

RESOLUTION NO. 405

A RESOLUTION AMENDING THE PERSONNEL POLICIES AND PROCEDURES BY ADDING SECTION 6.51, TRAFFIC VIOLATIONS WHILE OPERATING CITY VEHICLES

WHEREAS, the Code of Ordinances, Title 4 relating to MUNICIPAL PERSONNEL, Chapter 4 relating to PERSONNEL POLICIES AND PROCEDURES, Section 4-402 relating to amendment of the Policies and Procedures Manual for employees requires that all amendments be made by resolution of a majority of the Board of Mayor and Aldermen: and,

WHEREAS, the Town of Mount Carmel wishes to promote a safe working environment and in the interest of keeping the Town's liability and risk assessment to a minimum it is hereby found to be desirable to require employees who receive traffic violations while operating a city vehicle report such to the Town; and

WHEREAS, the public health and welfare require it;

NOW, THEREFORE, BE IT RESOLVED that Chapter VI, DISCIPLINARY ACTION, Section 6.51, Traffic Violations be added, as follows:

6.51. TRAFFIC VIOLATIONS WHILE OPERATING CITY VEHICLES

All employees will report to their Supervisor, who in turn will report to the Safety Committee Chairman, receipt of any traffic citation received by the employee while operating a city vehicle, whether it be issued by an officer or by photo enforcement cameras.

When the employee receives a citation he/she will be counseled by their supervisor and a copy of the citation shall be placed in their personnel file. If no additional citations are received within a year after the date of the first citation, all records will be expunged from their personnel file.

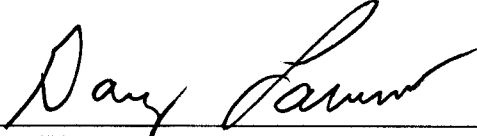
Should the employee receive another citation within the year following the first citation while operating a city vehicle, he/she will receive a written reprimand, which along with a copy of the citation, will be placed in their personnel file. The employee will be placed on probation for one year as of the date of the second violation. If no additional citations are received with a year after the date of the second citation, all records will be expunged from their personnel file.

Should any additional citations be received by the employee while operating a city vehicle, if the employee is on probation, the employee may be suspended for up to three days or terminated.

Should the employee fail to report the receipt of any citation while operating a city vehicle or fail to provide documentation of such to his Supervisor within three working days, the employee will receive a written reprimand which will be placed in their personnel file, and be placed on three days suspension without pay.

THIS Resolution shall become effective immediately, the public welfare demanding it.

A D O P T E D this the 22nd day of July, 2008.



GARY W. LAWSON, Mayor

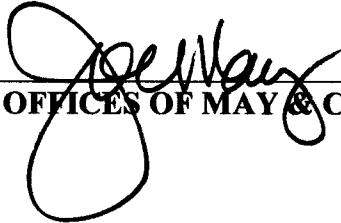
ATTEST:



MARIAN SANDIDGE, Recorder



APPROVED AS TO FORM:



LAW OFFICES OF MAY & COUP

FIRST READING	AYES	NAYS	OTHER
Vice-Mayor Eugene Christian	✓		
Alderman Wanda Davidson	✓		
Alderman Richard Gabriel	✓		
Alderman Tresa Mawk	✓		
Alderman Thomas Wheeler	✓		
Alderman Carl Wolfe	✓		
Mayor Gary Lawson	✓		
TOTALS	7	0	0

PASSED FIRST READING July 22, 2008

RE: Mt Carmel Questions

Wednesday, June 25, 2008 9:50 PM

From:

"Judy Housley" <JHousley@tmlrmp.org>

Add sender to Contacts

To:

"Jeff Jackson" <mcpd_jackson@yahoo.com>

Message contains attachments

Charity Road Block.doc (40KB), drug free workplace tn policy.pdf (389KB)

Norton
AntiVirus

No virus threat detected

File: Charity Road Block.doc Download File

Jeff,

I don't have a policy for getting tickets in city vehicles. I guess, you play - you pay, would be my recommendation. Violating the law should have no relevance to the job. If an employee receives a traffic ticket in the course of work, I would think they would have to report it and personally pay it.

Judy

-----Original Message-----

From: Jeff Jackson [mailto:mcpd_jackson@yahoo.com]

Sent: Tuesday, June 03, 2008 11:41 PM

To: Judy Housley

Subject: Mt Carmel Questions

Judy could you send me something from the pool in reference to granting variances to have roadblocks for fund raisers.

Also guidelines on Drug testing municipal employees and any policies on employees receiving tickets in city vehicles.

Thanks in advance, Jeff Jackson

Information Product

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Printer-Friendly Version

Title: City's Payment of a Fine Against a City Employee**Summary:** MTAS was asked whether it is legal for the city to pay a fine levied against an employee related to the conduct of city business.**Original Author:** Hemsley, Sid**Co-Author:****Product Create Date:** 04/05/2001**Subject:** Ethics; Fines and court costs; Laws and regulations—Municipal; Municipal government; Personnel—Discipline; Wastewater—Laws and regulations**Type:** Legal Opinion**Legal Opinion:**

City Pays Employee's Fine Public.wpd

Reference Documents:**Text of Document:****MEMORANDUM****FROM:** Sid Hemsley, Senior Law Consultant**DATE:** April 5, 2001**RE:** City's Payment of a Fine Against a City Employee

You have the following question: Is it legal for the city to pay a fine levied against an employee related to the conduct of city business. The facts behind your question are that a city employee may be fined \$35,000 for the negligent operation of the city's wastewater treatment operation.

While the law in Tennessee is not entirely clear on that question, the answer is probably no, for two reasons:

1. The payment of the fine under the circumstances surrounding the question is probably not a public purpose.
2. There is no statute that supports the payment of the fine.

Tennessee Code Annotated, § 68-221-901 et seq., is the Water Environmental Health Act. It generally provides for the certification of water and wastewater plant operators. Tennessee Code Annotated, § 68-221-904, makes unlawful the operation of systems unless the competency of the operators are certified, makes a violation of that statute and the rules issued pursuant to it punishable as a Class C misdemeanor, and gives the commissioner of environment and conservation the authority to levy civil penalties of up to \$10,000 per day for violations of the statute and the rules issued thereunder. I assume the city employee in question is

alleged to have violated rules and regulations issued by the commissioner of health and environment. While I do not know what rules and regulations are at issue, I assume that if the fine is against the employee rather than the city, the employee had some control over the nature and extent of the violations, and is himself responsible for them. That assumption may, of course, be incorrect. If it is, the answer could change.

The principle Tennessee case directed at the question of the right of local governments to indemnify their employees is City of Chattanooga v. Harris, 442 S.W.2d 602 Tenn. (1969). [Also see Banks v. City of Mason, 541 S.W.2d 143 (1976), and Grundy County v. Dyer, 546b S.W.2d 577 (1977).] There the Tennessee Supreme Court upheld against several constitutional challenges a statute that authorized cities to indemnify police and fire employees against the cost of defense counsel and judgements rendered against them in suits "arising out of the performance of his official duties and while engaged in the course of his employment..", except that the indemnity could not apply to "any judgement for punitive damages or for damages arising out of any wilful wrongdoing..."

The constitutional provision most at issue was Article II, Section 29, of the Tennessee Constitution, which requires municipal expenditures to be for a public purpose. The Court reasoned that the statute served a public purpose because:

It is not to be questioned at this stage of the development of municipal activities that the maintenance of police and fire departments are proper corporate activities and for a public and corporate purpose. Nor, do we feel that, considering the difficulty encountered in filling and sustaining the ranks of these departments, it can be questioned that the giving of certain "fringe benefits" as well as salaries are necessary in order to effectuate these public purposes. In recognition of the necessity of providing such benefits, pension plans, tenure acts, retirement and vacation benefits have been adopted by individual cities by resolution, changes in charter, and often by acts of the Legislature. One method of approach in considering the instant statute is to consider it as providing another such fringe benefit. As it removes the burden from the individual of carrying insurance coverage for, and defending against, suits which arise out of his employment, it might even be said that it provides an indirect pay raise for such employee. At the very least it makes employment in these departments more attractive for both the veteran and the recruit, just as other "fringe benefits" do. [At 606]

That indemnification statute, then, met the public purpose test of Article II, Section 28, of the Tennessee Constitution. That statute was repealed in 1987, but its principles would apply to any similar indemnification statute. The Tennessee Tort Liability Act contains a

similar provision governing the indemnification of municipal employees in general. [Tennessee Code Annotated, § 29-20-301]. However, it seems clear that the indemnification statute at issue in City of Chattanooga v. Harris would not have applied to the payment of a fine imposed against a municipal employee, even where the fine was civil rather than criminal in nature. The same is true of the indemnification statute in the Tennessee Tort Liability Act.

There are a number of cases in other jurisdictions that local governments have the common law right to indemnify their employees in many circumstances, where there is no indemnification statute, and even where there is an indemnification statute. [On the subject of the right of municipal governments to indemnify their employees, see Payment of Attorneys' Services in Defending Action Brought Against Officials Individually As Within Power of Obligation of Public Body, 47 A.L.R.5th 553.] However, some jurisdictions hold that indemnification is not authorized absent statutory authority. [See for example, Zimmer v. Town of Brookhaven, 678 N.Y.S.2d 377 (A.D. 2 Dept. 1998), and cases and treaties cited therein.] I suspect that Tennessee would be included among such jurisdictions.

But it has even been held that where indemnification against a judgment is claimed under a statute, the discretion of the municipality to indemnify its employees is not unfettered. For example, in Douglas v. City of Minneapolis, 230 N.W.2d 577 (Minn. 1975), a statute made indemnification of employees against legal costs of defending certain suits against them, and paying judgments. The Court took up the question of how much discretion the city had to pay a judgment against a municipal employee. The standard, said the Court, was whether the payment was "fitting and proper...assuming that the actions of the officer or the employee which lead to the judgment occur in the performance of duty and do not arise as a result of malfeasance in office or willful or wanton neglect of duty." [At 585] In making that determination, continued the Court, the city:

...may consider, among other things, whether the employee acted in good faith; whether he was acting pursuant to directions from a superior officer; whether the morale of other city employees might be significantly affected by paying, or failing to pay, the judgment; and such other factors as, in the judgment of the governing body, may be reasonably relevant and helpful in reaching a conclusion that payment should or should not be made. The important principles are: (a) The governing body must *first determine that the action arose out of the performance of the employee's duty and that there was no malfeasance in office or willful or wanton neglect of duty*; (b) the municipality must then determine whether it is "fitting and proper" to pay the judgment; (c) the determination of whether it

is "fitting and proper" to pay the judgment must be based upon the best interests of the municipality and the public after considering all of the facts and circumstances. [At 855-56]

If it is assumed that under the common law cities have the right to indemnify their employees against judgments, and that the common law rule applies in Tennessee, it appears to me that the same standards governing indemnification under a statute apply to common law indemnification. In fact, the statutes, and the interpretation of those statutes, on the subject generally reflect the common law. For that reason, even under the common law rule governing indemnification, the act for which indemnification is claimed must be:

- Done within the scope or employment;
- Done in good faith.

The cases on the question of whether an act is done within the scope of employment go every direction imaginable, but a common thread is that deliberate breaches of the law, and wilful and wanton negligence, are not within the scope of employment. Likewise, similar acts are not done in good faith. [See, for example, Wright v. City of Danville, 675 N.E.2d 110 (Ill. 1996).] City of Knoxville v. Christenberry, 147 Tenn. 287 (1922), while not an indemnification case, outlines the circumstances under which a municipal governing body can compensate one of its members for activities that member does in the city's behalf, but which are not done under a contract with the city, and for that reason gives the member no enforceable right against the city. Said the Tennessee Supreme Court:

If an officer of a municipality, in the discharge of his duties, incurs expenses which the municipality accepts the benefits of, there is nothing illegal in repaying to him his expenses, if the same be fair and honest and free from suspicion or fraud. [At 295]

If the employee's actions were deliberate violations of the rules and regulations of the Department of Environment and Conservation, or constituted wilful or wanton negligence, it is difficult to see how such actions could be from "suspicion or fraud."

A recap of the points at issue are as follows:

- Generally, indemnification of municipal employees serves a public purpose. However, as will be seen in the third point below, such indemnification has certain limits, which the city's proposed indemnification of the employee exceeds.
- While some jurisdictions permit indemnification under the common law, some do not. There is probably a good possibility that the

Tennessee Courts would require an indemnification statute. Because there is no such statute that would cover the fine at issue, the city's payment of the fine would probably lack statutory authority.

- As a practical matter, it appears not to matter whether the indemnification is permitted under a statute or the common law, there are limits to indemnification. The major limits include:
 - the act in question must have been within the scope of employment;
 - the act in question must have been done in good faith.

Deliberate misconduct, or wilful and wanton negligence do not appear to qualify as having been done within the scope of employment or in good faith.

Please remember that these legal opinions were written based on the facts of a given city at a certain time. The laws referenced in any opinion may have changed or may not be applicable to your city or circumstances.

Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this database.