

RESOLUTION 1993-58

A RESOLUTION AMENDING ARTICLE IX, SECTION 4
(INDEMNIFICATION) OF THE BYLAWS OF THE
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

WHEREAS, the Board of Trustees of the Greater Cleveland Regional Transit Authority established Bylaws pursuant to Resolution No. 1976-178 adopted May 25, 1976, and has amended such Bylaws from time to time by appropriate resolutions; and

WHEREAS, to assure the effective, efficient and orderly operation of the Greater Cleveland Regional Transit Authority, it has become necessary to amend the Bylaws of the Authority to be consistent with other policies and procedures duly adopted by the Board of Trustees; and

WHEREAS, the Board of Trustees has adopted Indemnification Policies and Procedures pursuant to Resolution 1991-151;

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1: That Article IX Section 4 (Indemnification) of the Bylaws shall be amended as set forth in the Proposed Bylaw Provision, a copy of which is attached hereto and incorporated as if fully written herein;

Section 2: That the General Manager/Secretary Treasurer be and he is hereby authorized to incorporate the amendments adopted by this resolution into the Bylaws of the Greater Cleveland Regional Transit Authority. He is further authorized to make non-substantive editorial and grammatical changes to the amendments adopted herein and to number same so as to conform to the editorial style format and wording scheme of the codified policies and procedures of the Board of Trustees of the Greater Cleveland Cleveland Regional Transit Authority.

Section 3: That this resolution has been adopted pursuant to Article X Section 1 Amendments of the Greater Cleveland Regional Transit Authority Bylaws including the notice provision contained therein.

Section 4: That any conflicts between policies and procedures previously adopted by the Board and the amendments contained herein that arise prior to the adoption of this resolution be resolved in favor of the duly adopted policies and procedures as of the effective date of the adoption of said policies and procedures.

Section 5: All formal action of this Board concerning and relating to the adoption of this Resolution were performed in an open meeting of this Board, and that all deliberations of this Board or any of its Committees that resulted in such actions, were in meetings open to the public in compliance with all legal requirements established by Section 121.22 of the Ohio Revised Code.

Section 6: That this resolution shall become effective immediately upon its adoption.

Adopted: March 16 1993

Attachment A - Proposed Bylaw Revision,
Section 4, Article IX



PRESIDENT

Attest: Ronald J. Lee
General Manager/Secretary Treasurer

Draft 12/02/92

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

PROPOSED BYLAW REVISION

1 Sec. 4. Indemnification. Each member of the Board and each
2 officer or employee of the Authority who was or is a party, or is
3 threatened to be made a party, to any threatened, pending or
4 completed civil, criminal, administrative or investigative
5 action, suit or proceeding, other than an action by the
6 Authority, by reason of the fact that he or she is or was a
7 trustee, officer, or employee of the Authority, may be
8 indemnified by the Authority against expenses, including
9 attorney's fees, costs of investigation, court costs, judgments,
10 fines and amounts paid in settlement actually and reasonably
11 incurred by him or her in connection with such action, suit or
12 proceeding, if he or she acted (1) in good faith, (2) in a manner
13 that he or she reasonably believed to be in the discharge of the
14 official duties of his or her office or employment, (3) for a
15 lawful purpose and not for a private purpose, and (4) in
16 accordance with these bylaws and other applicable rules,
17 regulations and policies of the Authority, and, (5) with respect
18 to any criminal action or proceeding, if he or she had no
19 reasonable cause to believe that his or her conduct was unlawful.

20 The termination of any action, suit or proceeding by
21 judgment, order, settlement or conviction or upon a plea of nolo
22 contendere or its equivalent, shall not create, of itself, a
23 presumption that the person did not act in good faith and in a
24 manner that he or she reasonably believed to be in the discharge

of the official duties of his or her office or employment and for a lawful purpose and not for a private purpose, and, with respect to any criminal action or proceeding, a presumption that the person had reasonable cause to believe that his or her conduct was unlawful.

Any person who expects to make a claim for indemnification under this section shall give written notice of the existence and nature of the action, suit or proceeding to which the person is a party, or threatened to be made a party, to the General Manager (or, if the General Manager is the person who expects to seek indemnification, to another officer designated to act in his or her place) before incurring substantial expenses in connection with that action, suit or proceeding, and shall thereafter furnish to the officer to whom such notice was given such further information concerning the status of the action, suit or proceedings and costs incurred and expected to be incurred by the person in connection therewith as the officer to whom the notice was given shall from time to time reasonably request.

No claim for indemnification under this section will be considered unless it is filed not later than one year from the date on which the action, suit or proceeding to which it pertains has been completed, or on which a final judgment, decree or order has been rendered and the period for any appeal from the same has expired.

Any attorney's fees paid by the Authority under this section shall not exceed reasonable amounts for the actual services

1 rendered and shall not in any case exceed amounts calculated in
2 accordance with the Authority's schedule of fees for outside
3 counsel to the Authority in effect at the time of performance of
4 the legal services for which payment is claimed.

5 Except with the written approval of the General Manager (or,
6 if the General Manager is the person seeking indemnification,
7 another officer designated to act in his or her place) given
8 prior to the commencement of such legal services and upon good
9 cause shown, no payments for attorney's fees and expenses under
0 this section will be made with respect to a single action or
1 proceeding to more than a single law office. Any statement for
2 attorney's fees and expenses of a law office submitted in
3 connection with a claim for indemnification shall be in such
4 detail as the General Manager or other officer having
5 responsibility for the initial review of such statement shall
6 require. No payment will be made for attorney's fees or other
7 expenses that are determined by the Authority to be duplicative
8 or not reasonably necessary. As used in this section "law
9 office" means a law firm that is a partnership of attorneys, a
0 legal professional association, or an attorney who is a sole
1 practitioner together with his or her employees who are
2 attorneys.

3 Attorney's fees and other expenses incurred by a member of
4 the Board or by an officer or employee in defending any action,
5 suit or proceeding referred to in this section may be paid by the
6 Authority as they are incurred, in advance of the final

7 disposition of the action, suit or proceeding, as authorized by
78 the Board in the specific case, upon receipt of a commitment,
79 satisfactory to the Board, by or on behalf of the Board member,
80 officer or employee to repay the amount if it ultimately is
81 determined that he or she is not entitled to be indemnified by
82 the Authority.

83 This section does not create any legal obligation on the
84 part of the Authority toward any member of the Board or to any
85 officer or employee. The decision in each case as to whether
86 indemnification will apply shall be within the sole discretion of
87 the Board of Trustees as provided herein. This section may be
88 revoked or amended by the Board of Trustees at any time, and
89 nothing herein shall be construed as constituting a condition or
90 benefit of employment or as an emolument of office.

91 Any indemnification under this section shall inure to the
92 benefit of the indemnified person's heirs, executors and
93 administrators.

94 This section does not apply in the case of any action, suit
95 or proceeding as to which the Authority has the duty to indemnify
96 members of the Board or officers or employees under Section
97 2744.07 of the Revised Code or any other provision of the Revised
98 Code now in effect or enacted hereafter that provides for the
99 circumstances under which the Authority has such a duty.

ATTACHMENT B

SUMMARY OF SIGNIFICANT PROVISIONS
OF THE NEW INDEMNIFICATION
SECTION OF THE BYLAWS

The proposed new Indemnification section accomplishes the following:

1. Broadens the scope to include "employees" as well as "Board Members" and "Officers".

Justification: Makes it clear that employees are covered by the section. Critical to morale and our ability to get things done ("Will the Authority back me up?").

2. Adds language to insure consistency with Indemnification Policies and Procedures and court order.

Justification: To avoid confusion and potential conflicts that could cause legal difficulties.

3. Sets limits and parameters on when indemnification claims can be filed; what expenses the Authority will pay for and to what extent; and on special circumstances/requests.

Justification: To minimize costs; avoid confusion and later conflicts; and be fair and equitable.

4. Keeping indemnification as a policy within the discretion of the Board of Trustees to provide and prevent it from becoming a right of employment.

Justification: To provide flexibility and minimize future costs.