

CHAPTER 16

DEFENSE AND INDEMNIFICATION

1600. Defense of Suits and Claims.

If a County official or employee requests the County Counselor to defend him against any claim or action against him for an injury alleged to arise out of an act or omission occurring within the scope of his duties or employment as an officer or employee of the County and such request is made in writing no later than 60 days after service of process or notification of impending claim or suit, the County shall investigate, defend, negotiate or compromise such claims, actions or judgments resulting from trial, on behalf of the officer or employee, as deemed appropriate by the County Counselor or his designee. (Ord. 1610, Eff. 12/01/87)

1600.1 Determination Within Scope of Employment.

It shall be within the discretion of the County Counselor to determine whether a claim or action arises out of an act or omission occurring within the scope of employment. The employee shall not be entitled to County defense and indemnification for willful and wanton acts or other acts outside the scope of employment. (Ord. 1610, Eff. 12/01/87)

1600.2 Persons Protected.

This Chapter applies to all County officials, whether elected or appointed, and to members of County boards or commissions, and County entities. It also applicable to former county officials and employees. Employees of the Circuit Court of Jackson County, Missouri, except its Juvenile Division, who are paid with County funds, are also covered by this Chapter, although not County employees. The commissioner of the Land Trust of Jackson County, appointed by the county executive pursuant to §141.720.1, RSMo, shall also enjoy the protection of this chapter. This Chapter does not apply to employees of any other public entity beyond those described above, even if that entity receives funding from the County, in whole or in part, or to private persons or firms doing business with the County. Independent contractors are excluded from the coverage of this Chapter, unless such coverage is specifically included in the contractor's contract. (Ord. 1610, Eff. 12/01/87; Ord. 3256, Eff. 06/11/02)

1600.3 Compromise.

For purposes of this ordinance, the term "compromise" shall include settlements of claims or of judgments. (Ord. 1610, Eff. 12/01/87)

1600.4 No Obligation for Punitive or Exemplary Damages.

In no event shall this ordinance require the County to pay any part of a claim or judgment for punitive or exemplary damages. (Ord. 1610, Eff. 12/01/87)

1600.5 No Obligation to Defend Actions Brought by Fellow Employees.

In no event shall this chapter require the County to defend, or pay any part of a claim or judgment for damages arising out of, an action brought against a County official or employee by any person who was a fellow official or employee at the time the claim arose, and who had a remedy for the injury giving rise to such claim under the Workers' Compensation Law, chapter 287, RSMO. (Ord. 2275, Eff. 02/23/94)

1600.6 Written Authorization Required for Representation.

If the County Counselor does not receive, in writing, the authorization from the employee or office within the sixty (60) day period after service of process or other notification, the County Counselor's office may exercise its discretion to decline the defense and representation of said employee or officer. (Ord. 1610, Eff. 12/01/87; Ord. 2275, Eff. 02/23/94)

1600.7 Employee Retains Outside Counsel.

If an employee or officer elects to retain outside counsel there shall be no right to reimbursement for legal expenses or right of indemnification as provided by this Chapter. (Ord. 1610, Eff. 12/01/87; Ord. 2275, Eff. 02/23/94)

1600.8 Notice To Employee of Claim/Suit.

In the event that service of process is accepted by someone other than the named defendant but who is a County employee or agent and, therefore, legally capable of accepting service, the County Counselor shall be immediately notified of such service. Furthermore, upon receipt of notification of suit or claim the County Counselor shall give prompt notice to the individual being sued in order to apprise said individual of the pending claim or litigation. Notification to the individual shall include a brief statement from the County Counselor reciting the nature of the suit or claim, a copy of this Chapter and advisement that the employee or officer must elect to have the County Counselor defend the suit or claim and that such election must be in writing, within 60 days. (Ord. 1610, Eff. 12/01/87; Ord. 2275, Eff. 02/23/94)

1601. County Counselor To Be Solely Responsible for Conduct of Litigation.

Any investigation, defense, negotiation, or compromise of any claim covered by this Chapter shall be conducted by the County Counselor, provided that in instances where circumstances require it, outside counsel may be retained by the County to conduct such representation. The retention of outside counsel in the defense of claims or suits shall be within the discretion of the County Counselor. If outside counsel is retained to represent an official or employee, the County Counselor shall notify the employee or official of said representation. (Ord. 1610, Eff. 12/01/87)

1601.1 Responsibility for Negotiations.

The County Counselor shall be the sole agent authorized to negotiate on behalf of the County and its employees. An employee or official's independent act of compromise or settlement of claims shall be grounds for forfeiture of the protection

afforded under this Chapter. (Ord. 1610, Eff. 12/01/87)

1602. Employee's and Official's Cooperation.

Any persons and County entities seeking the benefit of this Chapter shall cooperate with the attorneys conducting any investigation and preparing any defense by assisting the attorneys in all respects including the making of settlements, the securing and giving of evidence, attendance at hearings and trials, helping them to obtain the attendance of witnesses at hearings and trials and to secure other evidence and keeping the attorneys notified of their whereabouts. (Ord. 1610, Eff. 12/01/87)

1602.1 Failure to Cooperate.

A failure of any person or entity to cooperate with the attorneys conducting any such investigation and defense shall be grounds for forfeiture of any right or claim by those persons or entities to protection or assistance from the County under this Chapter, and of any claim for indemnification or reimbursement for any settlement or judgment. (Ord. 1610, Eff. 12/01/87)

1603. Exclusion of Workers' Compensation Claims.

This Chapter is not meant to cover County workers' compensation claims, which are covered by separate provisions and those of Chapter 287, Revised Statutes of Missouri. (Ord. 1610, Eff. 12/01/87)

1604. Insurance.

The County or other entity whose officials and employees are protected by the Charter may, in its discretion, expend funds to procure one or more policies of insurance to insure against all or any portion of the potential liabilities of the County and its officials, employees or entities. (Ord. 1610, Eff. 12/01/87; Ord. 3256, Eff. 06/11/02)

1604.1 Indemnification Limited by Insurance.

Should the County or other entity elect to procure a policy of insurance pursuant to §1604, which policy covers an action or claim brought against a County or entity official or employee within the meaning of this Chapter, that official or employee's right to indemnification under this Chapter shall be limited by the policy limits of said policy of insurance. (Ord. 1610, Eff. 12/01/87; Ord. 3256, Eff. 06/11/02)

1604.2 Self-Insurance Fund.

Damage claims not covered by existing insurance policies shall be paid out of the Self-Insurance Trust Fund. (See Section 526, et seq. of Chapter 5). (Ord. 1610, Eff. 12/01/87)

1605. County Liability.

Nothing contained in the provisions of this Chapter shall be construed to broaden the liability of the County beyond the provisions of sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense at law or equity which might otherwise be available to any County official, employee or entity. For claims falling within the scope of sections 537.600

to 537.610, RSMo, a covered employee's right to indemnification under this Chapter shall be coextensive with and shall not extend beyond the limits of the County's liability as set out in those sections; the County's liability limit and the employee's right to indemnification shall be one and the same and there shall not be separate limits for each. Nothing in this ordinance shall be construed as a waiver of the County's immunity from liability for punitive damages under 42 United States Code §§ 1981-1988, or any other defense or immunity under that law on behalf of the County or any County official or employee. (Ord. 1610, Eff. 12/01/87)

1605.1 Proper Expenditure of County Funds.

The establishment by this Chapter of authority for defense and indemnification of claims or judgments is deemed a necessary and proper public purpose for which funds of this County may be expended. (Ord. 1610, Eff. 12/01/87)

1606. Satisfaction of Judgments, Claims and Settlement of Litigation.

Judgments entered against employees or officials, except judgments for punitive or exemplary damages, shall be self-executing and shall not require any further legislative action. The Director of Department of Finance is authorized to pay any and all such judgments upon the advice of the County Counselor. Payment of judgments shall include all court-ordered costs and attorney's fees. (Ord. 1610, Eff. 12/01/87; Ord. 2553, Eff. 07/30/96)

1606.1 Settlement of Claims/Suits.

Settlement of claims and suits shall be accomplished in the following manner:

- 1) Claims of \$1,000 or less may be settled by the County Counselor without legislative approval; the Director of Department of Finance is authorized to pay any and all such claims, upon the advise of the County Counselor;
- 2) Claims of \$5,000 or less may be settled upon recommendation of the County Counselor and approved by any three of the following officers: Chairman of the Legislature, the Chairman of the Legislature's Finance and Audit Committee, the Manager of the Division of Operations, the Manager of the Division of Administration, and the County Counselor; the Director of Department of Finance is authorized to pay any and all such claims upon receipt of a payment request signed by at least three of the above;
- 3) Claims over \$5,000 may only be settled upon recommendation of the County Counselor and approval by resolution of the Legislature as a whole. (Ord. 1610, Eff. 12/01/87; Ord. 2553, Eff. 07/30/96)

1607. Severability Clause.

If any section or provision of this Chapter is determined to be unconstitutional, contrary to state law, or incapable of being enforced, by reason of any law or public policy, all other

sections or provisions of this Chapter shall remain in full force and effect and no section or provision shall be deemed dependent upon any other section or provision unless expressly stated herein. (Ord. 1610, Eff. 12/01/87)