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April 11, 2024

***VIA ELECTRONIC MAIL ONLY***

Ms. Francine Ramaglia, Town Manager  
Town of Loxahatchee Groves  
155 F Road  
Loxahatchee Groves, FL 33470

RE: Reimbursement of Attorney's Fees

Dear Francine:

You have requested advice from our office regarding reimbursement to Council Members for attorney's fees related to defense of alleged ethics violations. There are several provisions that provide for the defense of public officials and reimbursement of costs and attorney's fees expended for such defense. This letter lays out each of those provisions and how they may be applied to such requests.

Section 2-54 of the Town's Code of Ordinances provides for indemnification of municipal officers for losses and expenses incurred in the defense of disputes, proceedings, or litigation against the official for actions taken by the official. The action of the official that is cause of the dispute, proceeding, or litigation must be based on the official's performance of or be in connection with the official's performance of official duties on behalf of the Town. Though the use of "dispute, proceeding, or litigation" is broader than the statutory use of "civil action", it appears that Section 2-54 of the Code is intended to implement statutory immunity obligations of the Town.

Section 111.07, Florida Statutes, requires the municipality to reimburse an official for court costs and reasonable attorney's fees for the defense of civil actions for damages or injury as a result of the official's actions or inactions in performance of the official's public duties and the official is the prevailing party in the action. The court in *Chavez v. City of Tampa*, 560 So. 2d 1214, 1215 (Fla. 2nd DCA 1990) held that alleged ethics violations are not "civil actions" and thus not covered under this statutory provision for reimbursement.

Common law in Florida also provides an opportunity for public officials who are wrongfully accused of violations of duty to recover private attorney's fees upon successfully defending accusation. In *Chavez*, the court discussed conditions for such reimbursement, stating that "[t]he conditions that must be satisfied for a public official to be compensated for legal defense expenditures are that the lawsuit arise from (1) the performance of the officer's *official duties* and (2) while serving a *public purpose*." emphasis included. (*Chavez* at 1218 citing *Lomelo v. City of Sunrise*, 423 So.2d 974, 976 (Fla. 4th DCA 1982)). The court held that while defense of ethics violations may be recoverable under common law, if the vote of the official that formed the basis of the alleged ethics violation included any private interest, it would not "serve a public purpose" and would not be eligible for reimbursement even if the commission on ethics found there was no ethical conflict of interest. *Chavez* at 1218. Common law reimbursement of attorney's fees is not awardable by the governing body of the municipality. Rather, such reimbursement must be awarded by the court. (*E. Cent. Reg'l Wastewater Facilities Operation Bd. v. City of W. Palm Beach*, 659 So. 2d 402, 404 (Fla. 4th DCA 1995) and *Webb v. School Bd. Of Escambia County*, 1 So. 3d 1189, 1191 (Fla. 1st DCA 2009)). It is also important to note that the time spent establishing the official's eligibility for reimbursement is not recoverable. *Leon County v. Stephen S. Dobson, III, P.A.*, 957 So. 2d 12, 12 (Fla. 1st DCA 2007).

For reimbursement, the official must be the prevailing party in the action. A dismissal of the claim does not automatically allow for reimbursement. The reason for the dismissal must be taken into account. The court in *Walter D. Padow, M.D., P.A. v. Knollwood Club Ass'n*, 839 So.2d 744, 745 (Fla. 4th DCA 2003), held that voluntary dismissal on the basis that a continuation of the action would be a waste of resources does not result in a prevailing party who is entitled to reimbursement of attorney's fees.

Chapter 2, Article V, Division 8, of the Palm Beach County Code of Ordinances sets forth the procedures and authority of the Palm Beach County Commission on Ethics for handling ethics complaints. All complaints are investigated for legal sufficiency and, if legally sufficient, a preliminary investigation is performed to determine probable cause to believe that a violation has been committed. If no probable cause is found, the Commission dismisses the complaint. Section 2-260.3 of the County Code provides the Commission with the authority to dismiss ethics complaints on the following grounds: (1) if the Commission or hearing officer determines the public interest would not be served by proceeding further; (2) if the Commission or hearing officer determines that the alleged violation was inadvertent, unintentional, or insubstantial. The Commission's public report or order must state with particularity the reasons for dismissal. Section 2-260.4 of the County Code provides for dismissal of frivolous or groundless complaints, including a provision that the complainant must pay attorney's fees.

The Commission's dismissal on the grounds that the public interest will not be served by proceeding further is akin to a voluntary dismissal on the grounds that the continuation of the action would be a waste of resources. The Commission's dismissal on the grounds that the alleged violation was inadvertent, unintentional, or insubstantial, is reminiscent of the findings in the *Chavez* case. In either instance, the courts have held that under such circumstances, the alleged violator is not eligible for reimbursement of attorney's fees.

Ms. Francine Ramaglia, Town Manager  
Town of Loxahatchee Groves  
April 11, 2024  
Page 2

It is our understanding that the Town does not have a policy on reimbursement of attorney's fees. The Town could adopt a policy on reimbursement that allows for reimbursement of attorney's fees for alleged ethics violations any time the complaint is dismissed, regardless of the reason. Without such policy, it is our opinion that a Council Member seeking reimbursement for attorney's fees related to an alleged ethic violation must file such a claim with the court under the common law.

If you have any questions regarding the reimbursement of attorney's fees, please contact me.

Sincerely,



Glen J. Torcivia