

RESOLUTION NO. 1991- 151

ADOPTING POLICIES AND PROCEDURES
FOR PROVIDING INDEMNIFICATION TO TRUSTEES, OFFICERS AND
OTHERS AS PROVIDED FOR IN THE BYLAWS OF
THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

WHEREAS, the Bylaws of the Authority provide that persons in certain positions of responsibility for the Authority can be indemnified by the Authority for reasonable expenses actually incurred by that person in connection with their defense in a legal proceeding or be indemnified by the entry of a legal defense in certain pending litigation actions;

WHEREAS, such indemnification can be provided under the Bylaws to said persons when the legal proceeding arises from actions of the person taken within the scope of the official duties and responsibilities of the person's position with the Authority and said actions when undertaken in good faith in accordance with the provisions of the laws of the State of Ohio; and

WHEREAS, it is in the best interests of the Authority to have a clear and comprehensive set of policies and procedures for investigating and evaluating any claims for indemnification from said persons;

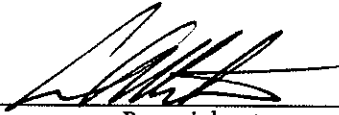
NOW, THEREFORE, be it resolved by the Board of Trustees of the Greater Cleveland Regional Transit Authority that:

Section 1. The Indemnification Policies and Procedures described in Attachment A are hereby adopted.

Section 2. The General Manager/Secretary-Treasurer is hereby authorized to take the steps necessary to implement said Indemnification Policies and Procedures.


Section 3. This Resolution shall take effect upon its adoption.

Adopted: July 23, 1991



President

Attest:



General Manager/Secretary-Treasurer

Attachment A: Indemnification Procedures and Policies

INDEMNIFICATION PROCEDURES AND POLICIES OF
THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

I. These Indemnification Procedures And Policies shall govern all indemnification claims submitted under the present Bylaws of the Authority (or "GCRTA") as Article IX, Section 4, as well as its predecessors or as the Bylaws may be amended from time to time.

II. Delegation Of Authority To The General Manager

- A. The General Manager is authorized by Resolution of the Board of Trustees to prepare and to implement Indemnification Procedures And Policies for the Authority in conformity with the Bylaws and to make such changes thereafter as may be necessary from time to time to conform to the policies and programs of the Board of Trustees.
- B. The General Manager is authorized by Resolution of the Board of Trustees to conduct an investigation and review of each indemnification claim submitted to the Authority and to communicate with the Board of Trustees or issue such report and make such recommendations to the Board of Trustees as may be necessary for its action.
- C. The Board of Trustees shall make the final determination of all indemnification claims submitted to the Authority.

III. Nature Of Claims

The Indemnification Procedures And Policies apply to all claims presented to the Authority under Article IX, Section 4 of the Bylaws, or as the Bylaws may be amended from time to time, whether in the nature of:

- (a) the entry of a defense in any pending litigation, action, suit, or proceeding; or
- (b) the indemnification reimbursement or payment of reasonable expenses actually incurred in the defense of any litigation, action, suit or proceeding for which indemnification is permitted.

IV. Application By Claimant

- A. Any person claiming indemnification shall, upon written request to the General Manager or his designee be provided with a copy of the Bylaws and the Indemnification Procedures And Policies of the Authority.
- B. The Claimant must complete a written request under oath for indemnification on an Application form approved by the General Manager.

- C. In the event that the General Manager is a Claimant for indemnification, the General Manager shall complete the Application Form and advise the Board of Trustees of the submission of the claim, but shall not otherwise act upon the claim. The Board of Trustees shall designate one of its members or a special representative of the Board to act in the capacity of the General Manager on all matters authorized and delegated to the General Manager under the Indemnification Procedures And Policies of the Authority in order that the claim of the General Manager may be so determined by the Board of Trustees.
- D. Failure of a Claimant to submit the Application in a complete manner or in a truthful manner shall be sufficient grounds for the Authority to deny the claim at any time. Any Application which is believed may be false or fraudulent in any way may be referred to appropriate authorities for investigation and possible prosecution.
- E. The Application form approved by the General Manager should request the following information in writing, under oath, from the Claimant:
 - 1. Identification of the Claimant:
 - (a) Name;
 - (b) Address and Telephone Number;
 - (c) Social Security Number;
 - (d) GCRTA Employee Identification Number;
 - (e) GCRTA job or position at time of the acts for which indemnification is claimed;
 - (f) Dates of employment; and
 - (g) Attorney identification, if any, and address and telephone number.
 - 2. Statement Describing the Nature of the Claim;
 - 3. Statement in Support of Claimed Eligibility for Consideration of Indemnification;
 - 4. Statement in Support of Claimed Indemnification;
 - 5. Identification of Supporting Information Persons, Documents, Materials and Other Things; and
 - 6. Authorization, Consent, Release and Understanding.

V. Eligibility for Consideration

- A. Eligibility for consideration of indemnification shall be first and separately reviewed by the General Manager, but shall be determined by the Board of Trustees.

B. The standards for eligibility contained in the Bylaws are presently as follows:

1. An indemnitee must be a "member of the Board or officer of the Authority (and his heirs, executors, and administrators)" at the time of the acts for which the indemnification is claimed giving rise to the litigation, action, suit or proceeding:
 - a. Under the February 16, 1988 Bylaws - the definition of "officer" includes the President, Vice-President, General Manager, Secretary - Treasurer, and all other officers as the Board of the Authority may from time to time designate.
 - b. Under the August 5, 1986 Bylaws - the definition of "officer" includes President, Vice-President, General Manager, Secretary - Treasurer, General Counsel, and all other officers and such assistants thereto as the Board of Authority may from time to time designate.
2. "Officers" include those officers designated in Article II, Section 1 of the Bylaws of the Authority (as amended to 2/16/88), its predecessors if applicable, and the Bylaws as may be amended from time to time.
3. The Claimant must have been made a party to the litigation, action, suit or proceeding "by reason of his being or having been a member of the Board or an officer of the authority." This includes both active and passive involvement in the acts which gave rise to the litigation, action, suit, or proceeding.

C. Initial Determination of Eligibility

1. The General Manager shall conduct an initial investigation and review of whether the Claimant is Eligible for consideration of indemnification. The General Manager shall conduct the initial investigation in an expeditious manner.
2. Should the General Manager find on initial review that the Claimant is Eligible for consideration of indemnification, that finding shall be preliminary and non-final and shall be made a part of the General Manager's written Report with recommendation to the Board of Trustees. The General Manager shall then proceed to review the next stage of the claim for either (a) the entry of a defense in any pending litigation, action, suit or proceeding, or (b) the indemnification reimbursement or payment of reasonable expenses after the conclusion of any litigation, action, suit, or proceeding, whichever may be applicable.

3. Should the General Manager later find or the Board of Trustees later determine at any stage of review that the preliminary, non-final determination of Eligibility should be changed to a determination of Non-Eligibility, either shall be free to do so or to take any other appropriate action.
4. The Board of Trustees shall make the final determination of whether a Claimant is Eligible for consideration of indemnification.

D. Determination of Non-Eligibility

1. Should the General Manager find that the Claimant is Non-Eligible for consideration of indemnification, the General Manager shall promptly communicate to the Board of Trustees in writing his finding of Non-Eligibility together with a recommendation of Non-Eligibility.
2. The Board of Trustees shall make the final determination of whether the Claimant is Eligible or Non-Eligible for consideration of indemnification.
3. Should the Board of Trustees determine that the Claimant is Eligible for consideration at this stage of the review, the determination shall be preliminary and non-final and the Claim shall then be returned to the General Manager for further processing of the Claim.
4. Should the Board of Trustees determine that the Claimant is Non-Eligible for consideration of indemnification, the General Manager is authorized to inform the Claimant of the determination of Non-Eligibility upon the claim.

VI. Investigation And Review Of The Claim With Legal Standards for Indemnification

- A. In order to process the claim, should the Claimant be Eligible for consideration of indemnification, the General Manager shall investigate and review the following:
 1. Whether the Claimant acted in good faith;
 2. Whether the Claimant's acts were conducted in the discharge of the official duties of his employment; and
 3. If the answers to paragraphs 1 and 2 above are in the affirmative, the amount of the indemnification reimbursement or payment of expenses actually incurred by the Claimant in his defense, based upon the standard that the "expenses", as defined in the Bylaws, are both:

- (a) reasonable; and
- (b) were actually incurred by the Claimant in connection with the defense of the litigation, action, suit or proceeding.

VII. General Manager's Review, Report, and Recommendation

- A. The General Manager (or his designee) shall conduct an investigation and review of the Claimant's Application in an expeditious manner. The General Manager shall have the authority to act upon, investigate, and review indemnification claims submitted to the Authority in such manner as he deems necessary or appropriate, including the use of any assistant or other person authorized by him and the employment or engagement of such experts, consultants, or attorneys as he deems necessary or appropriate. Any authority provided to the General Manager shall also be authority for acts of his designee.
- B. The General Manager shall not be bound by any formal rules of evidence or procedure. In his discretion, he may obtain and/or consider any and all matters or things which he deems relevant to the claim for indemnification, including but not limited to:
 - 1. Any and all information, documents, materials or things in the possession, custody, or control of the Authority;
 - 2. Any and all documents, materials or other things identified in the Claimant's Application;
 - 3. Any and all additional information, documents, materials or other things identified by any other persons; and
 - 4. Any and all other information, documents, materials, or things of any nature which may come into his possession of the Authority or which may reach the attention of the Authority.
- C. The General Manager, in his discretion, may conduct interviews and/or obtain statements from persons, including, but not limited to, persons identified in the Claimant's Application, or any other person(s) who may come to the attention of the General Manager.
- D. The Legal Standard of "Good Faith":
 - 1. In investigating and reviewing whether the Claimant acted in "good faith", the General Manager may consider some or all the following factors:
 - (a) Were the acts for which indemnification is claimed the kind of acts that the Claimant was hired to perform or part of an actual duty connected with his performance?

- (b) Were the acts done within the time and space limits of his employment?
- (c) Did the Claimant have the express or implied authority of the Authority to act in the circumstances which gave rise to the litigation, action, suit, or proceeding?
- (d) Did the acts further the Authority's interests, as opposed to the Claimant's own private interests?
- (e) Did the Claimant gain any personal profit or advantage?
- (f) Was the Claimant charged in pending litigation, or was he found liable in completed litigation, with acts in dereliction in the performance of his duties?

E. No required hearing, adversarial proceeding, or oral presentation:

- 1. The General Manager need not conduct any evidentiary hearing or adversarial proceeding;
- 2. The Claimant need not be present at any stage of the proceedings.
- 3. The General Manager shall not be bound by any formal rules of evidence or procedure, but may receive or consider all information of any nature, statements, documents, materials, or other things which may come into the possession of the Authority or which may reach the attention of the Authority.
- 4. The Claimant need not be given the opportunity for oral presentation or an opportunity to present witnesses or to cross-examine witnesses.
- 5. The Claimant need not be given the opportunity to appear before the General Manager or the Board of Trustees.

F. The Legal Standard of "Reasonableness" of "Expenses":

- 1. Should the General Manager find that the Claimant acted in good faith and that his acts were conducted in the discharge of the official duties of his employment, the General Manager must then investigate and review the amount of the "expenses" sought to be indemnified by reimbursement or payment based upon a standard of "reasonableness", as defined in the Bylaws.

2. "Expenses" shall be those defined in the Bylaws, as they may be amended from time to time. "Expenses" under the Bylaws, as amended to February 16, 1988, "shall be deemed to mean and to include, but not be limited to fines and penalties imposed on such member or officer; amounts paid upon a plea of Nolo Contendere or similar plea; amounts paid in compromise or settlement of the litigation; amounts paid in satisfaction of any judgment; costs of investigation; reasonable attorney's fees incurred in the defense of such litigation and costs of attachment on similar bonds."
 3. The standard of "reasonableness" is a two-part test requiring that the "expenses" be both (a) reasonable, and (b) "actually incurred in the defense of the litigation, action, suit, or proceeding for which indemnification is claimed."
- G. Should the General Manager determine that the Claimant is Eligible for indemnification reimbursement or payment, he shall promptly issue a written Report to the Board of Trustees which shall contain a recommendation as to what amount, if any, should be considered for payment to the Claimant. The General Manager's Report should include his finding of whether:
- (1) The Claimant is Eligible or Non-Eligible for consideration of indemnification as a member of the Board of Trustees or an officer of the Authority at the time of the acts for which indemnification is claimed;
 - (2) The Claimant was made a party to the litigation, action, suit, or proceeding by reason of his being or having been a member of the Board of Trustees or an officer of the Authority;
 - (3) The Claimant acted in good faith;
 - (4) The Claimant's acts were conducted in the discharge of his official duties; and
 - (5) The "expenses", as defined in the Bylaws, are both (1) reasonable, and, (2) were actually incurred by the Claimant in connection with the defense of the litigation, action, suit, or proceeding.
- H. Notice to the Claimant and opportunity for Response Statement by the Claimant:
1. Upon submission of the written Report to the Board of Trustees, the General Manager shall provide notice to the Claimant and/or to his attorney (a) that the Claimant may receive a copy of the Report upon written request; (b) that the Claimant may submit a written Response Statement to the Board of Trustees in response to the Report within such

prompt and reasonable time and upon such terms and conditions as the General Manager may determine; and (c) that any written Response Statement should be limited to matters addressed in the General Manager's Report and should not include any new matter or issues not specifically raised by the Claimant in his Application.

2. The General Manager may submit a Supplemental Report, with recommendation if he deems it necessary or appropriate, to the Board of Trustees in reply to Claimant's written Response Statement within such prompt and reasonable time as the General Manager may require.
3. The Claimant shall not be permitted to respond to the General Manager's Supplemental Report, but he may receive a copy of the Supplemental Report upon written request.

VIII. The Board of Trustees Shall Determine The Indemnification Claim

- A. The Board of Trustees in executive session shall determine the indemnification claim after investigation and review of the General Manager's Report with his recommendation and the Response Statement of the Claimant, if any, and the General Manager's Supplemental Report, if any. The Board of Trustees may cause and instruct the General Manager to further investigate and review the claim and make a Second Report to the Board, in which event the Claimant shall be provided with a copy of the Second Report but shall not have any further right to respond.
- B. Claimant shall have no right to appear before the Board of Trustees or to be present before the Board of Trustees at any stage of the proceedings. Claimant shall have no right to make an oral presentation before the Board of Trustees or to present or cross-examine witnesses. The Board of Trustees shall not conduct an evidentiary hearing or adversarial proceeding.
- C. The Board of Trustees shall apply the legal standards set forth in the Bylaws of the Authority.
- D. Board of Trustees Review:
 1. The Board of Trustees may instruct the General Manager to conduct such further investigation and review as it may deem appropriate or it may act upon the Report with recommendation of the General Manager without further review or investigation or review;
 2. The Board of Trustees may instruct the General Manager to reconsider any matters contained in the General Manager's Report or his Supplemental Report or raised by the Response Statement of the Claimant, as it may deem necessary or appropriate.

E. Board of Trustees Action:

1. The General Manager shall promptly inform the Board of Trustees that the Claimants' request for indemnification is ready for determination by the Board of Trustees.
2. The claim shall be considered ready for determination by the Board of Trustees following the receipt of the General Manager's Report, the Claimant's Response Statement, and the General Manager's Supplemental Report and/or Second Report if any, subject to any extension of time required or authorized by the Board of Trustees.
3. The Board of Trustees shall endeavor to make the final determination of an indemnification claim within ninety (90) days after it is ready for determination.
4. After final determination, the Board of Trustees shall authorize the General Manager to direct a written notice to the Claimant of its decision on Claimant's request for indemnification , which shall be done promptly.

F. Should the Authority authorize the entry of a defense to any pending litigation, action, suit, or proceeding, such determination shall always be subject to the continuing right of the Authority to suspend or terminate the defense for cause or to refuse reimbursement of any expenses incurred in the defense if the Board of Trustees or the General Manager later decides that its original determination should be suspended for investigation and review, changed for such cause, or terminated for one or more of the conditions set forth in the Bylaws.

G. Should the Board of Trustees authorize the entry of a defense, such determination shall be only upon the terms and conditions in Article IX, Section 4 of the Bylaws, and as the same may be amended from time to time. Any Board Member or officer of the Authority shall be obligated to repay and to reimburse the Authority for all monies advanced by or paid out as expenses as defined in the Bylaws which were expended or incurred by the Authority arising from any litigation, action, proceeding and appeals therefrom, namely:

- (a) Those as to which he shall finally be adjudged in such litigation to be liable because of a dereliction in the performance of his duties as a member of the Board or as an officer of the Authority, or
- (b) Those which have resulted in a judgment in favor of the Authority and against him or which are settled by any payment by him to the Authority, or

- (c) Those as to which he gained any personal profit or advantage to which he was not legally entitled.

The General Manager shall assure that the indemnitee is informed in writing and agrees to such conditions of the Bylaws, but any lack of such notice or agreement shall not impair the right of the Authority to recover or to secure reimbursement and/or repayment of any monies erroneously advanced or paid to any Claimant or indemnitee.

- H. The Authority always retains the right to recover or to secure reimbursement or repayment of any monies erroneously advanced or paid to any Claimant or indemnitee, together with the costs, expenses, and attorney fees incurred in such recovery.
- I. In the event of an indemnification reimbursement or payment, the determination by the Board of Trustees shall be final and the Claimant shall have no right of reconsideration or administrative appeal.

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RHONDA RAIDL

7-25-91

THE COPY OF ARTICLE IX, ATTACHMENT
B CAN BE FILED WITH YOUR COPY OF
1991-151 RE INDEMNIFICATION.
THE DATE OF JANUARY 22, 1991 HAS
BEEN ADDED FOR CLARIFICATION.

GCRTA Bylaws

ARTICLE IX

Sec. 4. Indemnification. Each member of the Board and each officer of the Authority (and his or her heirs, executors and administrators) who is made a party to any litigation, action, suit or proceeding (whether civil, criminal or administrative) by reason of his or her being or having been a member of the Board or an officer of the Authority, shall be entitled to be indemnified by the Authority for the reasonable expenses actually incurred by him or her in connection with the defense of such litigation, action, suit or proceeding.

Unless prohibited by law, the Authority hereby agrees to enter into such litigation, action, suit or proceeding, to defend each Board member and each officer of the Authority, to pay fines and penalties imposed on such member or officer and to pay amounts to be paid upon a plea of nolo contendere or similar plea or in compromise or settlement of the litigation or in satisfaction of any judgment. Each Board member and each officer of the Authority shall have the right of approval or rejection of any compromise or settlement of any such claim or action against him or her. Further, such Board member or officer may have counsel of his or her own choice as a recognized expense to the extent that it does not exceed the fee schedule set by the Board for outside counsel.

However, in relation to such matters, those as to which such Board member or officer shall finally be adjudged in such litigation to be liable because of a dereliction in the performance of his or her duties as a member of the Board or as an officer of the Authority; those which have resulted in a judgment in favor of the Authority and against him or her which are settled by any payment by him or her to the Authority; or those as to which he or she gained any personal profit or advantage to which he or she was not legally entitled, such Board member or such officer of the Authority shall be obligated to repay and to reimburse the Authority for all moneys advanced by or out as expenses as defined herein which were expended or incurred by the Authority arising from such litigation, action, proceeding and appeals therefrom.

As used in this section, "expenses" shall mean and include, but not be limited to, fines and penalties imposed on such member or officer; amounts paid upon a plea of nolo contendere or similar plea; amounts paid in compromise or settlement of the litigation; amounts paid in satisfaction of any judgment; costs of investigation; reasonable attorney's fees incurred in the defense of such litigation and costs of attachment or similar bonds.