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OFFICERS AND EMPLOYEES: Indemnification for legal expenses

MUNICIPAL OFFICERS AND EMPLOYEES: Indemnification for legal expenses

A public officer may be indemnified for legal expenses in defense of a legal action alleging wrongful conduct by him where he acted in good faith in discharging his official duties, assuming there are appropriate available funds for this purpose.

Opinion No. 4947

March 23, 1976.

Honorable Bill Huffman
State Senator
State Capitol
Lansing, Michigan 48901

You have requested an opinion of the Attorney General on the following question:

Where a city treasurer has defended himself against a charge of influencing a councilman on an application for a liquor license, may the city council reimburse the treasurer for the legal expenses incurred in his defense?

A city may not expend public money except for a public purpose. Const 1963, art 7, § 26, *Hays v Kalamazoo*, 316 Mich 443; 25 NW2d 787 (1947); *Skutt v Grand Rapids*, 275 Mich 258; 266 NW 344 (1936). The courts are divided on the question of whether a public officer may be reimbursed for the expense of defense against criminal prosecutions. New York courts have held that a public officer may not be reimbursed under these circumstances. *In re Jenson*, 28 Misc 378; 59 NYS 653 (1899); *Matter of Chapman v New York*, 168 NW 80; 61 NE 108 (1901); *Schieffelin v Henry*, 123 Misc 792; 206 NYS 172 (1924). Texas courts have held that a public officer may be reimbursed. *City of Corsicana v Babb*, 290 SW 736 (Tex Comm App, 1927).

Michigan courts have allowed a municipality to indemnify a public officer for civil liability under certain circumstances. The general rule was stated in *Messmore v Kracht*, 172 Mich 120, 122; 137 NW 549, 550 (1912):

"It is within the discretionary power of a municipality to indemnify one of its officers against liability incurred by reason of any act done by him while in the bona fide discharge of his official duties, and the municipality has the right to employ council to defend the officer, or to appropriate funds for the necessary expenses incurred by him in such defense, or pay a judgment rendered against him."

The *Messmore* rule was extended to cover the indemnification of a police officer for the defense against criminal charges in *Sonnenberg v Farmington Township*, 39 Mich App 446, 449; 197 NW2d 853, 854 (1972) in which the court stated:

"We hold that a municipality has the discretionary authority to indemnify a police officer for the expenses he has sustained in the successful defense to criminal or civil charges which arose out of and in the scope and course of his employment for the municipality. . . ."

Applying the *Messmore* rule, it is my opinion that a public officer may be indemnified for legal expenses in defense of a legal action alleging wrongful conduct by him where he acted in good faith in discharging his official duties, assuming there are appropriate available funds for this purpose.

FRANK J. KELLEY,
Attorney General.

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FUTURE ESTATES OR INTERESTS:

Duration of possibilities of reverter and rights of re-entry

DEEDS AND CONVEYANCES:

Duration of possibilities of reverter and rights of re-entry

RAILROADS: Rights of way

Pursuant to 1968 PA 13, title to a railroad "right of way" held in fee subject to a right of re-entry for condition broken or a possibility of reverter, may ripen into title in fee simple absolute if the specified contingency does not occur within thirty (30) years after creation of the terminable interest unless the right of termination has been preserved by recording of requisite notice under the statute.

Opinion No. 4949

March 24, 1976.

The Honorable John F. Toepp
State Senator
The Capitol Building
Lansing, Michigan 48901

You have requested my opinion concerning the application of 1968 PA 13; MCLA 554.61 *et seq*; MSA 26.49(11) *et seq*, to land in which a railroad corporation has, for railroad purposes, acquired from a private party the following terminable interest:

- (a) a fee subject to right of re-entry for condition broken; or,
- (b) a fee subject to possibility of reverter.

1968 PA 13, *supra*, provides that an interest in real property subject to termination by a provision in a conveyance or other instrument of title, is freed from any right of termination if the specified contingency does not occur within thirty (30) years after creation of the terminable interest.

1968 PA 13, *supra*, § 4, however, provides:

"This act does not apply:

- (a) To a lease for a term of years.
- (b) If the specified contingency must occur, if at all, within the period of the rule against perpetuities.