

Purpose

It is the policy of MPERS to indemnify and hold harmless trustees, officers, and employees who, within the scope of their authority, act in the interests of MPERS or under the direction of the trustees or officers, and in accordance with state law. In doing so MPERS encourages sound decision-making under a fiduciary or business judgment standard, according to the circumstances presented.¹

Authority

The MoDOT and Patrol Employees Retirement System (MPERS), is created a body corporate and an instrumentality of the state of Missouri pursuant to section 104.020, RSMo. Nothing in this policy abolishes or waives any defense at law, including sovereign or official immunity or protections from personal liability for acts of the system as described in section 104.240, RSMo, available to MPERS or any trustee, employee or agent of MPERS. MPERS may elect to purchase liability insurance subject to the limits prescribed in chapter 537 of the Missouri Revised Statutes. If such insurance is purchased, the insurance coverage shall be primary in relation to the State Legal Expense Fund established under chapter 105. MPERS may purchase and maintain such insurance on behalf of any indemnified person who is or was a trustee, officer, or employee of MPERS against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not MPERS would otherwise indemnify him against such liability under the provisions of this policy. In the event such insurance is not purchased, MPERS will self-insure claims brought against the system and this policy shall be applied accordingly.²

The trustees authorize the officers to either insure or self-insure the risks of MPERS, including the determination of coverage provisions, policy limits and deductibles. Through continued risk management efforts and discussions, the officers will, from time to time, recommend for trustee approval any financial risk transfer or assumption. Any risk assumption will be funded within an assigned fund balance. In the event of self-insurance, MPERS will cap defense expenses at \$350,000 in the aggregate and assign a fund balance of the same amount.³

Indemnification Generally

MPERS shall⁴ indemnify any trustee, officer, or employee of MPERS ("Indemnified Person") who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of MPERS, by reason of the fact that such person is or was a trustee, officer, or employee of MPERS against expenses, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person, in connection with such action, suit or proceeding, including attorney fees, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of MPERS; and, with respect to a criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Person did not act in good faith and in a manner which such person reasonably believed to be in, or

¹ Revised June 23, 2016.

² Revised June 23, 2016.

³ Revised June 23, 2016.

⁴ Revised June 23, 2016.

not opposed to, the best interests of MPERS, and, with respect to a criminal action or proceeding, had no reasonable cause to believe that such person's conduct was unlawful.

Indemnification in Derivative Actions

MPERS shall⁵ also indemnify any Indemnified Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by, or in the right of MPERS, to procure a judgment in its favor by reason of the fact that such person is or was a trustee, officer, or employee of MPERS against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, including attorney fees, if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of MPERS and except that no indemnification shall be made in respect of any claim, issue or matter as to which such Indemnified Person shall have been adjudged to be liable for negligence, breach of fiduciary duty, or misconduct in the performance of such person's duty to MPERS, unless and only to the extent, that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such Indemnified Person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Amount of Indemnification

To the extent that an Indemnified Person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to above, or in defense of any claim, issue or matter therein, such Indemnified Person shall be indemnified against expenses actually and reasonably incurred by such person in connection therewith, including attorney fees, but only to the extent such expenses were not covered or reimbursed by insurance (if such insurance is purchased by MPERS) or the State Legal Expense Fund.

Determination to Indemnify

Any indemnification of an Indemnified Person by MPERS, unless ordered by a court, shall be made by the MPERS Board only as authorized in the specific case upon a determination that indemnification of the Indemnified Person is proper in the circumstances because such person has met the applicable standard of conduct set forth above. The Board of Trustees shall make this determination by the majority vote of a quorum that consists of trustees who were not parties to such action, suit or proceeding, or if such a quorum is unobtainable, or even if obtainable, should a quorum of disinterested directors so direct, by independent legal counsel in a written opinion. Such indemnity may be covered or restricted by an insurance policy, if so purchased by MPERS.⁶

Advance of Expenses

Expenses incurred by a trustee or officer in defending a civil or criminal action, suit or proceeding may be paid by MPERS, when not otherwise covered by insurance or the State Legal Expense Fund, and paid in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Trustees in the specific case upon receipt of an undertaking by or on behalf of the trustee or officer to repay such amount unless it is ultimately determined that the trustee or officer is entitled to be indemnified by MPERS as authorized in this policy. Such expenses incurred by other employees or agents may be so paid upon such terms and conditions, if any, as the Board of Trustees deems appropriate.

⁵ Revised June 23, 2016.

⁶ Revised June 23, 2016.

Non-Exclusivity

The indemnification provided under this policy shall not be deemed exclusive of any other rights to which an Indemnified Person seeking indemnification may be entitled under any applicable law, policy or rule of MPERS, agreement, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and such indemnification shall continue as to an Indemnified Person who has ceased to be a trustee, officer, employee or agent and shall inure to the benefit of the Indemnified Person's heirs, executors and administrators.

Definition of System

For purposes of this policy, references to MPERS shall include any successor trust, system or entity resulting from a consolidation or merger, so that any person who is or was a trustee, officer, or employee of MPERS shall stand in the same position with respect to the resulting or surviving trust, system or entity as if the separate existence of MPERS had continued.