

R-7863

MUNICIPAL LEGAL DEFENSE FUND PROGRAM

WHEREAS, suits and claims against elected municipal officials frequently interfere with the official's ability to conduct the affairs of his office and discourage qualified citizens from seeking public office; and

WHEREAS, Act 23 of 1949 (Ark. Stat. 19-2301) permits municipalities "... to associate with other municipalities for the promotion of their general welfare; to join with another or other municipalities in the purchase of equipment, supplies or services; ..."; and

WHEREAS, there is a need for a method whereby Arkansas cities and towns may mutually provide legal defense, pay expenses, and, in certain cases, pay judgments in various suits against municipal officials seeking judgment against their personal assets;

NOW, THEREFORE, the municipalities joining herein hereby establish the MUNICIPAL LEGAL DEFENSE FUND PROGRAM (the Fund) for member cities and towns under the following terms and conditions:

1. During the term of this program, and to the extent of funds available, the Fund shall, in the sole discretion of the Fund administrators, (1) provide extraordinary legal defense and extraordinary expenses in "suits against municipal officials" of a participating municipality and (2) pay from the Fund sums for extraordinary judgments (for actual damages - not punitive damages) imposed on certain "elected municipal officials" or the estate of such "elected municipal officials" in such suits.

2. The legal defense provided to municipal officials shall include all necessary legal research, preparation of all briefs and pleadings, all appearances, taking of all statements and depositions necessary for proper preparation for trial, all necessary trial preparation, conduct of the trial and all other necessary functions essential for the proper representation of the municipal

officials, including all necessary legal work in connection with any appeal or appeals from rulings, judgments, or orders of the trial court.

3. Payment of sums from the Fund for extraordinary judgments for actual damages imposed against elected municipal officials or against the estate of elected municipal officials may only be made under the following conditions:

(a) All requirements of the Fund have been complied with, and attorneys for the Fund participate in defense of claim.

(b) If the municipality of which the elected municipal official is an official is also a party defendant and judgment is rendered jointly against the elected municipal official and the municipality, then the municipality shall be primarily liable under the terms of this agreement and the Fund shall be obligated for payment of the judgment against the elected municipal official only to the extent that judgment is not paid by the municipality.

(c) The Fund shall not, under any circumstances, pay judgments for punitive damages.

(d) The Fund shall never be liable to reimburse municipal officials because of judgments in any one lawsuit for more than 50% of the Fund's available funds at time demand for reimbursement is made.

(e) The administrators of the Fund shall have the right to settle and pay any claim prior to entry of a judgment.

4. A participating municipality agrees to pay into the Fund each year the charge of 10¢ per capita for the municipality's population with a minimum payment of \$100 per municipality. Each participating municipality also agrees to pay the first \$1,000 of the aggregate cost for all judgments and expenses, including legal fees, on each lawsuit against municipal officials of the participating municipality. Payment by a participating municipality shall constitute its

agreement to, and the acceptance of, the provisions of this program.

5. As used in this agreement:

(a) The words "municipal official" shall mean a mayor, city manager, assistant city manager, alderman, city director, municipal clerk, municipal treasurer, finance officer, municipal recorder, administrative assistant to the mayor (director of administration), chief of police, marshal, fire chief, parks director, airport director, superintendent of street department, superintendent of sanitation department, superintendent of sewer department, or superintendent of water department of a participating municipality, or a member of a municipal board or commission of an Arkansas municipality, or the manager reporting to such board or commission. The words "director", or "superintendent", as used in this paragraph, shall mean the senior officer, or person primarily responsible, for administration and supervision of the particular governmental department of the municipality who reports directly to the municipal governing body, mayor or city manager.

(b) The words "elected municipal official" shall mean the following elected municipal officers: mayor, alderman, city director, city clerk, treasurer, or recorder of an Arkansas municipality.

(c) The words "suits against municipal officials" shall mean any litigation commenced during the term of this program arising out of acts or omissions occurring during the term of this program in a United States District Court sitting in the State of Arkansas or a Circuit or Chancery Court of the State of Arkansas against a "municipal official" which requests a money judgment, or other judgment affecting the personal assets of the "municipal official", for acts alleged to have been done or not done in his official capacity. The words "suits against municipal officials" shall not include the following:

(i) claims filed by or on behalf of any other municipal official [as defined in subparagraph (a)];

(ii) any claim based upon a municipal official's gaining any personal profit or advantage to which they were not entitled, including remuneration paid in violation of law;

(iii) any claim which is insured by a valid insurance policy;

(iv) any claim for intentional misconduct;

(v) a claim by any government, or department or agency thereof, seeking to impose a fine, penalty, or forfeiture against a municipal official;

(vi) a claim arising from the ownership for use of any motor vehicle or machinery of any kind;

(vii) any claim by the State or Federal Government alleging a violation of a criminal statute;

(viii) claims by any municipality;

(ix) any claim which is not presented pursuant to Paragraph 6 hereof within seven days (Saturdays, Sundays and holidays excluded) from the deadline for responding to said claim.

(d) The words "participating municipality" shall mean a municipality which has paid the charge provided in Paragraph 4 hereof.

(e) The word "extraordinary", as it applies to legal defense, expenses and judgments, shall mean the total amount of expenses for legal defense and other expenses and judgments which in the aggregate exceed \$1,000 in any one suit against a municipal official.

6. The members of the Executive Committee of the Arkansas Municipal League (the League) and their successors in office are hereby designated the Fund administrators. As a condition precedent to becoming eligible to participate in the Fund, the municipal official shall notify the Executive Director of the League to defend a pending claim by delivering a copy of said claim, along with the written consent executed by the municipal official involved, together with a cost deposit, to the Executive Director of the League not

less than seven (7) days, excluding Saturdays, Sundays and holidays, prior to the deadline for responding to said claim.

7. The Fund will be administered by the League with no administrative costs to the Fund during the year 1979. The Fund will be governed by the Executive Committee of the League (and League Annual Convention) as other League activities are governed, but the assets of and monies in the Fund shall be completely separate and distinct from League funds, monies and assets.

8. Notwithstanding anything herein to the contrary, the League shall not be obligated, directly or indirectly, to pay any sum except from the Fund's monies and assets and then only to the extent that funds are available in the Fund.

9. The term of this program shall begin January 1, 1979 and terminate upon resolution of the Executive Committee of the League. The provisions of this program may be amended from time to time by resolution of the Executive Committee of the League.

10. This agreement is made for the benefit of the individual municipalities joining herein and no municipal official shall have any legally enforceable rights under this agreement against any municipality joining herein, the Fund, the League, or attorneys for any of the foregoing, whether as third-party beneficiaries or otherwise, this agreement being one solely between the municipalities joining herein.

CERTIFICATE

I hereby certify that the foregoing Municipal Legal Defense Fund Program was adopted by the Annual Convention of the Arkansas Municipal League at its meeting November ____, 1978 at Hot Springs, Arkansas.

Secretary