



CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

Office of the Mayor

300 Sixth Street

605-394-4110

Fax 605-394-6793

E-mail: mayor@rcgov.org

MEMORANDUM

TO: Legal and Finance Committee
FROM: Mayor Sam Kooiker *Sam Kooiker*
DATE: June 13, 2012
SUBJECT: Travel update

At the June 5, 2012 Council meeting, Council President Dave Davis offered a motion asking for information on several items. One of the items is a request for an update on travel expenditures at the July 16, 2012 Council meeting.

Dave's questions regarding travel are appreciated. In the past, there have been serious issues. Current Mayor's office staff recently found a memo from the previous administration which interprets the travel policy to allow payment of family member expenses. The memo also asserts that the travel policy doesn't apply to elected officials. The memo appears to have been inadvertently spared from the well-known data destruction that occurred in the waning days of the previous administration (see 2/21/2012 Records policy link - <http://archive.rcgov.org/ca20120221/LF021512-16/covermemo.htm>). This interpretation was not disclosed to the council or the community. It also appears these expenditures were not listed in the online travel reports.

Since 2005, the travel summary for elected officials is collected, collated and updated periodically: <http://www.rcgov.org/Mayors-Office/mayor&citycounciltravelreports.html>. The report templates were lost during the data purge in July 2011 and had to be completely recreated. The 2011 report was complete, but the title was confusing and made the report appear as though it was last updated in July 2011. This has been corrected. The 2012 link was updated a few months ago. The next scheduled update coincides with the timeframe of Dave's request.

For the past few months, Pauline Sumption and I have been working on amendments to the travel policy, which we plan to bring forward within the next 30-60 days. The changes will include the following:

- Adjustments to the per diem rate for inflation.
- Allowing the independent boards (Airport, Library, and Civic Center) to approve travel up to the \$5,000 threshold instead of it coming to the Mayor.
- Clarification that spouses and family members are welcome to attend events, but not at taxpayer expense.

I want to thank Dave Davis for supporting my commitment to transparency and accountability.



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CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-5035

City Finance Office

300 Sixth Street

Rapid City, South Dakota 57701-5035

605-394-4143

TO: Jason Green
FROM: Jim Preston *Jim*
SUBJECT: Legal opinion
DATE: March 23, 2009

Mayor Hanks and I have a different opinion on whether he is authorized to purchase meals for his wife utilizing City funds when they both attend a social function for the City. I do not believe that the travel policy gives him the authority to expend City funds for his spouse even though she was included in the invitation to attend a function. I believe that the Council would have to approve this expenditure under the current policy.

We agree that when the travel policy is updated, specific language such as "The Mayor is authorized to approve expenditures for non city employees when he/she feels that to do so is beneficial to the City."

I have attached a copy of the travel policy for your review.

Mayor Hanks asked that I obtain your legal opinion.

I would like a written response for my records.

Thank-you.

Cc: Mayor Hanks



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CITY OF RAPID CITY

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OFFICE OF THE CITY ATTORNEY

300 Sixth Street

Jason E. Green, City Attorney
City web: www.rcgov.org

Phone: 605-394-4140
Fax: 605-394-6633
e-mail: Jason.green@rcgov.org

MEMORANDUM

TO: James F. Preston, City Finance Officer

CC: Mayor Hanks

FROM: Jason E. Green, City Attorney *JEG*

DATE: April 23, 2009 *4-23-2009*

RE: Request for Legal Opinion

RECEIVED

APR 23 2009

MAYOR'S OFFICE

Introduction

In a memo dated March 23, 2009, you asked for my opinion regarding the Mayor's ability "to purchase a meal for his wife utilizing City funds when they both attend a social function for the City." You are of the opinion that the Travel Regulations do not give him authority to expend funds for his spouse, even though she was included on the invitation to attend the function. It is further your opinion that the City Council would have to approve the expenditure under the current regulations. I have reviewed the current Travel Regulations and will explain my conclusions below. In short, I believe the Mayor does have the authority to use City funds to purchase a meal for his wife while attending a social function on behalf of the City. Further, it is my opinion that Council approval is not necessary for this expenditure.

As an initial matter, I believe it is important to properly classify the expenditure at issue. The Travel Regulations meal reimbursement provision exists to compensate travelers for the costs of eating while away from home. For example, if a group of City employees travels to Pierre for a conference (imagine engineers attending a water conference) the employees are reimbursed per the Travel Regulations for meal expense they incur while away from home. On



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the other hand, if the same group of employees attends the same seminar at the School of Mines here in Rapid City, the employees are not eligible for meal reimbursement. However, in either case, the City pays the costs of registration for the event. Similarly, the City pays the full cost for employees to attend the South Dakota Municipal League annual conference. The Municipal League registration fee includes the cost of a meal. The payment of the expense for the meal is incidental to the cost of registration (although a meal allowance is reduced when meals are provided.)

The question you have presented is about the cost of attending a social event where a meal is served. The expense for which the Mayor has requested reimbursement is the cost of admission to the event for himself and for his wife. Per our phone conversation, it is my understanding that the events in question took place in town. Therefore, this is not a request for meal reimbursement, but rather for registration reimbursement. Despite this distinction, throughout this memo I will refer to the reimbursement request as a "meal request" consistent with your inquiry.

Applicability of Travel Regulations

To begin, it appears the current Travel Regulations do not apply to elected officials. The very first sentence of the regulations reads, "The following regulations will explain travel reimbursement for expenses incurred by City **employees** while away from their home station." (emphasis added.) Thus, by its plain terms, the Travel Regulations apply to city employees, not to elected officials. The Mayor is an elected official, not a city employee. Therefore, the Travel Regulations do not appear relevant to your inquiry. Since the Travel Regulations are inapplicable, your question is to be answered by the applicable state statute or city ordinance. SDCL § 9-12-3 allows municipalities to "appropriate funds to pay the necessary expenses of its officers or employees in conducting such business or attending such meetings within or without the state as the governing body shall determine necessary to carry out its authorized municipal activities." *Id.* By appropriating money to the travel line item for the Mayor and Council budget, the Council has made funds available for the purpose of reimbursing the Mayor for his "necessary expenses". Likewise, the costs of Council members attending the recent National League of City's sessions held here in Rapid City were eligible for reimbursement. It is my opinion that costs incurred in attending functions as the Mayor of Rapid City is a "necessary expense" for purposes of this statute. This includes costs for the Mayor's spouse to attend social events (especially when the invitation includes the Mayor's wife.)

Alternative Analysis if Travel Regulations are Applicable

Even if the Travel Regulations would apply to the Mayor, I believe the Travel Regulations allow the Mayor to be reimbursed for the expenses he incurs for his wife to attend functions with him. Section I of the policy sets out expenses that are eligible for reimbursement and these include, "[L]odging, registration, rented cars and other incidental expenses charged."

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The expenses you have asked about are either "registration" expenses or other incidental expenses and are eligible for reimbursement under the policy.

Further, Section V of the Travel Regulations contemplates that persons who are not City employees may be traveling on behalf of the City. It authorizes reimbursement for actual expenses of travel using the same procedures as employees. Therefore, the plain terms of the policy allow non-City employees to be reimbursed for actual expenses incurred. Therefore, whether the expense in question is the Mayor's or his wife's, it is eligible for reimbursement under the policy.

Council Authorization is Unnecessary

The final aspect to your inquiry is who may authorize the reimbursement request. It is my opinion that the regulations consistently grant the Mayor the authority to authorize expenditures for the repayment of meals beyond the amounts authorized in the policy. At the top of the policy, under the first paragraph subsection b) gives the Mayor the authority to authorize expenditures of up to \$1500.00. You have not provided the amount of the Mayor's reimbursement request, but I cannot imagine that it exceeds \$1500.00. The Council must still approve the payment as a part of the bill list, but no separate authorization is necessary prior to placing the item on the bill list.

Section VIII of the Travel Regulations is entitled Appeal Procedure and allows for an appeal to the City Council if an employee is aggrieved by the action of a, "department head, Finance Officer, or Mayor, regarding any travel expense which may have been disallowed." Again, this provision is applicable to employees, not elected officials. Additionally, the Mayor has authorized the expenditure consistent with his authority to do so. Therefore, no additional approval is necessary.

Conclusion

In summary, it is my opinion that the Travel Regulations do not apply to reimbursement for expenses of elected officials. As such, the restrictions on the expenditure of funds to reimburse an elected official are those imposed by City ordinance or state law. State law authorizes the Council to appropriate (and the Council has appropriated) funds for the purpose of reimbursing the Mayor's "necessary expenses". Even if the Travel Regulations do apply to elected officials, it is my opinion that people other than City employees may be reimbursed under the Travel Regulations in the same manner as City employees. The Mayor has the authority to approve reimbursement requests of up to \$1500.00. Obviously the Mayor is not aggrieved by his own decision, and as noted earlier, is not an employee. Therefore, an appeal to the City Council for their authorization is unnecessary. Finally, since the Mayor has the authority to seek reimbursement for his "necessary expenses" reimbursement to him for his documented expenses is a proper expenditure of appropriated municipal funds. Please feel free to contact me if you have additional questions.

JEG/map