Charleston, 23 S.C. 57 \(1886\)](#)); see also [Op. S.C. Att'y Gen., 2008 WL 4829833 \(Oct. 28, 2008\)](#) (stating [Art. X, § 11](#) is violated "when public funds are appropriated to a private entity and such appropriation is not for a public purpose").

*4 As previously indicated, the constitutional prohibition against the use of public funds for the primary benefit of a private party is not violated where a county makes contributions towards health insurance premiums for its officers or employees who wish to participate in a group health insurance plan the county is authorized to offer. See [3 McQuillin Mun. Corp. § 12:173.82, supra](#). However, in the absence of legislation specifically allowing a county to make cash payments to individual council members in lieu of contributions toward premiums on the approved group health insurance plan on their behalf, a court would most probably conclude that the use of public funds in this manner unconstitutionally benefits private parties, i.e., the individual council members.

Even more suspect is the use of county funds to pay the college tuition costs of an individual member of council. We have recognized in previous opinions that the promotion of higher education in a county generally serves a valid public and corporate purpose, [Op. S.C. Att'y Gen., 2012 WL 1036301 \(March 20, 2012\)](#), and that the "expenditure of public funds for tuition assistance generally meets the public purpose test." [Op. S.C. Att'y Gen., 1986 WL 289767 \(March 17, 1986\)](#). However, the 2012 opinion, as well as others previously issued, generally concerned programs designed to provide tuition assistance to the residents of the State or a political subdivision. The 1986 opinion concerned a tuition reimbursement policy adopted by a public service district for the purpose of encouraging its employees to take courses with "a legitimate connection or manifest relation" to the district's corporate purpose. No opinion of this Office or decision by our state appellate courts has ever sanctioned the expenditure of public funds to cover a single individual's college tuition costs. Furthermore, as previously referenced, [4 McQuillin Mun. Corp. § 12:213](#) states that "a public officer may not inform or educate him or herself generally at public expense" Accordingly, we believe a court would find that the use of county funds to pay the tuition costs of individual members of council is a violation of the Constitution.

We note that other provisions of law may be relevant to your questions concerning the legality of the manner in which county funds may or have been used. However, we believe our above conclusions sufficiently and decisively answer your questions. Thus, we find it unnecessary to further address the propriety of the use of county funds in manner presented in relation to any other provision of law.

Conclusion

It is our opinion that State law prohibits a county from using public funds to make cash payments directly to individual members of county council who elect not to participate in the group health insurance plan offered by the county in lieu of making payments toward the premiums for such plans on their behalf or as reimbursement for expenses incurred by such non-electing members in obtaining separate insurance. While only a court may so conclude with finality, we believe that such payments are unauthorized and that it is a departure from the law for the county to pay them. We are also of the opinion that State law prohibits county funds from being used to pay for the college tuition of individual council members. The use of public funds for such purposes grants such members extra compensation in violation of [Article III, § 30 of the South Carolina Constitution](#). Furthermore, the use of county funds for such purposes violates § [4-9-100](#) as such expenditures cannot reasonably be construed as reimbursements for “actual **expenses** incurred in the performance of their official duties.” Both forms of payment, in our opinion, also constitute the use of public funds for private purposes. Should a court determine that these forms of payments are prohibited by law as we believe they are, there may be personal liability for the wrongful receipt or payment of such funds. [Op. S.C. Atty. Gen., 1997 WL 208002 \(March 3, 1997\)](#).

Sincerely,

*5 Robert D. Cook
Solicitor General
Harrison D. Brant
Assistant Attorney General

Footnotes

- ¹ [See generally](#) § 1-11-703 [et seq.](#)
- ² According to the 2013 Insurance Benefits Guide issued by PEBA, page 9, “eligible employees” includes “elected members of the council of participating counties or municipalities.” A copy of this guide is available at <http://www.eip.sc.gov/ibg/>.
- ³ Similar to § 4-9-100, § 5-7-170 provides the following with regards to the compensation of members of a municipal council:
The council may determine the annual salary of its members by ordinance 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.
- ⁴ This result is consistent with a prior opinion in which we concluded that a county council could not make cash payments directly to members of the county delegation to cover their expenses in lieu of providing them with “office space and appropriations necessary for the operation of the county legislative delegation” as required by a specific provision enacted as part of the home rule legislation. [Op. S.C. Att’y Gen., 1979 WL 43593 \(Sept. 18, 1979\)](#). To the extent this result is inconsistent with a prior opinion in which we concluded a county “may lawfully pay to those of its employees who elect not to participate in the County-sponsored group health insurance plan an amount equal to the cost the County of providing coverage under the plan,” [Op. S.C. Att’y Gen., 1983 WL 182004 \(Sept. 20, 1983\)](#), we expressly overrule that opinion. In any event, that opinion can be distinguished on the basis it concerned county employees who may receive certain compensation and benefits pursuant to contract, as opposed to the instant case involving elected members of county council whose salary and compensation is fixed by law and not by contract.

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1987 S.C. Op. Atty. Gen. 107 (S.C.A.G.), 1987 S.C. Op. Atty. Gen. No. 87-39, 1987 WL 245448

Office of the Attorney General

State of South Carolina
Opinion No. 87-39
April 24, 1987

*1 The Honorable Addison G. Wilson
Senator
District No. 23
606 Gressette Building
Columbia, South Carolina 29202

Dear Senator Wilson:

By your letter of March 24, 1987, you have asked for the opinion of this Office on several questions, as follows:
May a county or political subdivision of South Carolina pay for bar bills and liquor charges with public funds? May such a political subdivision reimburse public officials or employees for such charges while traveling on official business? Is there a limit to any such expenditure to where it exceeds official business?

May a county or political subdivision of South Carolina pay for movies or pay television included in hotel bills with public funds? May such political entities reimburse public officials and employees for such charges while traveling on official business?

The same principles of law to be discussed below would be applicable to both questions.

Statutes Authorizing Reimbursement

At least two statutes of South Carolina permit reimbursement to public officials of political subdivisions of this State. [Section 4-9-100, Code of Laws of South Carolina](#) (1976, as revised), provides that members of county councils “may also be reimbursed for actual **expenses** incurred in the conduct of their official duties.” As to municipalities, [Section 5-7-170 of the Code](#) provides that mayors and council members “may also receive payment for actual expenses incurred in the performance of their official duties within limitations prescribed by ordinance.” We will discuss decisions from other jurisdictions construing similar statutes, to formulate a response to your questions, but we must advise that we have not examined any ordinances of any political subdivision and thus make no comment or judgment as to any subdivision’s policy of reimbursement or to any specific instance in which reimbursement was provided.

Constitutional Provisions

There are two constitutional arguments which are usually advanced in issues such as you have raised: extra compensation to the public official being reimbursed and use of public funds for other than public purposes. The Constitution of the State of South Carolina contains provisions similar to those which are raised when the issues arise in other jurisdictions. Article III, Section 30 provides:

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law;

In addition, Article X, Section 11 provides that
[t]he credit of neither the State nor any of its political subdivisions shall be pledged or loaned for the benefit of any

individual, company, association, corporation, or any religious or other private education institution....

Whether the practice of a political subdivision of the State violates either of these constitutional provisions can be determined only by a review of the facts of a particular situation, applying applicable law. While this Office may not make factual determinations, see Op.Atty.Gen. dated September 9, 1986, the law will be discussed for your guidance.

Discussion of Applicable Law

*2 The general rule as to reimbursement for expenses of public officials is succinctly stated in 62 C.J.S. Municipal Corporations § 535: “The general rule is that a municipality [or political subdivision] may, when not prohibited by its charter, reimburse one of its officers for moneys actually and necessarily expended by him in the discharge of a duty pertaining to his office.” See also [Brown v. Wingard](#), 285 S.C. 478, 330 S.E.2d 301 (1985); [Scroggie v. Scarborough](#), 162 S.C. 218, 160 S.E. 596 (1931). Courts interpret strictly the right of public officials to be reimbursed for their necessary expenses incurred in the performance of their official duties. [Housing Authority of City of Harlingen v. State ex rel. Velasquez](#), 539 S.W.2d 911 (Tex.Civ.App.1976); Op.Atty.Gen. dated September 9, 1986. The test to be applied in determining the propriety of a particular request for reimbursement is found in [McQuillin](#), Municipal Corporations, § 12.190:

[W]as the act done by the officer relative to a matter in which the local [political subdivision] had an interest, or have an affect [sic] upon [the political subdivision’s] rights or property, or the rights or property of the citizens which the officer was charged with an official obligation to protect and defend. No expenditure can be allowed legally except in a clear case where it appears that the welfare of the community and its inhabitants is involved and direct benefit results to the public.

In [Terrell v. Middleton](#), 187 S.W. 367 (Tex.Civ.App.1916), the Governor of Texas sought reimbursement for food items, horse feed, gasoline, horse shoeing, party invitations, waiter hire, and similar expenses. The court stated: Clearly, the items ... were for private and individual purposes, and not for the public good, and the appropriation made for that purpose by the Legislature was directly in the face of article 16, § 6 of the Constitution, which commands that “no appropriation for private or individual purposes shall be made.” The articles named were clearly not for the Governor in his official capacity, but for his individual satisfaction and gratification.

* * *

A lending of the credit of the state to a Governor for his private expenses, to increase his compensation is ... a violation of the constitutional provision as to his compensation....

[Id.](#), 187 S.W. at 372–373.

Courts have noted the distinction, in numerous cases, between official expenses and those personal to the officer. See [Annot.](#), 5 A.L.R.2d 1182 for a comprehensive collection of decisions. In [Funk v. Milliken](#), 317 S.W.2d 499 (Ky.Ct.App.1958), the court stated that reimbursement “may be allowed for expenses that are reasonable in amount, beneficial to the public, and not predominantly personal to the officer in the sense that by common understanding and practice they are considered to be personal expenses.” [Id.](#), 317 S.W.2d at 506. To receive reimbursement, the officer was required to show the amount and purpose of each expenditure, reasonableness, and that each expenditure was in an allowable category as determined by the political subdivision. To determine the latter factor, the “court will be governed by the consideration of whether the expense is official rather than personal in nature.” [Id.](#), 317 S.W.2d at 507.

*3 As long as the reimbursement is made for actual and necessary expenses for such items as lodging and subsistence incurred by a public officer in the performance of his official duties, courts do not view such reimbursement as extra compensation. [Earhart v. Frohmiller](#), 178 P.2d 436 (Ariz.1947). If the public officer is reimbursed for expenses which were in excess of the officer’s entitlement, such has been deemed to be extra compensation, which is prohibited by constitutional

provisions such as Article III, Section 30 of South Carolina's Constitution. *Terrell v. Middleton*, supra.

The only judicial determination relative to [Section 5-7-170](#) (reimbursement of **expenses** of municipal mayor and council members) is *Brown v. Wingard*, supra; [Section 4-9-100](#) has apparently not been construed in a reported decision. In *Brown*, the practice of a municipality's paying the expenses of spouses accompanying the mayor and city council members to a National League of Cities convention was successfully challenged. The Supreme Court stated that "[o]nly actual expenses incurred by the Mayor and Council members themselves in the performance of their official duties are contemplated by the statute." *Id.*, 285 S.C. at 480. The court apparently did not examine the various expenses incurred such as lodging or food, however, and thus this case is not of great assistance in responding to your questions.

At least two South Carolina cases have challenged the practice of paying per diem to legislators: *Scroggie v. Scarborough*, supra, and *Scroggie v. Bates*, 213 S.C. 141, 48 S.E.2d 634 (1948). While the courts in many states were not allowing personal expenses of legislators to be paid with public funds, *State ex rel. Griffith v. Turner*, 117 Kan. 755, 233 P. 510 (1925); Annot., 5 A.L.R.2d 1182, South Carolina's Supreme Court declined to follow, declaring that expenses of necessary travel were in the nature of official expenses. Due to the difference in per diem and reimbursement of actual expenses, these cases are not particularly helpful as to your issues.

We have not been able to locate a decision in which the court expressly considered the payment of bar tabs, pay television, or in-room movies as a part of one's "actual expenses" while traveling or otherwise performing official duties.¹ Thus, the test as provided in *McQuillin*, supra, and the consideration of official expenses as opposed to those personal to the official must be the guidelines for determining the propriety of any given expense or reimbursement thereof. These factors could be utilized by a municipality in adopting an ordinance, as required by [Section 5-7-170](#), establishing limitations on expenditures.² For possible guidance as to reimbursement of meals, which might include alcoholic beverages, enclosed is an opinion of this Office dated August 16, 1985, as to the policy which applies to reimbursement of meal expenses by the State.

In addition to constitutional considerations, that reimbursed expenditures were for private rather than public purposes and thus may be considered to be extra compensation, the State Ethics Act, in [Section 8-13-410 of the Code](#), mandates that "[n]o public official or public employee shall use his official position or office to obtain financial gain for himself." See Op. Atty. Gen. dated September 9, 1986 (enclosed), cautioning that in other jurisdictions, monies received in excess of the official's entitlement would be deemed to be extra compensation and therefore illegal. We also note that because public funds are involved, the following from *Scroggie v. Bates* is appropriate:

*4 Nothing in fiduciary law is better settled than that the trustee shall not be allowed to advantage himself in dealing with the trust funds. While of course, the matter here does not in a legal sense involve a trust such as exists between individuals or corporations, the principle of trusteeship in authorizing disbursements of funds to its own members during their term of office is quite apposite. A cogent statement of this idea is found in 49 American Jurisprudence, 248. In speaking generally of the Legislature it says: "It is an instrumentality appointed by the state to exercise a part of its sovereign powers. In that capacity it holds the public funds in trust for the people."

[Id.](#), 213 S.C. at 152.

This Office advises that a political subdivision may reimburse its officers and employees for only official business expenses incurred in the performance of their official duties. Reimbursement of purely private or personal expenses would most probably violate Article III, Section 30 and [Article X, Section 11 of the State Constitution](#) and [Section 8-13-410](#) of the Code. As to the specific expenditures mentioned in your letter, we were not able to locate any law or judicial determinations and thus can respond only generally to your inquiry. Only a court could make a determination with absolute certainty that an expense was an official business expense rather than a private or personal expense after a review of the facts involved in a given situation. The determination of whether to reimburse an individual for a particular expense should be made using the test enunciated by *McQuillin*, supra. This Office herein makes no comment as to specific practices by a specific municipality or county and leaves such a determination to the courts. *Funk v. Milliken*, supra. Due to the lack of guidance from the courts on your questions, the General Assembly may wish to consider adopting legislation which would clarify the issue.

With kindest regards, I am
Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

- ¹ But see [Russ v. Commonwealth](#), 210 Pa. 544, 60 A. 169 (1905). The Pennsylvania legislature appointed a committee to arrange an excursion to New York to attend the dedication of a monument to General U.S. Grant. The committee contracted for table supplies, wines and liquors, supper, china and breakage, cigars, car fare, and other related charges. The wine and liquor accounted for half of the challenged expenditures. The expenditures were argued to have been incurred for personal and private objects; though the dedication was a public service, participation of the legislators was argued to be a private or personal affair. The Supreme Court disagreed and noted the patriotic nature of the event. In determining that such did not result in extra compensation to the legislators, the court stated that “[p]roper entertainment of the Legislature was not merely incidental to its attendance at the dedication, but was necessary, and therefore formed part of the state’s expenses in making suitable recognition of the ceremony.” [Id.](#), 60 A. at 174.
This case does not appear to be apposite to your questions but is noted because it is the only decision located which expressly discussed payment of expenses relative to alcoholic beverages.
- ² 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.

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