

Chapter 15

DEFENSE AND INDEMNIFICATION

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[HISTORY: Adopted by the Board of Trustees of the Village of Youngstown 8-23-1979 by L.L. No. 2-1979. Amendments noted where applicable.]

§ 15-1. Short title.

This chapter shall be known as and may be cited as the “Village of Youngstown Officer and Employee Legal Expenses and Indemnification Law.”

§ 15-2. Applicability.

This chapter shall apply to all the territory within the confines of the Village of Youngstown.

§ 15-3. Legislative intent.

A. It can be said without question that American citizens and government are currently utilizing litigation with unprecedented frequency to resolve countless alleged wrongs and disputes of all types and natures. Such a heightened degree of litigation has proven beneficial to the future and furtherment of human and civil rights, but it is also subject to abuse in that frivolous lawsuits have also increased dramatically. One target of such lawsuits are public servants, both officers and employees of every level and area of government. New York State Law does afford some protection to some officials and employees, but leaves virtually defenseless the majority of officers and employees of local government. Thus, a local public servant who is the subject of a lawsuit has no choice but to stand alone in his own defense, incurring at times immense legal expenses and suffering the possibility of an overwhelming adverse judgment.

- B. It is the intent of this chapter to provide relief from legal expenses incurred while defending actions which challenge the reasonable use of discretion by a public servant and/or which allege negligence, illegality or unethicity in the performance of municipal duties, through the payment of legal defense funds to officers and employees of the Village of Youngstown. It is also the intent of this chapter to provide indemnification of village public servants in the event that an adverse judgment in such actions is entered against them.

§ 15-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

EMPLOYEE—A person hired by the Village of Youngstown on a full-time, permanent basis, who receives wages or salary directly from the Village of Youngstown, who in his municipal job or position owes no allegiance to any other person or entity but the Village of Youngstown, and who is not an officer of the Village of Youngstown.

INDEMNIFICATION – The act of making compensation for an incurred loss.

JUDGMENT – Costs and expenses of a successful plaintiff, if awarded, and all damages awarded to a plaintiff in a successful action.

LEGAL EXPENSES – Includes reasonable attorneys’ fees and all costs and disbursements necessary to the subject action, but does not include any costs or expenses of the plaintiff, or damages awarded to the plaintiff, should said plaintiff be successful in his action.

MUNICIPAL DUTIES – Those responsibilities, both explicit and implicit, which may reasonably be determined to be a part of the position for which the subject person was hired or elected.

OFFICER – The incumbents of the offices of Mayor, Trustee, Village Clerk, Deputy Clerk, Superintendent of Public Works, Treasurer, Deputy Treasurer or any of them and any member of any board, committee, commission or authority who shall have been appointed to such position by act of the Village Board regardless of whether such member serves with or without compensation.¹

§ 15-5. Legal defense expenses.

There is hereby authorized the payment or reimbursement by the Village of Youngstown of legal expenses incurred by officers and employees of the Village of Youngstown.

§ 15-6. Legal expenses: application and procedure for payment or reimbursement.

- A. Any village officer or employee who is the defendant in an action founded upon an allegation of abuse of discretion, or negligence, illegality or unethicity in the performance of his duties,

¹ Editor’s Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

may make application to the Village Board, within 10 days of the service of such document. Upon application as provided herein, the village shall provide for the defense of the officer or employee in any civil action or proceeding arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his public employment or duties. Said application shall be in the form prescribed by the Village Board and shall include whatever information said Board deems relevant to its determination; however, said application must include the following: the title of the action, including the name and address of the plaintiff, the content of the charges, a recounting of all the facts and circumstances which led to the initiation of action, what, if any, damages are alleged and the name and address of the attorney representing the defendant. Said application shall be accompanied by a copy of all pleadings in the action and by a sworn statement of the subject attorney, which shall state the amount of said attorney's fees, his estimation of what must be done to resolve the litigation, what disbursements are involved and what legal services he proposes to provide for the stated fee, including the estimated time to be spent in the provision of legal services. Nothing herein shall prevent a defendant village officer or employee from submitting another application at a later date for additional financial assistance, if unforeseen or unexpected additional legal expenses are incurred.²

- B. After reception of an application, and no later than one month thereafter, the Village Board shall study the validity and merits of the defendant village officer or employee's request and shall determine by resolution whether or not the claim against the officer or employee, as alleged, or actually, arose out of the scope of employment and or performance of duties by such officer or employee. In order to assist in its determination, the Village Board may question any person whom it deems possessing information relevant to such determination, including the defendant's attorney, and may inspect all the pleadings and papers of the subject action, so long as no paper is demanded and studied in public session which might violate the attorney-client privilege, invade the privacy of either the defendant or his attorney, or compromise the ability of either to successfully conclude the subject litigation. In order to avoid any such situation, the Village Board, for this reason, may meet in executive session pursuant to, and as permitted by, the Open Meetings Law. In the event that the Village Board determines that the claim did so arise, it shall appropriate and pay sufficient funds to be paid after the rendering of the described legal services in accordance with the submitted applications.

§ 15-7. Legal expenses repayment.

In the event that any officer or employee of the Village of Youngstown is successful in defending against an action and is therein awarded costs pursuant to the directives of §51 of the General Municipal law, including a sum for legal expenses, and if said defendant officer or employee has previously been assisted in the satisfaction of legal expenses through an allocation or allocations from the Village of Youngstown, said successful defendant officer or employee shall tender the moneys awarded by the court to the Village of Youngstown for repayment of said legal expenses to the extent that the village has paid such expenses.

² Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 15-8. Indemnification.

In the event that a plaintiff is successful in an action against a defendant officer or defendant employee of the Village of Youngstown, and if any judgment rendered in said action is the result of or arises out of the performance of an act or duty by such officer or employee which is within the scope of the acts or duties of said officer or employee, the Village of Youngstown shall indemnify said officer or employee to the full extent of such judgment.

§ 15-9. Conditions.³

- A. The obligation to indemnify and save harmless shall not apply to acts of intentional wrongdoing or recklessness on the part of the officer or employee.
- B. The officer or employee must serve a copy of the final judgment or settlement upon the chief administrative officer of the village, personally or by certified or registered mail, within 30 days of the date of entry of such settlement.

³ Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).