

TOWNSHIP OF WANTAGE

AN ORDINANCE AMENDING CHAPTER II, ADMINISTRATION, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WANTAGE, TO PROVIDE FOR THE DEFENSE AND INDEMNIFICATION OF MUNICIPAL OFFICERS AND EMPLOYEES.

Ordinance No. 2002-08

BE IT ORDAINED by the Committee of the Township of Wantage, County of Sussex and State of New Jersey, as follows:

Section 1 - Definitions. For the purposes of this Chapter, unless the context clearly indicates a different meaning:

"Municipal Official" shall mean a present or former municipal employee, appointee, official, elected official or member of the various boards, agencies and commissions of the Township of Wantage whether full or part time, appointed, elected or hired.

Section 2 – Indemnification - Civil Actions. Pursuant to the provisions of N.J.S.A. 59:10-1 et seq. and subject to the provisions of this Chapter, the Township of Wantage is authorized to provide for the defense of actions brought against its municipal officials and shall indemnify such officials to the extent permissible by law and shall save harmless and protect such persons from financial loss resulting from litigation. Such indemnification shall arise out of any action or legal proceeding of a non-criminal nature directly related, or incidental to, the performance of the duties of the position or office held by such municipal official. The Township of Wantage may indemnify an official for exemplary or punitive damages resulting from the official's civil violation of State or federal law, if, in the opinion of the Committee of the Township of Wantage the acts committed by the official upon which damages are based did not constitute actual fraud, actual malice, willful misconduct or an intentional wrong.

Section 3 - Indemnification - Criminal Actions. The Township shall not defray the cost of defending any criminal action against any municipal official except as may be authorized by state statute or other municipal ordinance or resolution of the Township of Wantage, and in those circumstances, the responsibility for defraying the cost of defending such employee shall be applicable only when such criminal proceeding shall have been dismissed or result in a final disposition in favor of the municipal official. However, should the Township Committee determine that there is good cause to dismiss the employee arising out of the incident(s) giving rise to the criminal prosecution, the Township will not reimburse the municipal official for legal defense and costs in defending this suit, even though criminal proceedings against the employee may be dismissed or the employee found not guilty.

Section 4 - Notification of Township; Cooperation with Township. The municipal official shall not be entitled to indemnification or reimbursement pursuant to this Chapter unless within ten calendar days of the time such official is served with any summons, complaint, process, notice, demand or pleading, the official delivers the original or a copy thereof to the Township attorney. The municipal official shall be obliged to cooperate with the Township in the conduct of the official's defense. Whenever competent and disinterested legal counsel is available to the Township through any insurance coverage, the municipal official shall be obliged to be represented by such counsel. If the Township wishes to use the Township Attorney or the attorney for any board or committee of the Township to defend that action, the municipal official shall be obligated to be represented by that attorney unless there is a conflict of interest. The refusal of the municipal official to cooperate with the Township shall terminate the Township's obligation to reimburse the municipal official.

Section 5 - Method to Provide for Defense; Attorney's Fees. If the Township Committee determines to provide a defense as authorized by this chapter, it may do so by:

- (1) Hiring an attorney of its choice; or
- (2) Reimbursing the municipal official for reasonable attorney's fees and costs

incurred in connection with the defense of the act.

A resolution shall be adopted appointing counsel for the defense and determining counsel fees. The hourly rate shall not exceed the then rate paid to the Township Attorney without a written resolution of the Committee.

Nothing in this ordinance shall preclude the Township and/or Township Attorney from demanding and reviewing periodically any costs and attorney's fees in connection with the defense of the municipal official. In the event a dispute over attorney's fees arises, the Township reserves the right to submit the dispute to the Fee Arbitration Committee of the District or pursue any other course of legal action.

Section 6 - Exceptions. The Township shall not be obligated to provide reimbursement in the following instances:

- (1) Where the act or omission was not within the scope of employment or authority;
- (2) Where the act or omission complained of was because of actual fraud, willful misconduct or actual malice;
- (3) Where the legal proceeding is instigated or brought by the Township of Wantage against the municipal official;
- (4) Where the legal proceeding involves a question concerning the election laws;

(5) Where the action is brought against the Township by the municipal official.

If any such legal proceeding shall be dismissed or finally determined in favor of the municipal official or employee, the official or employee shall be reimbursed for the expense of the defense providing (a) the employee proves that the act or omission was within the scope of employment or authority and (b) the Township fails to prove the act or omission complained of was because of actual fraud, willful misconduct or actual malice.

(6) Where the defense of the action or proceeding would constitute a conflict of interest between the Township and the municipal official.

(7) Where the defense of the action or proceeding is covered by an insurance policy or policies, however, the Township shall be responsible for the cost of the deductible.

(8) The municipal official has failed to fully cooperate with the defense.

(9) Where the act or omission is in violation of the New Jersey Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., or any ethics code adopted pursuant to the statute.

Section 7 - Exclusive Control as a Condition for Defense. The Township shall have exclusive control over the representation of the municipal official and such person shall cooperate fully with the Township and the designated attorney, provided, however, that the municipal official may at any time at the municipal official's option take control of the representation by waiving all rights to indemnification and all rights to payment for the defense costs.

Section 8 - Reduction of Reimbursement. The amount the Township is obliged to reimburse the municipal official shall be reduced by any insurance coverage payable to the municipal official by the net amount, (that is, any recovery less attorneys fees, disbursements and Court costs), of any money received by the municipal official in any counteraction against the person or persons bringing the action against him.

Section 9 - Approval of Settlement. If the legal proceeding is terminated by an agreement among or between the parties, then the Township shall not be obligated to reimburse the municipal official unless the Township approves the settlement agreement.

Section 10 - Cause Attributable to Counterclaim or Crossclaim. If the municipal official files a counterclaim or crossclaim in the legal proceedings, the Township shall not be obligated to reimburse for any attorney fees or court costs attributable to such.

Section 11 - Time of Payment. The obligation of the Township to reimburse a municipal official for expenses shall arise upon final determination of the legal proceedings. In its discretion the Township may reimburse a municipal official for a portion of expenses incurred prior to a final decision.

Section 12 - Severability. Any article, Section or Subsection of this Ordinance is declared for any reason to be unconstitutional or invalid by a court of confident jurisdiction, such provision(s) shall be deemed severed from the remainder of the Ordinance and shall not effect the enforceability of the remainder of the Ordinance.

Section 13 - Repealer. Any and all ordinances or parts thereof inconsistent with the provisions of this ordinance are hereby repealed to such extent as they are so in conflict or inconsistent, provided, however, that the adoption of the ordinance shall not prevent or bar the continuance or institution of any proceedings for offenses heretofore committed in violation of any existing ordinance of the Township of Wantage.

Section 14 - Effective Date; Effect on Prior Actions. This chapter shall take effect upon final passage and publication according to law. Any legal proceeding which may be covered by this chapter which has not been reduced to a final judgment as of the date of passage shall be covered by the terms of this chapter.

Richard H. Sytsema, Mayor

ATTEST:

James R. Doherty, Administrator/Clerk

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LEGAL NOTICE OF PENDING ORDINANCE

NOTICE IS HEREBY GIVEN THAT THE ORDINANCE PUBLISHED HEREWITH WAS INTRODUCED AND PASSED UPON FIRST READING AT A MEETING OF THE MAYOR AND COMMITTEE OF THE TOWNSHIP OF WANTAGE, IN THE COUNTY OF SUSSEX, NEW JERSEY, HELD ON MARCH 14, 2002. IT WILL BE FURTHER CONSIDERED FOR FINAL PASSAGE AFTER PUBLIC HEARING THEREON, AT A MEETING OF SAID MAYOR AND COMMITTEE TO BE HELD IN THE WANTAGE TOWNSHIP MUNICIPAL BUILDING, 888 ROUTE 23, WANTAGE, NEW JERSEY 07461, IN SAID TOWNSHIP, ON MARCH 28, 2002 AT 8:00 P.M., AND DURING THE WEEK PRIOR TO AND UP TO AND INCLUDING THE DATE OF SUCH MEETING, COPIES OF SAID ORDINANCE WILL BE MADE AVAILABLE AT THE CLERK'S OFFICE IN SAID MUNICIPAL BUILDING TO MEMBERS OF THE GENERAL PUBLIC WHO SHALL REQUEST THE SAME.

JAMES R. DOHERTY
TOWNSHIP ADMINISTRATOR/CLERK