

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

December 14, 2018

Mr. Robert W. Lawrence, Esq.
City of Crystal Springs
Post Office Box 473
Crystal Springs, MS 39059

Re: Police Officer Reimbursement of Attorney Fees

Dear Mr. Lawrence:

Attorney General Jim Hood is in receipt of your opinion request and has assigned it to me for research and reply.

Background

Your request states:

A city police officer was charged with a crime which occurred during the course of an arrest while the officer was on duty and in the course of his employment with the City. The officer requested that I represent him, but I declined due to the potential conflict if he was in fact found guilty. The police officer did not know, and was not told to appear before the Board of Aldermen and request authority to pay for legal representation and he did not do so. At the probable cause hearing the court found there was no probable cause and dismissed the case. My research reflects prior opinions from your office that the Board may authorize the payment of defense for a police officer [r] falsely charged if he is exonerated but if the defense cost are approved by the board before the charges are incurred.

Question:

Under the facts as stated, where the police officer had no knowledge he was required to request pre-approval of his attorney fee defense by the Board, may the Board reimburse the police officer his attorney fees for successful defense of a criminal action where there was no probable cause for the charge?

Response

The answer to your question is no. In order for the Board of Aldermen to reimburse the police officer for his attorney fees for successful defense of a criminal action, the officer must have obtained pre-approval.

Section 25-1-47 gives municipalities the ability to provide legal defense for its employees for civil and criminal claims that arise as a result of his or her actions while acting in the capacity of their employment. There is no duty under this section for the municipality to inform the officer of his or her ability to apply for representation under Section 25-1-47, which states:

(1) Any municipality of the State of Mississippi is hereby authorized and empowered, within the discretion of its governing authorities, to investigate and provide legal counsel for the defense of any claim, demand, or action, whether civil or criminal, made or brought against any state, county, school district, or municipal officer, agent, servant, employee, or appointee as a result of his actions while acting in the capacity of such officer, agent, servant, employee, or appointee; and such municipality is hereby authorized to pay for all costs and expenses incident to such investigation and defense.

(2) Any municipality of this state is hereby authorized and empowered, within the discretion of its governing authorities, to pay and satisfy any negotiated settlement of a claim or any judgment, fine, or penalty which may be made, assessed, or levied by any court against any municipal agent, officer, servant, employee, or appointee as a result of any actions of such municipal agent, officer, servant, employee, or appointee while acting as such.

This office has consistently opined that approval for representation must be granted in advance. See MS AG Op., Dye (September 4, 2007); MS AG Op., Childers (May 2, 1997); MS AG Op., Jackson (December 30, 1992). This office previously addressed the same question you pose and opined that "the mayor did not receive the discretionary approval of the governing authorities in advance and therefore it is our opinion that the mayor's employment of counsel was at his own expense." MS AG Op., Childers (May 2, 1997).

If our office may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben
Special Assistant Attorney General