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October 18, 1979

ATTORNEY GENERAL OPINION NO. 79- 237

Mr. Keith D. Hoffman
Prosecuting Attorney
715 East Broadway
Herington, Kansas 67449

Re: State Boards, Commissions and Authorities -- Law Enforcement
Training Center -- Tuition Reimbursement

Synopsis: Pursuant to K.S.A. 1978 Supp. 74-5609(b), where a law enforcement agency has paid the tuition for the attendance of one of its officers at the Law Enforcement Training Center and, within six months after completion of the Training Center's course of instruction, the officer is employed by another law enforcement agency, the latter agency must reimburse the sponsoring agency for the officer's tuition and other expenses incurred in connection with such attendance. Such other expenses may include those incurred for the officer's salary, retirement benefits, health insurance and mileage to and from the Training Center.

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Dear Mr. Hoffman:

You have requested an opinion of this office concerning K.S.A. 1978 Supp. 74-5609 and the extent of reimbursement authorized for expenses incurred at the Law Enforcement Training Center. This statute was amended in 1978 to include subsection (b), which provides that:

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"Any city, county or state agency which commences employment of a law enforcement officer within six (6) months of the time such law enforcement officer has completed a course of instruction at the law enforcement training center shall reimburse the city, county or state agency which paid the tuition for training such officer. Said reimbursement shall be in the amount of the tuition paid on such officer's behalf and any other expenses incurred which were incidental to training such officer." (Emphasis added.)

The facts as described in your request indicate that a law enforcement officer of the City of Herington, who had graduated from the Law Enforcement Training Center on March 30, 1979, left the employment of the city within six months of that date. On the day following his resignation, he began employment as a law enforcement officer for the City of Enterprise, Kansas. You have inquired whether, under these facts, the City of Herington is entitled to reimbursement from the City of Enterprise for the salary, retirement, health insurance and mileage expenses incurred during the training period. It is the opinion of this office that the foregoing expenses are "incidental to training such officer," and, therefore, entitles the City of Herington to be reimbursed for them. K.S.A. 1978 Supp. 74-5609(b).

We believe K.S.A. 1978 Supp. 74-5609(b) is susceptible of two different interpretations of what expenses are "incidental to training an officer." A literal interpretation of the statute would imply that those "expenses incurred which were incidental to training" would be of a secondary or minor nature. A second interpretation of incidental expenses could aptly include all expenses which are a necessary consequence of attending the Training Center. Whereas the latter meaning would allow reimbursement for salary, retirement and health insurance expenses, the former interpretation would not. In construing this statute, it is this ambiguity we seek to resolve.

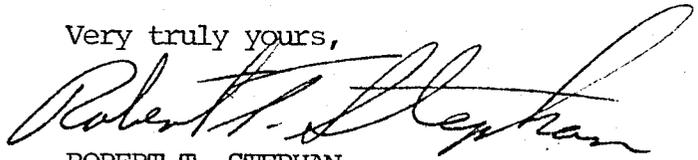
A statute may be open to construction where the language used therein may reasonably be considered ambiguous or uncertain 73 Am.Jur.2d Statutes, §194. It is the primary rule of statutory construction, to which all others are subordinate, that the intent of the legislature governs when that intent can be ascertained from the statute [Southeast Kansas Landowners Association v. Kansas Turnpike Authority, 224 Kan. 357 (1978)], even though such construction is not within the strict literal interpretation of the statute. State v. V.F.W. Post No. 3722, 215 Kan. 693 (1974). In determining the legislative intent, it is appropriate to consider the purposes to be accomplished and the effect the statute may

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have under various constructions. Southeast Kansas Landowners Association v. Kansas Turnpike Authority, supra. Applying these rules of construction, it is our opinion that subsection (b) of K.S.A. 1978 Supp. 74-5609 was intended by the legislature to encourage those officers who completed the Law Enforcement Training Center program to remain, for at least six months, with the agency which sponsored their attendance. This conclusion allows the employer of the attendee to reap some benefit for the expenses it incurred during the employee's attendance. If another agency wishes to hire an officer who has graduated from the academy within the previous six months, we believe the legislature intended the foregoing statute to require such agency to incur the expenses borne by the agency which sent the officer for training. Certainly, in our judgment, the expenses attributable to the attendee's salary, fringe benefits and mileage while the attendee is at the Training Center are necessary consequences of providing for the attendee's training.

In conclusion, it is our opinion that, pursuant to K.S.A. 1978 Supp. 74-5609(b), the expenses incurred by the City of Herington for the attendee's salary, retirement benefits, health insurance and mileage to and from the training center are expenses which are subject to reimbursement by the City of Enterprise.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kurt J. Shernuk
Assistant Attorney General

RTS:TDH:KJS:may