



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2015-066

September 10, 2015

The Honorable Andrea Lea  
State Auditor  
500 Woodlane Street, Suite 230  
Little Rock, AR 72201

Dear Auditor Lea:

This is in response to your request for an opinion concerning the Auditor of State's duty, under Ark. Code Ann. § 16-13-331 (Repl. 2010), to reimburse counties for a portion of the previous year's salaries of juvenile probation officers and juvenile intake officers. As background for your request, you relay the following:

Probation officers are required to be certified and must complete their initial certification requirements within one year of employment. Ark. Code Ann. § 16-13-327(c). They must maintain their certification during the term of their employment. *Id.*

Likewise, intake officers are required to be certified and must complete their initial certification requirements within one year of employment. Ark. Code Ann. § 16-13-328(c). They must maintain their certification during the term of their employment. *Id.*

Counties may have both probation and intake officer salaries reimbursed by the state. Ark. Code Ann. §§ 16-13-327(d) and -328(d). To be eligible for state reimbursement, probation and intake officers must fulfill the following requirements: (1) be certified according to the laws of Arkansas, and (2) have their salary paid "by the county or counties for a period of one (1) year." *Id.* If these requirements are met, the county may receive whichever is less: \$15,000 per year or half the probation or intake officer's salary.

In light of the foregoing, you pose the following questions:

1. If a full-time juvenile intake or probation officer position is filled with a certified officer who leaves the position and is replaced with a certified officer who serves for less [than] a year, may the Auditor of State reimburse the county for that full-time position?
2. If an individual is newly hired for a full-time juvenile intake or probation officer position and serves for a full year, must that individual be certified for the entire year for the county to be reimbursed for his or her salary under the statute?
3. Or, may the county also be reimbursed if an uncertified officer is hired, serves an entire year, and obtains his or her certification during the officer's first year of service as per Ark. Code Ann. §§ 16-13-327(d) and -328(d)?

## **RESPONSE**

As long as a county pays a full year's salary between the two officers, the officers meet all statutory requirements for their employment, and the county submits the required documentation, then the answer to your first question is likely "yes," in my opinion. This is owing to what I believe a court would find to be ambiguous statutory language coupled with the state's apparent long-standing practice in this regard. Legislative clarification is warranted, however. With respect to Question 2, in my opinion the answer is "no." Accordingly, the answer to Question 3 is "yes," in my opinion.

## **DISCUSSION**

Each juvenile division of circuit court in the state is to be provided with at least one juvenile probation officer<sup>1</sup> and at least one juvenile intake officer<sup>2</sup> (collectively, "juvenile officers"). These juvenile officers must be certified as juvenile probation or juvenile intake officers; they must obtain their initial

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<sup>1</sup> See Ark. Code Ann. § 16-13-327(a) (Repl. 2010).

<sup>2</sup> See Ark. Code Ann. § 16-13-328(a) (Repl. 2010).

certification within one year of the employment; and they must maintain their certification during the terms of their employment.<sup>3</sup>

The juvenile officers' salaries are paid by the county or counties where the officers work.<sup>4</sup> The state is required to reimburse the counties a portion of the salary paid to each full-time juvenile officer who is certified and "[w]hose salary has been paid by the county or counties for a period of one (1) year."<sup>5</sup> The Auditor of State is charged with administering these reimbursements.<sup>6</sup>

The state's portion for each juvenile officer's salary is the lesser of \$15,000 or one-half of the officer's average salary as calculated over the last 12 months.<sup>7</sup> However, the state "shall reimburse a county only for salaries paid to the number of [juvenile] officers" that meet these requirements.<sup>8</sup> In order for a county to receive reimbursement, the county must submit to the State Auditor: 1) proof of each juvenile's officer's certification and continuing education hours; 2) a copy of each juvenile officer's W-2 form for the salary (i.e. tax) year being reimbursed; and, 3) a completed form, designed and distributed by the State Auditor's office, showing each officer's employment status.<sup>9</sup>

***Question 1: If a full-time juvenile intake or probation officer position is filled with a certified officer who leaves the position and is replaced with a certified***

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<sup>3</sup> See Ark. Code Ann. §§ 16-13-327(c), -328(c) (Repl. 2010).

<sup>4</sup> See Ark. Code Ann. §§ 16-13-327(d)(1)(A), -328(d)(1)(A) (Repl. 2010). See also Ark. Code Ann. § 16-13-331(d)(2) (Repl. 2010), note 7 *infra*.

<sup>5</sup> See Ark. Code Ann. §§ 16-13-327(d)(1)(B), -328(d)(1)(B) (Repl. 2010). A "year" is based on the employee's salary year. See Ark. Code Ann. § 16-13-331(b)(2) (Repl. 2010).

<sup>6</sup> See Ark. Code Ann. § 16-13-331(a) (Repl. 2010).

<sup>7</sup> See Ark. Code Ann. §§ 16-13-327(d)(2), -328(d)(2) (Repl. 2010). Of course, it goes without saying that reimbursements should only be made to the county that actually paid the juvenile officer's salary. If, under Ark. Code Ann. § 16-13-331(d)(2), multiple counties share the cost of such annual salary, then one county may be designated as the county to be reimbursed. Otherwise, each county must designate its portion of the salary it paid and be reimbursed its pro-rata share accordingly.

<sup>8</sup> See Ark. Code Ann. §§ 16-13-327(d)(3)(A), -328(d)(3)(A) (Repl. 2010).

<sup>9</sup> See Ark. Code Ann. § 16-13-331(b) (Repl. 2010).

***officer who serves for less [than] a year, may the Auditor of State reimburse the county for that full-time position?***

You seem to be asking whether the state should reimburse a county if the county pays a full year's salary for a juvenile probation officer's or juvenile intake officer's position, but the position is held by two or more people who, individually, serve less than one year.<sup>10</sup> This question seems to be prompted by the quoted statutory language above—“[w]hose salary has been paid by the county or counties for a period of one (1) year.”<sup>11</sup>

In attempting to resolve your question, which turns on the proper interpretation of Ark. Code Ann. §§ 16-13-327(d) and -328(d), I am guided by the following principles of statutory construction:

The first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary meaning and usually accepted meaning in common language. [The courts] construe the statute so that no word is left void, superfluous, or insignificant; and meaning and effect are given to every word in the statute if possible. When the language of the statute is plain and unambiguous, there is no need to resort to rules of statutory construction. When the meaning is not clear, [the courts] look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject.<sup>12</sup>

Finally, where a statute is ambiguous and subject to more than one reasonable interpretation, the courts give deference to the interpretation of the statute by the regulatory agency responsible for administering and enforcing that statute.<sup>13</sup> This

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<sup>10</sup> Your question presumes that a county has paid a full year's salary as opposed to only a partial year's salary. It is with this understanding that this opinion is rendered.

<sup>11</sup> See text accompanying note 5 *supra*.

<sup>12</sup> *Macsteel, Parnell Consultants v. Ark. Okla. Gas Corp.*, 363 Ark. 22, 30, 210 S.W.3d 878 (2005) (internal citations omitted).

<sup>13</sup> See *Leathers v. W.S. Compton Co., Inc.*, 316 Ark. 10, 13, 870 S.W.2d 710, 712 (1994) (and cases cited therein).

is particularly true where the administrative interpretation is of long standing.<sup>14</sup> In such a case, the administrative interpretation will not be disregarded unless it is clearly wrong.<sup>15</sup>

Applying these principles to both statutes in question, it is my opinion that a court likely would find the language in subsections (d)(1) of both statutes ambiguous and subject to differing interpretations.

On the one hand, the above subsections could be read to refer to an individual juvenile officer and to contemplate that reimbursement for that officer's salary is only due if that individual officer was paid by a county or counties for a full one-year period. Under this interpretation, the state would be prohibited from making reimbursement if more than one person held for the same job within the same salary year because no one person's salary would have been paid by the county or counties "for a period of one (1) year."

On the other hand, the subsections could be read to refer to a juvenile officer *position*, the salary for which a county has paid for one year. Under such an interpretation, if a county has paid a full-year's salary for a juvenile officer's position—whether it was held by one or more qualified persons—then the state would be obligated to make the reimbursement, provided that all other statutory requirements are met.<sup>16</sup>

It is my understanding that the State Auditor's office has administered these reimbursements with this latter interpretation. I cannot say that this interpretation is clearly wrong. While legislative clarification is warranted, this interpretation seems to be in line with the overall statutory purpose—to provide probation and intake officers for the state's juvenile judges and to have the state assist the counties by reimbursing them for a portion of the juvenile officers' full-year salaries actually paid by those counties.

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<sup>14</sup> See *Pledger v. Boyd*, 304 Ark. 91, 799 S. W.2d 807 (1990).

<sup>15</sup> See *W.S. Compton Co.*, 316 Ark. at 13, 870 S.W.2d at 712.

<sup>16</sup> Ark. Code Ann. § 16-13-331 enumerates the documentation that a county must submit to the State Auditor's office to be eligible to receive such reimbursements. See text accompanying note 9 *supra*.

In sum, as long as all other statutory requirements are met and the county provides the required documentation to the State Auditor, then in my opinion the answer to your first question is likely “yes.” I think a court in all likelihood would find the relevant statutes ambiguous and therefore defer to the administering agency’s long-standing practice. It is my understanding that past practice has been for the state to make the salary reimbursements when a county has paid a salary for such position for a period of one year, irrespective of whether one or more qualified persons filled that position during the year.

***Question 2: If an individual is newly hired for a full-time juvenile intake or probation officer position and serves for a full year, must that individual be certified for the entire year for the county to be reimbursed for his or her salary under the statute?***

***Question 3: Or, may the county also be reimbursed if an uncertified officer is hired, serves an entire year, and obtains his or her certification during the officer’s first year of service as per Ark. Code Ann. §§ 16-13-327(d) and -328(d)?***

In my opinion, the answer to Question 2 is “no.” Accordingly, the answer to Question 3 is “yes,” in my opinion.

Under Ark. Code Ann. §§ 16-13-327(c) and -328(c), all that is required for juvenile officers is that they 1) be certified as juvenile officers according to the laws of the state; 2) complete their initial certification requirements within one year of their employments; and, 3) maintain such certification during their employment as juvenile officers. These statutes clearly state that the officers must complete their initial certifications *within* their first year of employment, not necessarily prior to accepting employment or starting work.

Sincerely,



LESLIE RUTLEDGE  
Attorney General