



## Ohio Revised Code

### Section 2744.07 Defending and indemnifying employees.

Effective: October 29, 2018

Legislation: Senate Bill 239 - 132nd General Assembly

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(A)(1) Except as otherwise provided in division (A)(2) of this section, a political subdivision shall provide for the defense of an employee, in any state or federal court, in any civil action or proceeding which contains an allegation for damages for injury, death, or loss to person or property caused by an act or omission of the employee in connection with a governmental or proprietary function. Amounts expended by a political subdivision in the defense of its employees shall be from funds appropriated for this purpose or from proceeds of insurance.

(2) A political subdivision does not have the duty to provide for the defense of an employee under division (A)(1) of this section if any of the following apply:

(a) The act or omission occurred while the employee was not acting in good faith.

(b) The act or omission occurred while the employee was acting manifestly outside the scope of the employee's employment or official responsibilities.

(c) The civil action or proceeding is commenced by or on behalf of a political subdivision.

(d) The employee is an employee of a regional council of governments established under Chapter 167. of the Revised Code and both of the following apply:

(i) The employee is not also an employee of a political subdivision that is a member of the council.

(ii) The act or omission, if proven, would constitute a violation of Chapter 102. or Chapter 2921. of the Revised Code.

(B)(1) Except as otherwise provided in division (B) (2) of this section, a political subdivision shall indemnify and hold harmless an employee in the amount of any judgment, other than a judgment for punitive or exemplary damages, that is obtained against the employee in a state or federal court or as



a result of a law of a foreign jurisdiction and that is for damages for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function.

(2) A political subdivision is not required to indemnify and hold harmless an employee under division (B)(1) of this section if any of the following apply:

(a) At the time of the act or omission, the employee was not acting in good faith.

(b) At the time of the act or omission, the employee was not acting within the scope of the employee's employment or official responsibilities.

(c) The employee is an employee of a regional council of governments established under Chapter 167. of the Revised Code and both of the following apply:

(i) The employee is not also an employee of a political subdivision that is a member of the council.

(ii) The act or omission constitutes a violation of Chapter 102. or Chapter 2921. of the Revised Code.

(C)(1) A political subdivision may enter into a consent judgment or settlement and may secure releases from liability for itself or an employee, with respect to any claim for injury, death, or loss to person or property caused by an act or omission in connection with a governmental or proprietary function.

(2) No action or appeal of any kind shall be brought by any person, including any employee or a taxpayer, with respect to the decision of a political subdivision pursuant to division (C)(1) of this section whether to enter into a consent judgment or settlement or to secure releases, or concerning the amount and circumstances of a consent judgment or settlement. Amounts expended for any settlement shall be from funds appropriated for this purpose.

(D) If a political subdivision refuses to provide an employee with a defense in a civil action or proceeding as described in division (A) of this section, upon the motion of the political subdivision, the court shall conduct a hearing regarding the political subdivision's duty to defend the employee in that civil action. The political subdivision shall file the motion within thirty days of the close of



discovery in the action. After the motion is filed, the employee shall have not less than thirty days to respond to the motion.

At the request of the political subdivision or the employee, the court shall order the motion to be heard at an oral hearing. At the hearing on the motion, the court shall consider all evidence and arguments submitted by the parties. The court shall determine whether the political subdivision has the duty to defend the employee under division (A) of this section. The pleadings shall not be determinative of whether the employee acted in good faith or was manifestly outside the scope of employment or official responsibilities.

If the court determines that the political subdivision has the duty to defend the employee under division (A) of this section, the court shall order the political subdivision to defend the employee in the action.