



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

May 10, 1999

To: Norman D. Butts
Inspector General

Via: Charles W. Thompson
County Attorney

Via: Marc P. Hansen, Chief
Division of General Counsel

From: Anne T. Windle
Assistant County Attorney

Subj: Charter Section 407 and Tuition Reimbursement

Question Presented

Do departmental college tuition reimbursements to employees violate Section 407 of the County Charter, *Prohibition Against Additional Compensation*?

Answer

College tuition reimbursements to employees do not violate Section 407 of the County Charter, if the reimbursements are authorized. Section 401, *Merit System*, provides that the merit system shall provide the means to recruit, select, develop, and maintain an effective, non-partisan and responsive work force. Section 33-5(a) of the County Code states that one purpose of the merit system is to foster excellence in public service and high individual competence. Section 33-5(b)(4) specifically encourages employee training to assure high quality performance and, where possible, an opportunity to facilitate employee career development. Administrative Procedure 4-6, *Employee Development*, specifically acknowledges college courses as one type of training departments should budget for. Therefore, the authority to reimburse an employee for college tuition flows from Section 401 of the Charter, Code Section 33-5 and the appropriation of funds for employee training.

Department heads have authority to approve the expenditure of departmental operating funds for employee training. The department head is responsible for ensuring that these funds

Norman D. Butts
May 10, 1999
Page 2

are spent in a manner consistent with advancing the interests of the County, which may include under §33-5(b)(4), facilitating the career development of department employees.

For example, we think there is no doubt that a department head is legally authorized to provide employee training in the use of an operating software system that is used by the department – even though this training may enhance the employee's position in the job market. The analysis becomes more difficult as the training becomes more orientated to career enhancement and less directed to the immediate needs of the employee's County job. For example, reimbursing an employee for taking a college course in literature in order to meet the requirements for a college degree could be problematic. But even in this case, a department head may determine that such an expenditure is necessary to retain an effective work force. In that situation, we believe that the expenditure would be legal.

The Scholar Attorney Program in the Office of the County Attorney is an example of using County funds to provide training that is intended primarily to enhance the career goals of the employee. Under the Scholar Attorney Program, newly admitted attorneys are appointed as assistant county attorneys to a 12-18 month term. The County pays these attorneys an extremely modest annual salary of \$30,000 (without benefits) and an opportunity to obtain up to \$3,000 in training. Offering these attorneys the opportunity to obtain considerable experience coupled with formal training opportunities provides the incentive the County needs to recruit and retain these employees.

Analysis

Section 407 is part of Article 4 of the County Charter, *Merit System and Conflicts of Interest*, and provides:

No member of the Council and no officer or employee of the County whose salary is fixed, in whole or in part, by this Charter, the laws of the County, or its personnel regulations, shall be entitled, directly or indirectly, to any other salary, expenses, or compensation from the County for performance of public duties except expenses for travel and subsistence incident to the performance of official duties as prescribed by law.

Section 407 has remained substantively unchanged since the County Charter was originally adopted in 1948. But to understand the scope¹ of Charter Section 407 requires reading Section

¹ For purposes of this opinion, we assume without deciding that an employee whose wage is set under the Uniform Salary Plan is an employee whose salary is fixed under law or the
(continued...)

407 in the context of other provisions of the Charter.²

Article 4 of the Charter requires that employees — with some exceptions not relevant here — must be members of the merit system. The Commentary of the 1968 Charter Revision Commission (1968 Commentary) notes that Article 4 is designed to maintain the merit system and to strengthen the merit principle and its administration.

By merit system the Charter Revision Commission had in mind the recommendations of the Municipal Manpower Commission, which are contained in *Governmental Manpower for Tomorrow's Cities*, a report of the Municipal Manpower Commission, 1962 (Report). The Report pertains to administrative, professional, and technical (APT) employees staffing local governments. The Report was based on the first national study to examine the problem of revitalizing local government through better use of APT employees. One recommendation states, "Personnel practices must be revitalized to provide rewarding careers." (Page 111.) Related to this recommendation, the Report continues, "Local governments must develop APT personnel for broader professional and executive duties." (Page 113.) The Report identifies a need to update the knowledge and develop the capabilities of APT employees, and recommends that the chief executive and department heads ensure that APT personnel are aided to expand their understanding and technical skills through appropriate training. According to the Report, essential to further training are university programs, institutes sponsored by professional associations, and in-service institutes. Six steps required by local governments are identified:

1. Action by the chief executive to provide training which will help each of his colleagues develop the skills and understanding they need.
2. Employment in the larger local governments, at least, of competent training officers to work directly with the chief executive.
3. A policy of "continuing development" of employees, based on research into the needs of both the individual and the enterprise.

¹(...continued)
Personnel Regulations.

² Sinai Hosp. Of Baltimore v. Dept. of Employment and Training, 309 Md. 28, 522 A.2d 382 (1987) (All parts of a law should be read together giving effect to all those parts so as to give effect to the purpose of the law.)

Norman D. Butts
May 10, 1999
Page 4

4. More comprehensive training to include preparation for higher positions and to aide specialists (e.g., social workers or engineers) to think and act like managers.
5. Use of the full range of training techniques and devices, as well as the best instructional methods and materials.
6. Provision of positive incentives to employees who do train, especially in using training as a criterion for promotion. (Page 114.)

The Report urges a local government to provide opportunities for personal growth for every APT employee and that training must be recognized as a public responsibility for the public's benefit. (Page 115.)

It is clear that the 1968 Commentary intended the creation of a modern personnel system in Montgomery County. These changes included a heavy emphasis on training and employee development.

Implementing these provisions, the Chief Administrative Officer (CAO) adopted in 1973 Administrative Procedure 4-6, *Employee Development* (AP 4-6). AP 4-6 specifically states that it is the responsibility of department heads, division heads and supervisors to budget for single department training activities and for attendance at conferences, workshops, and college courses by employees on professional improvement leave based upon the department training plan.

In 1978 the voters approved an amendment to Section 404, *Duties of the Personnel Board*, to clarify the policy role of the County Council by providing that regulations adopted by the Personnel Board must not be in conflict with "general personnel policies established by local law." Subsequently, in 1979, the County Council enacted a comprehensive merit system law, as authorized by the 1978 Charter amendment, to delineate the personnel management responsibilities of the CAO and the Personnel Board.

A new article II, *Merit System*, was added to Chapter 33 the Montgomery County Code. Section 33-5(a) as enacted provides:

It is the legislative intent of the county council that this article foster excellence in the public service; high individual competence among employees; recognition that respect for the employee as an individual is first required for achieving such excellence and

competence; and harmonious and efficient operation within the various components of county government. (Emphasis added.)

Section 33-5(b)(4) as enacted provides:

The merit system established by this chapter encompasses the following principles: merit system employees shall be provided training as needed to assure high quality performance and such training where possible should also provide increased opportunity to facilitate their career advancement. (Emphasis added.)

Both Section 33-5(a) and 33-5(b)(4) remain unchanged in the current Code. The 1968 Commentary had recommended “an ordinance or code which supports merit principles and places full responsibility for carrying out these principles in the chief executive.” Section 33-5(a) fulfills this recommendation. Section 33-5(b)(4) specifically supports the concept of employee training, including training that would increase opportunity to facilitate career development, which is consistent with the Municipal Manpower Commission’s 1962 report, relied on by the 1968 Commission.

On November 4, 1980, Sections 401-404 of the Charter, pertaining to the merit system, were amended to reallocate and clarify personnel functions among the Council, the County Executive, the Chief Administrative Officer, and the Personnel Board (renamed the Merit System Protection Board). One of the amendments expressly provided that the merit system is intended to provide the means to develop and maintain an effective workforce.

Thus, the Charter, Sections 33-5(a) and (b)(4) of the Montgomery County Code, and AP 4-6, read in conjunction with the 1968 Commentary, and the 1962 Report of the Municipal Manpower Commission, make it clear that the merit system is intended to support the development of employees through training and educational opportunities to not only enhance job performance but also employee career advancement.

Finally, when the Council approves the annual operating budget it appropriates funds for departments to use for employee training and education.³ Although the Council appropriates a

³ Dorsey v. Petrott defines “appropriation” as follows:

. . . [A]n appropriation of public funds is made by a constitutional mandate or a lawful legislative act whose primary object is to authorize the withdrawal from the State Treasury of a certain sum of money for a specified public object or purpose to which such

(continued...)

Norman D. Butts
May 10, 1999
Page 6

single sum for operating expenses for each department, this appropriation, in our view, includes authority for a department to expend funds for training and education. After the County Executive submits an operating budget to the Council, the budget detail is made available to Council. This detail shows the various elements making up the operating budget for a department including training, equipment maintenance, supplies, publications, postage, etc.⁴

Therefore, when the County Council adopts the budget, which includes dollars specified for training and education, that act authorizes the withdrawal of funds for employee training, including training designed to enhance employee career advancement.

Conclusion

We believe Section 407 does not negate Section 401 and the merit system law that has flowed from it. Section 407 is intended to prevent unauthorized payment to employees. But training and education expenditures are authorized payments since they are authorized by Charter Section 401 and Code Section 33-5 in conjunction with funds appropriated in the yearly budget for that purpose. We conclude that expenditure of funds for training and education, including college tuition, is therefore legal.

Although reimbursement of college tuition may be legal, we acknowledge that such expenditures may be open to potential abuse. Accordingly, administrative contracts appropriate to the department, the classification of the employee, and the interests of the County should be established and implemented. Administrative Procedure 4-18, *Employee Tuition Assistance Program*, provides some useful guidance in this regard.

³(...continued)

sum is to be applied. 178 Md. 230, 245, 13 A.2d 630, 638 (1940).

⁴ Training and education is found under sub-object code 3549.

Norman D. Butts

May 10, 1999

Page 7

cc: Douglas Duncan, County Executive
Isaiah Leggett, Council President
Bruce Romer, Chief Administrative Officer
Marta Brito Perez, Director, Office of Human Resources
Robert Merryman, Acting Director, Department of Public Works and Transportation
Timothy Firestine, Director, Department of Finance

I:\TZ\WINDLA\tuition reimbursement=opinion= inspector general.wpd