



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

February 15, 2022

William W. Simmons, Esq.
Attorney for City of Meridian
Post Office Drawer 5514
Meridian, Mississippi 39302-5514

Re: Council Member Stipends and Reimbursements

Dear Mr. Simmons:

The Office of the Attorney General has received your request for an official opinion.

Background

Members of the Meridian City Council have requested a \$200.00 per month stipend to cover expenses incurred in the execution of their duties. Council members are not provided an office and must provide their own cell phones and internet access. Further, they must cover their own automobile expenses when traveling around their districts meeting with constituents and inspecting conditions of their ward.

Questions Presented

1. May the City pay council members a stipend of \$200.00 per month to cover expenses incurred in the execution of their duties?
2. If the answer to the first question is “no,” may the City reimburse council members for mileage for all travel not related to attending luncheons, dinners, or banquets or traveling to and from council meetings?
3. If the answer to the first question is “no,” may the City reimburse council members for cellular telephone expenses or provide cellular telephones to the council members?
4. If the answer to the first question is “no,” may the City reimburse council members for the expense incurred in obtaining internet access at their homes as they are not provided with an office by the City?

Brief Response

1. No. A stipend is a form of compensation rather than a form of reimbursement. Section 96 of the Mississippi Constitution prohibits granting city council members compensation in addition to the amount authorized pursuant to Mississippi Code Annotated Section 21-8-21.
2. The City may reimburse travel of council members, in accordance with and in the manner provided in Section 25-3-41, that is both pre-authorized and required in the performance of the official's official duties.
3. The City may either provide council members with City cell phones or, in the alternative, reimburse council members for expenses paid for a personal cell phone if the Council finds, consistent with the facts and spread upon the minutes, that such expenses are reasonable and necessary to the performance of the council member's duties or to conduct public business of the City. Expenditures would be limited to the amount incurred by city business only and would not be authorized for personal cell phone usage.
4. The City may reimburse internet service to the private home of a city council member if the Council finds, consistent with the facts and spread upon the minutes, that such expense is reasonable and necessary to the performance of the council member's official duties or to conduct public business of the City. The reimbursement must only cover those expenses incurred by way of city business and may not cover expenses incurred by personal internet use of the council member.

Applicable Law and Discussion

Your first question asks whether the City may pay council members a stipend of \$200.00 to cover expenses. We note that a stipend is a form of compensation rather than a form of reimbursement. *See generally* MS AG Op., *Turner* (Feb. 18, 2011). Compensation for council members is provided for in Section 21-8-21 and may only be increased in accordance with requirements of Section 21-8-21(1), which provides:

The mayor and the members of the council shall be qualified electors of the municipality. The compensation for the mayor and the members of the council shall be set by the council. After the salaries of the first mayor and first council have been determined by the council of any municipality electing to come under the provision of this chapter, such salaries shall be effective immediately. Thereafter, any increases or decreases in the salary for the mayor or councilmen may be authorized by the council at any time prior to ninety (90) days before the next general election for the selection of municipal officers. Such increases or decreases shall not become effective until the next elected mayor and council takes office.

A stipend separate from the compensation allowed under Section 21-8-21 would amount to additional compensation. Therefore, it is prohibited by Section 96 of the Constitution which states, "The Legislature shall never grant extra compensation, fee, or allowance to any public officer,

agent, servant, or contractor, after service rendered or contract made.” By contrast, reimbursements are addressed below.

In response to your second question, Section 25-3-41 governs reimbursement of travel expenses and authorizes reimbursement for any municipal official who, “first being duly authorized,” is required to travel “in the performance of his official duties.” Miss. Code Ann. § 25-3-41(2). Reimbursements for *all travel* not related to attending luncheons, dinners or banquets or traveling to and from council meetings are not necessarily authorized. In fact, we have previously opined that whether or not travel is “in the performance of his official duties” is a factual determination to be made by the City Council on a case-by-case basis and prior to the expense being authorized and incurred. MS AG Op., *Compton* at *1 (Aug. 7, 1995). As such, so long as the travel to be reimbursed is pre-authorized by the Council and then found by the Council to be required in the performance of the official’s duties, reimbursement would be allowed in accordance with Section 25-3-41.

Third, we have previously analyzed whether governing authorities are authorized to provide municipal officers with cell phones paid for with public funds or, alternatively, to reimburse municipal officers for the use of their personal cell phones. MS AG Op., *Custom* at *1 (Jan. 31, 2014). In response, we said a governing authority may, in its discretion, either provide municipal officers with cell phones or reimburse municipal officers for use of their personal cell phones “provided that such use of a mobile phone is reasonable and necessary for the conduct of municipal business.” *Id.* (internal citation omitted). Whether a governing authority issues a mobile phone for the purpose of conducting municipal business or provides reimbursement for expenses incurred on a personal phone associated with municipal business is a determination to be made solely by the governing authority itself. *Id.*

In the event reimbursements are going to be provided, “the governing authority must determine, consistent with the facts, that the City will receive a benefit at least equivalent to the amount expended and then by order, resolution or ordinance duly entered on its minutes, authorize reimbursements and establish procedures that ensure that public funds are not being spent to reimburse officials for personal use.” MS AG Op., *Norwood* at *1 (Mar. 12, 2012). To avoid an unlawful donation we said, “[i]t would be incumbent upon the municipal officer or employee to itemize those calls made in the pursuit of municipal business in his/her submission for reimbursement, along with any required supporting documentation.” MS AG Op., *Custom* at *1 (Jan. 31, 2014). Finally, any expenses paid by the City for personal use of a cell phone issued by the municipality would constitute an unlawful donation and must be promptly reimbursed to the municipality. *Id.* (Internal citations omitted).

In response to your fourth question regarding reimbursements for the expenses incurred in obtaining internet access at the private homes of council members, we refer you to our recent opinion issued to William C. Hammack. MS AG Op., *Hammack* (Nov. 23, 2021). We said a county board of supervisors cannot expend public funds to provide broadband/internet service to a private home of a board member, “unless the Board finds, consistent with the facts and spread upon the minutes, that such expenses are reasonable and necessary to the performance of the supervisor’s duties or to conduct public business of the county.” *Id.* Moreover, the use must be reasonable. *Id.* (internal citation omitted).

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As it was in *Hammack*, the obvious concern of personal internet use at a council member's private home is raised here. Consistent with our analysis in *Hammack*, it is our opinion that the City may determine the percentage of monthly usage of the internet service that is associated with city business, and the City may then reimburse the council member for only that amount and not for any amount incurred by personal use of the internet service in the private home. *Id.*

Finally, we note that as with all public expenditures, all reimbursements would be subject to review by the State Auditor.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Abby C. Overby

Abby C. Overby
Special Assistant Attorney General

OFFICIAL OPINION