



**REQUEST FOR BOARD ACTION
JANUARY 25, 2016 REGULAR VILLAGE BOARD MEETING**

Subject: Liberty Justice Center Engagement Letter

Action Requested: Approval of Engagement Letter with Liberty Justice Center for Legal Representation Related to the Worker Empowerment Ordinance

**Originated
By/Contact:** Village Board / Brad Burke, Village Manager

Referred To: Village Board

Summary / Background:

Village Code, Chapter 6 "Village Officers and Employees, Article D of the "Legal Counsel" states:

Legal counsel shall be retained by the Village Board to advise the Village on legal matters, to prosecute and defend legal actions, and draft legal documents and furnish opinions. Said counsel shall be retained from time to time at the will of the Village Board with such compensation as they shall determine.

At the December 14, 2015 Village Board meeting, the Village Board approved an Ordinance on Economic Development and Worker Empowerment by Regulation of Involuntary Payroll Deductions for Private Sector Workers in the Village of Lincolnshire (Ordinance). The motion to approve the Ordinance included a statement the Village of Lincolnshire would be represented by the Liberty Justice Center on a pro bono basis on matters related to the passage of the Ordinance. Subsequent to passage of the Ordinance, several media reports mentioned possible lawsuits to be filed against the Village of Lincolnshire related to the Ordinance. Staff worked with Jacob Huebert, Liberty Justice Center Senior Attorney, to draft an engagement letter for their organizations potential representation of the Village of Lincolnshire. The purpose of the engagement letter is to clarify roles, rights and responsibilities of the Village of Lincolnshire and the Liberty Justice Center in the event of a possible lawsuit as well as ensure the Village Board's objective in passing the Ordinance. Legal representation by the Liberty Justice Center would be done at no cost to the Village including all fees, costs and expenses related to any possible suit.

The language of the Liberty Justice Center proposed engagement letter specifically recommended the Village seek independent counsel review of the engagement agreement. As such, Attorney Simon reviewed the document. Attorney Simon suggested several changes/edits to provide additional clarity regarding the engagement letter specifically to provisions pertaining to indemnifying the Village. The Liberty Justice Center agreed to those changes.

Please note a statement found in paragraph 7 of the engagement indicates the Liberty Justice Center may have public policy interests that conflict with the Village of Lincolnshire's own interests. The engagement further states that the Liberty Justice Center will not abandon any public policy interests for which the Village of Lincolnshire may have objections. The Village's remedy to any such objection is for Lincolnshire to terminate its representation by the Liberty Justice Center. Staff reviewed Liberty Justice Center ongoing cases and finds there are cases where the Liberty Justice Center represents clients bringing suits/challenges against



municipalities for enforcing activities such as food truck licensing, sign codes regulations, and implementation of an amusement tax.

Budget Impact: No Impact. Liberty Justice Center's engagement letter indicates their services would be a no cost to the Village.

Service Delivery Impact:

Recommendation:

Staff recommends approval engagement letter.

Reports and Documents Attached:

- Proposed Engagement Letter with the Liberty Justice Center

Meeting History	
Regular Village Board Meeting:	01/25/2016



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312.263.7668

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

January 22, 2016

Bradly J. Burke, Village Manager
Village of Lincolnshire One
Olde Half Day Road
Lincolnshire, Illinois 60069

Dear Mr. Burke:

On behalf of the Liberty Justice Center, I am pleased to offer legal representation to the Village of Lincolnshire (the "Village") in the event of a legal challenge to its Ordinance No. 15-3389-116, more commonly known as "An Ordinance on Economic Development and Worker Empowerment by Regulation of Involuntary Payroll Deductions for Private Sector Workers in the Village of Lincolnshire" (the "Ordinance"). Should the Village of Lincolnshire agree to this representation agreement, we would represent the Village in such litigation, at the trial and appellate levels.

Our principal goal in representing the Village in this litigation is to ensure that the Village prevails in such litigation, which may include a judgment upholding the Ordinance as a lawful exercise of the Village's home rule authority.

The Liberty Justice Center is a tax-exempt nonprofit organization and provides legal representation on issues that advance the Liberty Justice Center's mission at no cost to the client.

By accepting this proposal, the Village of Lincolnshire agrees to provide us with accurate information necessary to effectively represent the Village in this matter.

We will keep the Village informed of significant actions in the case and will be pleased to answer questions at any time. We welcome the Village's questions and advice on all aspects of the litigation. However, the Liberty Justice Center's attorneys will have sole discretion regarding legal claims, arguments, tactics and strategy in representing the Village. The Village does not waive its legislative discretion to take additional legislative actions which may be adverse to the Liberty Justice Center's policy interests related to the contemplated litigation and may result in the termination of such litigation.

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Our legal representation is provided pro bono, i.e. at *no cost* to the Village. The Liberty Justice Center will not charge the Village any attorneys' fees and costs, or any miscellaneous expenses, such as filing fees and brief formatting and preparation, for representing the Village in this case. Additionally, we plan to seek reasonable attorney fees and costs from adverse parties in the event of a successful outcome if such recovery is authorized by law. By accepting this offer, the Village promises to assign all awards related to costs and attorneys' fees arising from the contemplated litigation to the Liberty Justice Center and the Liberty Justice Center agrees that this represents the Village's sole obligation in regards to payment for any legal services rendered hereunder. The Liberty Justice Center is relying on this promise in furnishing the services and incurring the costs contemplated by this agreement. In the event any other litigant's attorney fees and costs are awarded against the Village of Lincolnshire in litigation in which the Liberty Justice Center represents the Village, the Liberty Justice Center will pay any such award as a litigation expense.

The Liberty Justice Center, as an independent public interest litigation center, may have public policy interests that conflict with the Village's interests. Furthermore, the attorneys employed by the Liberty Justice Center may simultaneously represent other governmental agencies and bodies, other private individuals and organizations, and public officials in matters unrelated to the contemplated action. A conflict of interest may arise directly or indirectly from such simultaneous representation, as well as from our public policy interests, although we are currently aware of none.

If we perceive a conflict of interest has arisen, we will endeavor to so advise the Village. At any time, the Village of Lincolnshire is free to retain separate legal counsel at its own expense to advise the Village about any possible conflicts or any other matter. The Village is encouraged to review the list of past and current cases, policy reports, investigations, and public policy issues involving the Liberty Justice Center at our website, libertyjusticecenter.org. The Village is also acknowledging that conflicts that may have arisen or could arise have been adequately disclosed. The Liberty Justice Center will provide the Village with a list of its current litigation and will inform the Village of any new litigation it files within a reasonable time after filing. Liberty Justice Center agrees that by accepting the legal services herein described, the Village is not waiving any conflicts which have been adequately disclosed, except to the extent expressly provided herein.

The Liberty Justice Center reserves the right to associate with other attorneys and/or law firms to the extent necessary to carry out the representation described in this letter. The Village of Lincolnshire acknowledges and agrees that we are authorized to share confidential information with attorneys and/or law firms that we may associate with in the future for purposes of representing the Village in this litigation, provided that sharing such confidential information shall not result in the waiver or loss or any evidentiary or testimonial privilege granted the Village by law.

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By signing below, the Village of Lincolnshire is acknowledging the foregoing disclosure and agreeing to waive any conflict or potential conflict of interest that may exist or arise between the Liberty Justice Center's attorneys, the Village, any co-parties, and/or any other person(s) that are simultaneously represented by the attorneys employed by the Liberty Justice Center, which arise or may arise solely as a result of conflicting interests unrelated to the contemplated litigation (the "Simultaneous Representation Waiver"). Furthermore, the Village of Lincolnshire agrees to notify the Liberty Justice Center's attorneys promptly in writing or by email communication of any objections the Village may have to our simultaneous representation of any person or entity. The Village and Liberty Justice Center agree that the foregoing waiver does not represent a waiver resulting from a conflict between the Village's interests and the Liberty Justice Center's policy interests related to the contemplated litigation.

The Village of Lincolnshire further agrees that any timely objection to the Liberty Justice Center's simultaneous representation of another person or entity will result solely in Liberty Justice Center attorneys withdrawing from representing the Village, and that the Village will not object to Liberty Justice Center attorneys' continued representation of any other party with respect to any litigation that is unrelated to the contemplated action. In the event the Liberty Justice Center withdraws from representing the Village, it shall nonetheless still maintain all client confidences as a matter of our ethical obligations to the Village of Lincolnshire.

Furthermore, the Village of Lincolnshire agrees that the Liberty Justice Center will not abandon any public policy interests as a result of any timely objection and that the Village's sole remedy for any such objection is the termination of the Village's continued representation by Liberty Justice Center attorneys. Subject to those rules and any applicable ethical rules, we may terminate representation for good cause at any time. The Village may terminate this agreement at any time and for any reason. In the event that the Liberty Justice Center's representation is terminated, the Liberty Justice Center shall have no obligation to pay attorneys' fees, costs, or other litigation expenses incurred by any parties to the litigation after the Liberty Justice Center's termination as counsel. In the event Liberty Justice Center's representation is terminated, the Village's obligation to assign all awards related to costs and attorneys' fees arising from the contemplated litigation shall be limited to the reasonable costs and fees which have accrued prior to such termination and in no event shall exceed the proportionate share of any such award, as measured by the metric used by the court to determine the value of such award.

Through this agreement, the Liberty Justice Center agrees to represent the Village of Lincolnshire only with respect to a challenge to the validity of the Ordinance. In the event that a party challenging the Ordinance's validity joins that challenge with other legal claims that do not pertain to the validity of the Ordinance, the Liberty Justice Center will consider at that time whether it can represent the Village with respect to the additional

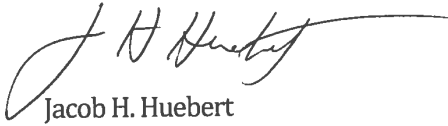
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claims. If the Village wishes to be represented by the Liberty Justice Center with respect to the additional claims, and if the Liberty Justice Center agrees to provide that representation, the parties will enter into a separate engagement agreement regarding representation for those claims. Unless it agrees to do so by a separate writing, the Liberty Justice Center shall not be obligated to pay any attorneys' fees or other litigation costs incurred by the Village or any other party arising out of any claims against the Village other than a challenge to the validity of the Ordinance.

Finally, by signing below, the Village of Lincolnshire acknowledges that the attorneys employed by the Liberty Justice Center strongly recommend that the Village seek independent legal counsel for guidance in regards to the meaning and significance of this engagement agreement, and the Village further represents that it has, in fact, consulted or knowingly waived consultation with independent legal counsel regarding the meaning of this agreement and fully understand and agree with its provisions.

If this agreement is acceptable to the Village of Lincolnshire, please sign and return one copy and retain another for your records. On behalf of the entire Liberty Justice Center team, we very much look forward to working with you.

Very truly yours,



Jacob H. Huebert
Senior Attorney

The undersigned has been authorized by the Village of Lincolnshire to enter into this agreement on the Village's behalf and accepts the terms of representation on behalf of the Village of Lincolnshire as set forth above.

Bradly J. Burke
Village Manager
Village of Lincolnshire, Illinois

Date