



# Indemnification of State & Local Public Officials and Employees

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## Overview:

The following document is a summary of the general principles and guidelines concerning [Indemnification of State & Local Public Officials and Employees](#). This document is presented in a frequently asked questions (FAQ) format. While the FAQ is fairly detailed, remember that every situation is unique and that each situation deserves careful individual review.

To facilitate use of this document, numerous links will direct your attention to text within this document and to related documents posted on the Louisiana Legislative Auditor's website and on external websites. For example, links in the Index link directly to a specific area of the FAQ if that question is clicked. Within the FAQ, several links will direct you to other areas of the FAQ or to relevant external documents. By clicking on an individual question number in the text, you will be returned to the index to allow selection and viewing of another question.

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## I. General

### Q.1. What is “indemnification”?

**A.1.** Black’s Law Dictionary defines indemnification as the “action of compensating for loss or damages sustained.” The courts in Louisiana generally state that indemnification is reimbursement. Louisiana law expressly provides for indemnification (i.e. reimbursement) of **state officers and employees** from financial loss, including court costs and monetary damages, for acts arising out of the discharge of duties within the scope of employment. To be indemnified, the actions of the state officer or employee must not be intentionally wrongful acts or gross negligence, nor must the action constitute a criminal act.

In most cases, no provisions in Louisiana law provide general indemnification to officers or employees of municipalities or local political subdivisions;\* however, limited indemnification is provided to District Attorneys ([Q.28](#)) and Clerks of Court ([Q.29](#)) under certain circumstances. The definition of state officers and employees specifically excludes an official, officer, or employee of a political subdivision or local authority. See [R.S. 13:5108.1\(E\)](#). Referring to these local public officials, the Attorney General stated in [AG Op. No. 07-0041](#), and re-affirmed in [AG Op. No. 11-0182](#), that:

**..., it has been the consistent opinion of this office that if a public official or employee is sued for civil damages and is found not liable and the allegations arose out of the performance of his official functions, then the public body that employs that person may, but does not have to, pay the reasonable attorney's fees and expenses that result from the defense against the suit.**

**In contrast, note this office has determined that a public official acting beyond the course and scope of his duties is not entitled to legal fees for the defense of civil or criminal actions brought against him.**

\*[R.S. 38:330.9](#) authorizes the Southeast Louisiana Flood Protection Authority (East and West) to indemnify its commissioners, officers, or employees in the following circumstances:

- where a claim or demand is made or threatened,
- in any investigation,
- or proceeding before a court, board, commission or other public body to defend or maintain their official position, or a position taken in the course of the execution of their duties, or because of an act or omission arising out of the performance of their official duties.

The commissioner, officer, or employee must have acted in good faith and in a manner that they reasonably believed to be in or not opposed to the best interested of the authority. The determination to indemnify shall be made by the board of commissioners by a majority vote of those who are not parties to the actions, suit, proceeding, investigation, or claim. This provision shall not apply if the commissioner, officer, or employee is ultimately adjudged liable for malfeasance in office or for an intentional tort.

[R.S. 33:9099.4](#) provides that crime prevention districts shall indemnify its officer and board members to the fullest extent permitted by [R.S. 12:227](#) as if the district were a nonprofit corporation. Further, to the fullest extent permitted by [R.S. 9:2792](#) et seq., a person serving as a board member or officer of a crime prevention district shall not be individually liable for any act or omission arising of the performance of their duties. Crime prevention districts are authorized to procure and maintain liability insurance against personal and legal liability of a board member for actions taken within the scope and discharge of their duties as a board member.

[R.S.33:9108](#) provides that a parish governing authority creating a communications district shall defend, indemnify, and hold harmless the district and any of its board members against any liability for damage or injury to another as a result of any act or omission of a board member acting within the scope of his official functions and duties, except damage or injury resulting from his own acts of willful or wanton misconduct. See [AG Op. No. 15-0166](#).

**Q.2. Can a public official, either state or local, be held personally liable for actions taken within the course and scope of employment?**

**A.2.** Yes, a public official or employee can be held personally liable for actions if the person is engaged in criminal conduct or gross negligence. Further an official or employee is not entitled to indemnification if his or her actions are found to be criminal or grossly negligent. A state official or employee is covered under the “Louisiana Governmental Claims Act” (The Act), [R.S. 13:5101](#), et seq., for most actions within the course and scope of their employment.

“Course and Scope” of employment mean acting within the specified duties of one’s job. To be indemnified under the Act, the action that forms the basis of the claim must have taken place while the individual was engaged in the performance of the duties of his or her office or employment with the state.

If the AG does not represent the individual and the employee is later found to be free of criminal conduct and was acting within the course and scope of his or her employment, the state is obligated to indemnify a covered individual for the attorney fees and all costs incurred` ([AG Op. No. 03-0041](#)). [\[See Q.1\]](#)

Local government officials and employees may also be held personally liable for their actions\*. Indemnification for local government employees and officials is at the discretion of the local entity. The AG states that to be considered for indemnification, the employee

or official must be acting in the course and scope of employment and must be exonerated of all charges. Note that the specific statutory requirements for personal liability insurance for many local officials and entities are discussed below. See [R.S. 13:5108.1\(B\)\(3\)](#)

[R.S. 33:9099.4](#) provides that no officer or board member shall, to the extent permitted by [R.S. 9:2792 et. seq.](#), be individually liable for any act or omission arising of the performance of their duties.

[R.S.33:9108](#) provides that a parish governing authority creating a communications district shall defend, indemnify, and hold harmless the district and any of its board members against any liability for damage or injury to another as a result of any act or omission of a board member acting within the scope of his official functions and duties, except damage or injury resulting from his own acts of willful or wanton misconduct.

## **II. State Officials**

### **Q.3. Where is the law on indemnification for state officials found in the Louisiana Revised Statutes?**

**A.3.** The “Louisiana Governmental Claims Act” (The Act) is found at [R.S. 13:5101](#) - 5113.

“Liability for Acts of Public Employees”, found at [R.S. 42:1441](#) - 1442 details insurance requirements and tort liability regarding local government officials.

### **Q.4. Who can be indemnified under the Louisiana Governmental Claims Act (the Act)?**

**A.4** An officer or employee of the state or a state agency can be indemnified if the claim arises out of the discharge of the official duties of the office or within the course and scope of his employment. See “covered individual” below.

(See [R.S. 15:1171 - 1179](#) related to prisons and correctional facilities or [R.S. 15:1181 - 1191](#), the “Prison Litigation Reform Act” for specific provisions for the department of corrections.

### **Q.5. What exactly is a “state agency” under the Act?**

**A.5.** A "state agency" is any board, commission, department, agency, special district, authority, or other entity of the state.

The Act also covers certain listed nonpublic, nonprofit service providers if the providers render services on behalf of the state ([R.S. 13:5102](#)). Specifically excluded from the definition are nonpublic, nonprofit agencies, persons, firms or corporations that commit a willful, wanton, or grossly negligent act or omission.

**Q.6. How does one determine if he or she is a “covered individual” for indemnification under the Act?**

**A.6.** [R.S. 13:5108.1\(E\)](#) defines “covered individual” for indemnification to include:

An official, officer, or employee holding office or employment:

- In the executive branch of state government or in any department, office, division, or agency.
- In the legislative branch of state government or in any house, committee, or office.
- In the state supreme court or in the office of the clerk or office of the judicial administrator, in one of the circuit courts of appeal or in the office of clerk, or in any of the family, juvenile, or judicial district courts of the state or in the offices of the judicial administrators.
- In one of the deep-water ports, deep-water port commissions, or deep-water port, harbor, and terminal districts.
- A physician **or dentist** who either contracts with or provides services on behalf of the state or any of its departments, whether compensated or not, **(a) in treating and performing evaluations of persons who cause harm to third parties, or (b) in providing professional assistance to the contracting agency when such professional assistance is alleged to have caused harm to third parties.** For the purposes of this Section, physicians **or dentists** who provide services under contract shall be deemed to be employees of the contracting agency.

**Q.7. What indemnification is provided for officers and employees of the state?**

**A.7.** [R.S. 13:5108.1\(A\)](#) states the indemnification provisions. The state defends and indemnifies a **covered officer or employee** -- not the agency (*Donnell v. City of New Orleans*, 557 So.2d. 278, (La. App. 4 Cir. 1/16/1990)) -- against suits seeking damages filed in any court over negligence or other acts if the cause of action arises out of the individual’s duties. This indemnification includes claims under federal statutes. Defense, but not indemnification, is provided to the agency.

The Attorney General has also noted that this indemnification also extends to investigations by the Board of Ethics, but only if and when the official or employee is exonerated of all violations of the Code of Governmental Ethics. [AG Op. No. 15-0016](#)

**Q.8. What is the procedure for the “covered individual” officer or employee of the state to obtain coverage for representation by the attorney general and indemnification under the Act? [R.S. 13:5108.1](#)**

**A.8.** R.S. 13:5108.1(B) provides the procedure for the coverage process. A prerequisite for indemnification for a “covered individual” is to deliver the summons to the Attorney General (AG) within ten days of service on the officer or employee. Delivery of the summons to the AG forms the basis for the request for indemnification.

The AG then determines if the complaint arises out of the performance of the individual’s duties or employment with the state. If the AG determines that the individual was performing official duties of his or her office or employment and that no criminal conduct occurred, the AG provides a defense.

If the AG concludes that the individual was not engaged in the performance of the duties of his office or employment with the state at the time or that the employee was engaged in criminal conduct, then the AG shall not provide a defense to the individual. Within ten working days of delivery of the petition to the AG, the AG sends written notice of this decision to the individual and to the head of the department of the state in which the individual is employed. If the AG determines that the individual is not a “covered individual” under the Act, the individual or employer may, within five days, send additional information to the AG if the supervisor desires AG representation. All investigations of the AG are confidential.

When a “**covered individual**” makes a request for representation to the AG, the individual waives any attorney-client privilege to the extent necessary for the AG and the office of risk management to carry out their respective duties. If the covered individual fails or refuses to cooperate with the AG in defending the action, then the AG may terminate the representation and withdraw from defense of the covered individual. Representation by the AG shall extend only until the time a final judgment is entered in the litigation.

With the agreement of the individual and Office of Risk Management, the AG may enter into a settlement agreement prior to final judgment.

Payment of any judgment is limited to \$500,000 and must be approved by the legislators listed in the statute. The amount paid in judgment and the terms and conditions of any agreement shall be public record.

**Q.9. If the attorney general does not provide representation, will the state indemnify the “covered individual” as defined in the Act for the costs of legal representation? [R.S. 13:5108.1](#)**

**A.9.** Yes, the “covered individual” will be indemnified for all costs and attorney fees if it is later found by a court that the “covered individual” was engaged in his or her official duties **and** was free of criminal conduct.

The procedure for payment of fees to indemnify the employee or official is discussed in R.S. 13:5108.1(C)(2). The fees are payable by the Office of Risk Management, at a rate per hour no greater than one and one-fourth times the maximum rate authorized and paid by the Office of Risk Management for counsel to defend the state in damage claims.

**Q.10. What if the suit continues after the death of the “covered individual” official or employee? [R.S. 13:5108.1](#)**

**A.10.** R.S. 13:5108.1(A)(2) states that upon the death of the covered individual, the indemnification benefits shall pass to the covered individual's heirs, subject to the community rights of the surviving spouse.

**Q.11. What is the role of the Office of Risk Management for a state public official with regard to indemnification?**

**A.11.** Assuming that the threshold issue of indemnification is satisfied and the State is obligated to indemnify a covered individual for attorney fees and all costs incurred, the Office of Risk Management manages the process. Note that if the attorney general had determined not to assume the defense of a covered individual in accordance with [R.S. 13:5108.1\(C\)](#) and a court later finds that the covered individual was engaged in the performance of duties of his or her office or employment and was free of criminal conduct, he or she may be indemnified.

The procedure: Any fees payable to indemnify the employee or official shall be sent by certified mail to the director of the Office of Risk Management and paid from the funds available for making settlements and paying judgments in lawsuits under the director’s control. Payment of the fees is subject to review and approval by a subcommittee of the Joint Legislative Committee on the Budget.

To be entitled to payment, the request must contain a certified copy of the final judgment reflecting the exoneration of the employee or officer and an itemized accounting of the attorney fees and costs. The fees shall be payable by the Office of Risk Management, at a rate per hour no greater than one and one-fourth times the maximum rate authorized and paid by the Office of Risk Management for counsel to defend the state in damage claims. (R.S. 13:5108.1(C)).

The AG has opined that unless the claim is a tort claim (fraud or negligence claim or breach of fiduciary duty), the office of risk management may not be responsible for paying the costs for defense. Breach of fiduciary duty may be either a contract or tort claim or both. [AG Op. No. 03-0041](#).

**Q.12. Does insurance provide any indemnification, and may a state public official hire his or her own attorney?**

**A.12.** The Louisiana Governmental Claims Act does not impair the right of “covered individuals” to obtain private counsel in their own behalf. Even if the AG denies representation of a

state official, some indemnification is provided under the Act for a state official or employee who hires his or her own attorney and is exonerated of charges.

[R.S. 13:5108.1](#) states that nothing in the reimbursement provisions of the Act changes the rights and obligations of any insurance policy. If the state official or employee has personal liability insurance, his or her insurer cannot avoid payment of legal fees just because he or she is a “covered individual” under the Act. If officials or employees choose to hire their own personal attorneys, they may do so under their personal insurance. If they are exonerated of all charges and were found to be acting within the course and scope of their employment, they can be indemnified.

Many boards carry officers and directors liability policies to the same extent as do non-profit entities ([R.S. 12:227](#)). Nothing prevents officials or employees, either state or local, from having their own liability policy.

**Q.13. What is the role of the Office of Risk Management (ORM) regarding liability insurance for state agencies?**

**A.13.** The Office of Risk Management was created within the Division of Administration, [R.S. 39:1528](#), to manage all state insurance covering property and liability exposure and to administer the state's risk management program. State agencies pay insurance premiums to ORM.

The legislature created a Self-Insurance Fund from which is paid the costs of representing the state and state agencies in all claims covered by the Fund and in all tort claims whether or not covered by the Self-Insurance Fund. The Fund pays losses incurred by state agencies under the self-insurance program and certain premium and administrative expenses. The Self-Insurance Program pertains to claims against the state or any of its agencies to recover money damages against the state or its agencies for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his or her office or employment ([R.S. 39:1538](#)).

**Q.14. Does the Act provide to a “covered individual” any payment or reimbursement for legal fees and expenses associated with a criminal action?**

**A.14.** The general provision is that legal fees and expenses associated with criminal acts are not covered. However, there are exceptions listed in [R.S.13:5108.3\(B\)](#). The limited exception covers payment or reimbursement of payment of any legal fees and expenses associated with the defense of any official, officer, or employee of the state or the Greater New Orleans Expressway Commission for any criminal action or if the official is made the target of a grand jury investigation **if**

- he or she is acquitted or
- the suit is dismissed and

- the Attorney Fee Review Board has reviewed and certified the reasonableness of the fees and expenses. (See [R.S. 13:5108.4](#))
- payment is authorized by the legislature.

**Q.15. What provisions exist under the Act to indemnify a “covered individual” charged with contempt of court?**

**A.15.** The state **may**, under certain circumstances, indemnify the “covered individual”. [R.S. 13:5108.3\(D\)](#) states that the state may represent, defend, hold harmless and indemnify any officer or employee of the state charged with contempt of court while in the performance of his or her duties if a determination is made by the employing department that the officer or employee:

- was acting in the discharge of his or her duties and within the scope of employment and
- the contempt charge did not result from the intentional wrongful act or gross negligence of the officer or employee.

### **III. Local Officials**

**Q.16. Are local government officers or employees “covered individuals” under the Act?**

**A.16.** Most local government officers and employees are not covered under the Act.

[R.S. 13:5108.1\(E\)\(3\)](#).

"Covered individual" **does not** include an official, officer, or employee of a municipality, ward, parish, special district, including without limitation a levee district\*, school board, parish law enforcement district, or any other political subdivision or local authority other than a deep-water port, deep-water port commission, or deep-water port, harbor, or terminal district whose functions have not been transferred to a state department or office or agency. District attorneys, sheriffs, assessors, clerks of district courts, coroners, justices of the peace, constables, mayor's courts, city courts, marshals, or their officials, officers, or employees are not “covered individuals.”

[\\*R.S. 38:330.9](#) authorizes the Southeast Louisiana Flood Protection Authority (East and West) to indemnify its commissioners, officers, or employees in certain circumstances.

[R.S.33:9108](#) provides that a parish governing authority creating a communications district shall defend, indemnify, and hold harmless the district and any of its board members against any liability for damage or injury to another as a result of any act or omission of a board member acting within the scope of his official functions and duties, except damage or injury resulting from his own acts of willful or wanton misconduct.

**Q.17. How does the Louisiana Governmental Claims Act define a “political subdivision”?**

**A.17.** [R.S. 13:5102\(B\)](#) defines "political subdivision" as any parish, municipality, special district, school board, sheriff, public board, institution, department, commission, district, corporation, agency, authority, or an agency or subdivision of any of these, and other public or governmental body of any kind that is not a state agency. Local political subdivisions and agencies of political subdivisions are **not covered** under the Act.

See [R.S. 13:5102](#) for a discussion of private entities such as Transit Management of Southeast Louisiana, Inc. (TMSEL).

**Q.18. Where is the law on indemnification for local officials found?**

**A.18.** There are no statutory provisions which **require** indemnification to local Government officials\*; however, the majority of AG opinions (See [AG Op. No. 11-0182](#) and [AG Op. No. 15-0019](#)) state that a local government entity **may, but is not required to**, reimburse an official or employee for legal expenses if:

- the charges against the individual arose out of his operating within the “course and scope” of his employment; and
- he is exonerated of all charges.

**What is “course and scope” of employment?**

- (1) To be within the scope of the employment, conduct must be similar to authorized conduct.
- (2) In determining whether an action is similar to authorized conduct, the following are some of the facts to be considered:
  - is the act commonly done by such employees?
  - the time, place and purpose of the act;
  - has a similar action been done by another employee?
  - does the entity have reason to expect that such an act will be done;
  - is there similarity of the act done to the act authorized;
  - who furnished the mechanism if it caused the harm? Ex. vehicle
  - was there a big difference in this act and the normal method of accomplishing an authorized result; and
  - is the act criminal? (SOURCE: Restatement of the Law—Agency, August 2008)

See [AG Op. No. 12-0085](#):

When a public official is acting beyond the course and scope of his duties he is not entitled to have public funds used to pay the legal fees for the defense of civil or criminal actions brought against him. The fact that the caption to a lawsuit states

that a public official is sued in his individual and official capacity is not proof sufficient that the conduct complained of occurred outside or beyond the course and scope of his public duties. The determination of whether the actions the local public official or employee are being defended against are actions performed in the course of carrying out the official duties of the public office is a factual determination that must be made on a case by case basis.

\* [R.S. 33:9099.4](#), provides for indemnification of officers and board members of a crime prevention district for acts or omission arising out of the performance of their duties.

\*[R.S.33:9108](#) provides that a parish governing authority creating a communications district shall defend, indemnify, and hold harmless the district and any of its board members against any liability for damage or injury to another as a result of any act or omission of a board member acting within the scope of his official functions and duties, except damage or injury resulting from his own acts of willful or wanton misconduct.

### **Q.19. Are local government officials or employees entitled to any indemnification?**

**A.19.** Although generally no statutory provisions **require** indemnification to local government officials\*, most AG opinions state that a local government entity **may** reimburse an official or employee for legal expenses if

- the charges against the individual arose out of performance within the course and scope of employment and
- the official is exonerated of all charges.

**AG Op. No. 96-0210** states that a municipality may reimburse its official for legal fees incurred in defense of an allegation that the official violated the home rule charter.

[AG Op. No. 05-0050](#) states that the AG continues to adhere to the view that if a public official is found exonerated from all alleged violations in a civil action arising out of his duties of office, the public body may reimburse its official for reasonable attorney fees resulting from the defense against the allegations.

[AG Op. No. 07-0041](#) states that R.S. 13:5108.1 – 5108.3 provide for the **indemnification** of state officers and employees for financial loss arising out of claims, demands, suits or judgments if the officer or employee was acting in the discharge of his duties and within the scope of his employment... . However, neither R.S. 13:5108.1 – 5108.3, “nor any other provision of state law... provides for the indemnification of the officers and/or employees of municipalities or other political subdivisions.” The AG states that if a local government public official or employee is sued for civil damages and is found not liable and the allegations arose out of the performance of official functions, then the public body that employs that person may, but does not have to, pay reasonable attorney fees and expenses related to defense against the suit. Regarding the payment of attorney fees, the AG further states that the entity must determine if:

- The hourly rate charged by counsel was reasonable,

- The number of hours spent by counsel was reasonable and necessary, and
- Any costs incurred by counsel were reasonable and necessary.

\* [R.S. 33:9099.4](#) provides for indemnification of officers and board members of a crime prevention district for acts or omission arising out of the performance of their duties.

\* [R.S.33:9108](#) provides that a parish governing authority creating a communications district shall defend, indemnify, and hold harmless the district and any of its board members against any liability for damage or injury to another as a result of any act or omission of a board member acting within the scope of his official functions and duties, except damage or injury resulting from his own acts of willful or wanton misconduct.

**Q.20. Are there procedures that a local public official must follow in order to secure indemnification from his or her public body?**

**A.20.** Generally, no statute requires indemnification for local government officials or employees\*. Consequently, no statutes or AG opinions discuss a procedure for local government officials or employees to follow to obtain indemnification. The AG has stated that a local entity may, but is not obligated to, provide indemnification in certain circumstances. If a local government employee or official is served with process, he or she should immediately request a copy of any procedure established by the local entity or the entity's insurer in order to obtain indemnification. He or she should also seek legal advice from private counsel.

\*[R.S. 33:9099.4](#), provides for indemnification of officers and board members of a crime prevention district for acts or omission arising out of the performance of their duties.

\*[R.S.33:9108](#) provides that a parish governing authority creating a communications district shall defend, indemnify, and hold harmless the district and any of its board members against any liability for damage or injury to another as a result of any act or omission of a board member acting within the scope of his official functions and duties, except damage or injury resulting from his own acts of willful or wanton misconduct.

**Q.21. Does insurance provide any indemnification, and may a local public official hire his or her own attorney?**

**A.21.** Because no local official or employee is covered under the Act, legal representation will be provided by private counsel, not the attorney general. The public entity may indemnify the official or employee.

Local officials or employees may choose to hire their own personal attorneys or they may do so under their personal insurance. If they are exonerated of all charges and were found to be acting within the course and scope of their employment, they may be reimbursed their legal fees by the local government subdivision; however the local government subdivision is not required to do so.

Some local government subdivisions have a joint self-insurance program for “public liability”, defined as “liability to which a local governmental subdivision may be subject either directly or by reason of liability rising out of an act of its employee, agent or officer in the course and scope of employment.”(See [R.S. 33:1342](#)). Others carry individual policies.

Tax Assessors, Clerks of Court, Coroners, Sheriffs, and District Attorneys **shall**, by commercial insurance carriers, by self-insurance funds, by joining an inter-local risk management program, or by a combination of any two or more of them, secure **general liability insurance** coverage on themselves and on their officers, deputies, assistants, employees, appointees, designees, and representatives in amounts of not less than twenty thousand dollars per injured person. Such public officers may secure this insurance coverage themselves or through their respective associations. (See [R.S. 42:1441](#)).

**Q.22. May a municipality reimburse its official for legal fees and expenses to defend charges by the Board of Ethics?**

- A.22.** Yes, under certain circumstances. [AG Op. No. 07-0041](#) states that state law does not specifically address the reimbursement of legal fees incurred by state officers or employees in connection with proceedings before the Ethics Commission. However, R.S. 13:1508.1 – 5508.3 provide for indemnification of state officers and employees for financial loss arising out of suits where “the act that forms the basis of the cause of action took place while the individual was engaged in the performance of the duties of the individual’s office or employment with the state.” The suits include allegations before the Ethics Commission. As discussed above, R.S. 13:1508.1 – 5508.3 do not cover officials or employees of local political subdivisions and municipalities. ([AG Op. No. 11-0182](#))

The AG states that if a local government public official or employee is sued for civil damages and is found not liable and the allegations arose out of the performance of official functions, then the public body that employs that person may, but is not required to, pay the reasonable attorney’s fees and expenses that result from the defense against the suit. If a public official or employee is exonerated of all allegations under investigation by the Ethics Commission, then the public body may reimburse its official or employee for legal expenses incurred in connection with the investigation. The requirement that the official be exonerated is to avoid violation of the prohibition of the Constitution relative to the donations of public funds. The public body must determine that (1) the hourly rate charged by legal counsel was reasonable, (2) the number of hours spent by legal counsel was reasonable and necessary, and (3) any costs incurred by legal counsel were reasonable and necessary. ([AG Op. No. 10-0290](#))

In contrast, the AG’s office states that a public official acting beyond the course and scope of duties is not entitled to legal fees for the defense of civil or criminal actions. (See also [AG Op. No. 03-0261](#), [AG Op. No. 02-0005](#), and [AG Op. No. 95-0242](#).)

## **IV. MISCELLANEOUS**

### **Q.23. Is a law enforcement officer accused of a crime while acting within the course and scope of employment entitled to reimbursement of attorney fees?**

**A.23.** Yes, [R.S. 42:1442](#) provides for reimbursement of reasonable attorney fees to a law enforcement officer employed by the state or a state agency or a political subdivision\* and who is prosecuted for alleged criminal acts while acting in good faith in the performance of duties within the course and scope of the officer's employment. The officer must be acquitted of the charge, the prosecution dismissed, or time expired for trial and conviction. No reimbursement is paid until the suit is dismissed or adjudicated and the period of time for appeal has lapsed. Payment is made only if the officer has not violated any other rights or privileges secured by the state or federal constitution. \*Note that for this statute a political subdivision is defined to mean a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions.

- The attorney general states that the statute provides for mandatory reimbursement of reasonable attorney's fees if a law enforcement officer is subjected to prosecution for an alleged criminal act committed in the course and scope of employment, and the officer is acquitted or the prosecution has been dismissed. If the prosecution is not initiated against the officer, the statutory requirements of R.S. 42:1442 for mandatory reimbursement of attorney's fees are not met. [AG Op. No. 15-0019](#); [AG Op. No. 05-0377](#)

Although not mandated to do so, a local public entity may still pay if:

- The alleged offense(s) arose out of the performance of the police officers' official functions
- The investigations did not result in an institution of prosecution and
- The public entity determines that the fees incurred were necessary and reasonable. [AG Op. No. 15-0019](#); [AG Op. No. 05-0377](#)

### **Q.24. Which treatment, service, and care providers are covered under the Act?**

**A.24.** Regarding providers of certain listed treatments, services, and care, the Act covers any nonpublic, nonprofit agency, person, firm, or corporation (as used in [R.S. 13:5102](#)) that has qualified with the United States Internal Revenue Service for an exemption from federal income tax under the Internal Revenue Code. The Act covers providers that, through contract with the state, provide services for the treatment, care, custody, control, or supervision of persons placed or referred by any agency or department of the state in connection with programs for treatment or services involving: residential or day care for adults and children, foster care, rehabilitation, shelter, or counseling. A nonpublic, nonprofit agency, person, firm, or corporation is covered only as it renders services to a person or persons on behalf of the state pursuant to a contract with the state.

**Q.25. Does the *Cabela* case regarding Article VII, § 14 have any effect on indemnification of public officers or employees?**

**A.25.** According to [AG Op. No. 08-0101](#), the *Cabela* case provides that the new standard for violation of Art. VII, § 14 is “only when the public funds or property are gratuitously alienated.” [The pre-*Cabela* standard for reimbursement in AG opinions was, if the employee or public official was prosecuted and found not guilty and the alleged offense arose out of the performance of the employee’s official function, then the public body/employer may pay the reasonable attorney’s fees and expenses that resulted from the defense. The AG examined the legal obligation of the agency.] According to AG 08-0101, the *Cabela* case does change the result of certain prior opinions dealing with expenditure of public funds for payment of legal expense incurred by a municipal officer in defense of criminal charges arising out of his or her employment if the public official or employee is prosecuted and found not guilty [See recall of [AG Op. No. 94-0276](#) and [AG Op. No. 94-0384](#) whereby AG applies the post *Cabela* standard of “only when the public funds or property are gratuitously alienated.”] The AG concludes future opinions on whether public funds or property are “gratuitously alienated” will be based on the facts and circumstances surrounding the proposed expenditure and states that the AG refrains from conducting factual evaluations.

NOTE: Article VII, § 14 of the Louisiana Constitution, provides, in pertinent part, the following:

**“Section 14. (A) Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private...”**

**Q.26. May a public official or officer be indemnified for actions in a civil rights allegation?**

**A.26.** The AG states that federal civil rights cases (42 U.S.C 1983, called a “1983 action”) involve an area of the law that is continually developing. The courts have fashioned a limited defense of qualified immunity for public officials who may engage in acts that are later held to be illegal. The officials will not be personally liable where there has been no malice and where there has been no contravention of clearly established law ([AG Op. No. 86-0410](#)). See [AG Op. No. 02-0240](#) for a discussion of a 1983 action.

Although good faith may appear to be grounds for immunity in civil rights actions, the standard is strict. An official's good intentions will not suffice; he or she has a duty to know the law.

A summary of the law in this area follows:

1) Public officers will **not** be held **personally** liable for actions that are legal and within the scope of their authority.

- 2) Public officers will **not** be held **personally** liable for failure to do acts that are discretionary.
- 3) Public officers **will be held personally liable** for failure to do acts required by law.
- 4) Public officers **will be held personally liable** for acts that are beyond the scope of their legal authority.

Public officers acting within the course and scope of their employment may be indemnified by the public body.

**AG Op. No. 02-0240** states that under state law, liability is not imposed upon officers and employees of public entities based upon the exercise or failure to exercise or perform their policymaking or discretionary acts when such acts are within the course and scope of their lawful powers and duties. See [R.S. 9:2798.1](#). Also, for law enforcement officers prosecuted for alleged criminal conduct, [R.S. 42:1442](#) requires the state or an agency or political subdivision of the state to reimburse the law enforcement officer's reasonable attorney fees if “[he] is acquitted of the charge, the prosecution has been dismissed by the district attorney, or the periods of time have expired in which he could be brought to trial and convicted.” (See also [AG Op. No. 15-0019](#); [AG Op. No. 05-0377](#)).

**Q.27. Are Justices of the Peace and Constables provided indemnification?**

**A.27.** [R.S. 13:2593](#), authorizes the Attorney General to provide legal representation to justices of the peace, constables or deputy constables of this state in a suit, if the claim arises out of the discharge of their duties and within the course and scope of their office and if the claim did not result from their intentional wrongful act or gross negligence. However, R.S. 13:2593 makes no provision for a right of indemnification. Section E specifically says that no right of indemnification is created by the statute.

[R.S. 13:2593\(F\)](#) states that the Attorney General may decline to provide representation to a deputy constable who is not in compliance with the provisions of [R.S. 13:2583.1](#) through 2583.7, including but not limited to, failure to file a copy of the oath of office with the Attorney General’s office or failure to attend requisite training. Further, upon judicial determination that a deputy constable was not acting in the discharge of his duties and within the scope of his office at the time of the alleged act or omission, or that he was acting in an intentionally wrongful manner or was grossly negligent, he or she may be required to reimburse the office of the attorney general for expenses incurred, including court costs and reasonable attorney fees.

A Justice of the Peace (JP) or constable may hire his or her own attorney, and the representation provision of R.S. 13:2593 does not impair the right to have a personal liability policy pay for representation. Additionally, the AG reminds JPs and constables to obtain personal liability insurance as statutorily required ([AG Op. No. 02-0240](#)).

**Q.28. Are District Attorneys provided indemnification?**

- A.28.** [R.S. 42:1441](#) provides that the State is not generally liable ‘for any damage caused by a district attorney, a coroner, assessor, sheriff, clerk of court or public officer of a public subdivision with the course and scope of his official duties.’”

However, R.S. 42:1441(D) requires the State to indemnify a district attorney and his office against any claim or suit in federal court based on the constitutional validity of a statute when the district attorney or his office has not initiated prosecution based on the statute. Pursuant to [R.S. 49:257\(C\)](#), the AG may, in his discretion, choose to defend the district attorney or his office. The district attorney, or the AG if the AG assumes defense of the claim, is required to present a detailed abstract of the facts of the case and the calculation of fees to the subcommittee of JLCB. This abstract and the amount of final judgment are a public record except for any materials that reflect the mental impressions, conclusions, opinions or theories of an attorney.

**Q.29. Are Clerks of Court provided Indemnification?**

[R.S. 42:1441](#)

- A.29.** R.S. 42:1441 provides an exception to allow for limited indemnification by the State of clerk of courts and their employees. The Act enacted R.S. 42:1441(E), which provides that the State shall indemnify a clerk of court and their employees in cases challenging the constitutional validity of a statute and when the clerk of court is acting in accordance with State law.

Payment of any final judgment or consent judgment shall be made only upon legislative appropriation following approval of a majority of a subcommittee of the Joint Legislative Committee on the Budget, made up of three senators and three representatives.

The clerk of court shall present the subcommittee a concise abstract of the facts and principles of law upon which the claim is based. The abstract shall include a detailed analysis of the calculation of damages as well as attorney fees, court costs, and interest thereon. The abstract, the amount of the final or consent judgment, any terms and conditions of any agreement, and any other information submitted to the subcommittee shall be public record, except for any materials reflecting the mental impressions, conclusions, opinion, or theories of any attorney.

**Q.30. Are Officers and Board Members of Crime Prevention Districts provided Indemnification?**

- A.30.** Yes, [R.S. 33:9099.4](#), provides that crime prevention districts shall indemnify its officer and board members to the fullest extent permitted by [R.S. 12:227](#) as if the district were a nonprofit corporation. Further, to the fullest extent permitted by [R.S. 9:2792](#) et seq., a person serving as a board member or officer of a crime prevention district shall not be individually liable for any act or omission arising of the performance of their duties. Crime prevention districts are authorized to procure and maintain liability insurance against

personal and legal liability of a board member for actions taken within the scope and discharge of their duties as a board member.

### **RECENT ATTORNEY GENERAL OPINIONS**

#### **AG Op. No. 15-0016**

Although not required by the indemnification statute, a public entity may choose to reimburse a public official or employee for his/her legal expenses in connection with investigations by the Board of Ethics arising from conduct within his/her official duties, when the Board of Ethics decides to not pursue the investigation, as this is the equivalent of a dismissal of the proceedings.

#### **AG Op. No. 14-0160**

A district attorney may use public funds to engage special counsel to represent an assistant district attorney who is the subject of a disciplinary complaint which, in the opinion of the district attorney, arises out of the performance of the assistant district attorney's job duties. Additionally the district attorney may use public funds to secure an insurance policy that would provide coverage to pay such legal fees in the future.

#### **AG Op. No. 12-0085**

Public officials acting beyond the course and scope of their duties are not entitled to have public funds used to pay the legal fees for the defense of civil or criminal actions brought against them. The fact that the caption to a lawsuit states that a public official is sued in the official's individual and official capacity is not proof sufficient that the conduct complained of occurred outside or beyond the course and scope of his or her public duties. The determination of whether the actions the local public official or employee are being defended against are actions taken in the course of carrying out the official duties of the public office is a factual determination that must be made on a case by case basis.

#### **AG Op. No. 12-0029**

Juvenile court judges are "covered individuals" under La. R.S. 13:5108.1 and are therefore entitled to defense and indemnity by the State "against any claim demand, suit, complaint or petition seeking damages filed in any court over alleged negligence or other act by the individual, including any demand under any federal statute when the act that forms the basis of the cause of action took place while the individual was engaged in the performance of the duties of the individual's office or employment with the state." Once a judge is dismissed from the litigation, the State is no longer obligated by law to provide defense or indemnity to the juvenile court judge. The State, through the Office of the Attorney General, is not obligated by law to provide a defense to a juvenile court judge in an investigation before the Judiciary Commission of Louisiana.

**AG Op. No. 11-0033**

Pursuant to [R.S. 42:1441.2](#), coroners are required to obtain general liability insurance for themselves and their employees, and as a legally necessary expense, the parish is financially responsible for paying the costs of the coroner's office's general liability insurance per R.S. 33:1556(B)(1) (Re-designated as [R.S. 13:5706](#) pursuant to Acts 2011, No. 248, §3). Coroners are not required to have medical malpractice insurance because they do not engage in physician-client relationships. The governing authority for a parish should defend a coroner and his/her staff under the theory of *respondeat superior*, and indemnify them if judgments are rendered against them.

**AG Op. No. 11-0033A**

Coroners are mandated under state law to perform a “necessary investigation” into the circumstances surrounding a decedent’s death in which the coroner has jurisdiction before issuing a permit for cremation; this mandate is not limited to only those instances in which a coroner has had actual physical possession over a decedent’s body. In those instances in which a coroner cannot provide the identity of the body pursuant to R.S. 37:877(B)(1)(b)(iii) because the coroner never had possession of a decedent’s body and, therefore, no body to relinquish possession of, a funeral director, funeral establishment, or crematory may not rely on R.S. 37:883(C) for immunity under the law. As a legally necessary expense of the coroner’s office, the parish is financially responsible for paying the costs of the coroner’s office’s general liability insurance per R.S. 33:1556(B)(1). The governing authority for a parish should defend a coroner and his/her staff under the theory of *respondeat superior*, and indemnify them if judgments are rendered against them.