

BVGCD Bylaws:

2.6. Indemnification of Directors and Employees.

Each director and employee is indemnified by the District against any liability imposed upon him and for any expense reasonably incurred by him in connection with any claim made against him, or any action, suit or proceeding to which he may be a party by reason of his being, or having been, a director or employee, and against such sums as counsel selected by the Board shall deem reasonable payment made in settlement of any such claim, action, suit, or proceeding; provided, however, that no director or employee shall be indemnified with respect to actual damages arising out of a cause of action for a willful act of omission, an act or omission constituting gross negligence or official misconduct, or with respect to matters for which such indemnification would be unlawful or against public policy. Any right of indemnification granted by this Section is in addition to and not in lieu of any other such right of which any director or employee of the District may at any time be entitled under the laws of the State of Texas; and if any indemnification that would otherwise be granted by this Section is disallowed by any competent court or administrative body as illegal or against public policy, then any director or employee with respect to whom such adjudication was made, and any other director or employee, shall be indemnified to the fullest extent permitted by law and public policy, it being the express intent of the District to indemnify its directors and employees to the fullest extent possible in conformity with these Bylaws, all applicable laws and public policy. The District may purchase and maintain insurance on behalf of any person who is a director or employee of the District in any capacity, or arising out of his status as such. The indemnification provided herein shall inure to the benefit of the heirs, executors, and administrators of the directors and employees of the District.

A demand letter and/or lawsuit may be filed against a director in their individual or official capacity, however, the law will determine whether the lawsuit proceeds in the director's official capacity. The plaintiff does not determine that legal issue.

The statements were made during a District Board meeting, which was Texas Open Meeting Act compliant, and the directors were speaking in their official capacity. Texas has adopted a three-part test to guide courts in the application of qualified or official immunity.

The statements meet the following test adopted by the Texas Supreme Court and official immunity applies to the directors:

- (1) the governmental actor was performing a discretionary act;
- (2) the act was performed in good faith; and
- (3) it was within the scope of his official authority.

City of Lancaster v. Chambers, 883 S.W.2d 650, 653 (Tex. 1994); *Kassen v. Hatley*, 887 S.W.2d 4, 8 (Tex. 1994).

Additionally, Chapter 36 of the Texas Water Code, states that:

Sec. 36.066. SUITS. (a) A district may sue and be sued in the courts of this state in the name of the district by and through its board. A district board member is immune from suit and immune from liability for official votes and official actions. To the extent an official vote or official action conforms to laws relating to conflicts of interest, abuse of office, or constitutional obligations, this subsection provides immunity for those actions. All courts shall take judicial notice of the creation of the district and of its boundaries.

If a suit is filed against the Directors, the District's TML insurance will cover defense of this type of lawsuit. However, TML coverage will begin when and if a lawsuit is filed for damages.

3. Discussion and possible action regarding payment of legal fees related to demand letters and possible related litigation sent to directors regarding discussion at the November 14, 2019 Board meeting.

(1) Payment of legal fees in this matter serves a public interest in defending official immunity and the need to protect officials who are required to exercise discretion and the related public interest in encouraging the vigorous exercise of official authority, including discussion in the Board Meeting on November 14, 2019, which complied with the Texas Open Meetings Act

and

(2) the alleged action of the matter was committed while the directors performing discretionary acts in good faith and within the scope of their official authority.