

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 9, 2019

Moran M. Pope, III, Esq.
Attorney, City of Hattiesburg
Post Office Box 17527
Hattiesburg, MS 39404-7527

Re: Opinion Request Concerning Tuition Payment

Dear Mr. Pope:

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

Background and Issues Presented

Your request states:

Currently, as a part of its recruitment/retention plan for the Hattiesburg Police Department, a police officer can continue his or her education by taking up to six (6) hours of college credit each semester at either the University of Southern Mississippi or William Carey University with the City paying for three (3) of those hours and the respective university paying for the other three (3) hours. The officer himself/herself must pay for any hours in a semester the officer takes above six (6) hours.

There are several officers who already have college degrees, but who have significant student loan debt. May the City, as a part of its recruitment/retention plan for police officers, pay some portion of the student debt of these police officers in an amount equal to the investment the City is making for officers who are pursuing college degrees?

Brief Response

The answer to your question is contingent upon whether or not the officer in question is to be paid a salary that contemplates his or her education level. If the officer is paid a higher salary due to his/her education level, he/she would not be entitled to additional compensation. If the officer's prospective salary does not contemplate his or her level of education, we are of the opinion that the local governing authorities may pay an officer who already has a college degree a salary which encompasses the base pay for the officer and an amount equal to what the city is paying for another officer's educational expenses. Any compensation for previously obtained education must be included in the terms of the employment contract prior to the term for which the payment is made.

Legal Analysis and Discussion

Generally, the governing authority may, pursuant to its authority under home rule, reimburse officers for vocation or college level courses which are directly related to their job, as long as steps are taken to ensure that the payment of such costs does not constitute a donation. See MS AG Op., Dye (June 17, 2011); MS AG Op., Meadows (March 16, 2001); MS AG Op., Lamar (October 30, 1998). This office has consistently opined that a policy should be in place, or an agreement entered with the employee, requiring him/her to reimburse the governing authority the expense of the education if the employee leaves the governing authority before a reasonable period of employment has expired. MS AG Op., Chapman (June 4, 1999); MS AG Op., Skinner (September 5, 1997).

However, Article 4 Section 96 of the Mississippi Constitution of 1890 prohibits retroactive payments for extra compensation. In a previous opinion to Steve Wright dealing with teachers' salaries, this office opined:

The district and the employee agreed upon an amount for salary and the employee was paid that salary and is not due any backpay under these circumstances. The district may adjust the teacher's level of experience prospectively, but this office finds no authority that would allow the district to award retroactive pay for work that has already been performed and for which an agreed upon compensation has already been provided.

MS AG Op., Wright (August 15, 2003)(Emphasis added). See also MS AG Op., Meredith (December 22, 2006)(employee and employer may agree in advance to conditions that, once satisfied by future performance, will obligate employer to increase employee's salary). Likewise, assuming the governing authority and officer have agreed in advance to the proposed reimbursement, such payment would be permissible, and may only be made prospectively.

Moran M. Pope, III, Esq.
August 9, 2019
Page 3

If we may be of further assistance, please advise.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 

Emiko Hemleben
Special Assistant Attorney General

OFFICIAL OPINION