LAW OFFICE
of
Joshua R.
Williams, PLLC

VIA EMAIL AND U.S. MAIL

July 25, 2016

Susan L. Segal
Minneapolis City Attorney
350 South Fifth Street
Room 210 City Hall
Minneapolis, MN 55415

RE: Proposed Charter Amendment for Police Liability Insurance

Ms. Segal:

I am writing at the request of the Committee for Professional Policing ("CFPP") to formally advise you about the CFPP's position regarding the proposed amendment to the Minneapolis City Charter that would require Minneapolis police officers to carry professional liability insurance. It is CFPP's position that the proposed amendment must be placed on the November 2016 ballot for consideration by the voters.

"Minnesota courts have . . . required that charter provisions be not only constitutional, but also in accordance with state public policy." *Haumant v. Griffen*, 669 N.W.2d 774 (Minn. Ct. App. 2005). As the Minnesota Supreme Court stated more than four decades ago, "Courts should exercise extreme caution in ruling out . . . such documents which are the result of democracy working at the grassroots level." *Bogen v. Sheedy*, 229 N.W.2d 19, 24 (Minn. 1975). For the reasons discussed below, the proposed amendment is both constitutional and in accordance with state public policy.

I. The Proposed Amendment is Not Preempted by Minnesota Law

The Police Officers Federation of Minneapolis ("POFM") argues that "the proposed amendment is clearly and unequivocally" preempted by Minn. Stat. § 466.07. In determining whether preemption has occurred, Minnesota courts consider "whether the subject matter is so fully covered by state law that it has become solely a matter of state concern." *Mangold Midwest Co. v. Vill. of Richfield*, 274 Minn. 347, 358 (1966).

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Section 466.07 addresses the circumstances under which Minneapolis must defend and indemnify its police officers. It requires that Minneapolis defend and indemnify an officer provided that the officer was (1) acting in the performance of the duties of the position, and (2) not guilty of malfeasance in office, willful neglect of duty,[1] or bad faith. The proposed amendment applies to situations in which § 466.07 does *not* require Minneapolis to defend and indemnify an officer, so it is not preempted by § 466.07.[2]

The legislature has not indicated any intent to occupy this field and, thus, preempt municipal action.

II. The Proposed Amendment Would Not Impose a Change to an Existing Term and Condition of Employment

The POFM states that its Labor Agreement with the City addresses the purchase of insurance coverage for claims against officers. Yet the Agreement only says that *Minneapolis* "may, at its option, maintain a standard policy of liability insurance covering employees against the actions and claims referenced in Section 25.1 above."[3] It does not address the purchase of professional liability insurance by individual officers, which would be required by the proposed amendment.

Moreover, the proposed amendment does not require officers to carry professional liability insurance with respect to claims arising from actions taken in the course of their employment. Instead, it requires coverage for acts *outside the scope of the officer's employment.*[4] Thus, the proposed amendment

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[1] Neglect of duty has been defined as "a careless or intentional failure to exercise due diligence in the performance of an official duty." *In re Olson*, 300 N.W. 398, 400 (Minn. 1941).

[2] The proposed amendment states that Minneapolis "may not indemnify police officers against liability in any amount greater than required by State Statute unless the officer's insurance is exhausted."

[3] Section 26.3. Section 25.1 does not refer to any actions or claims, but presumably Section 26.3 was supposed to cite Section 26.1, which refers to the same actions or claims that § 466.07 requires Minneapolis to defend and indemnify officers against. Again, the proposed amendment addresses different actions or claims, which § 466.07 does *not* address and does *not* require Minneapolis to defend and indemnify officers against.

[4] For example, if an officer deprived an arrestee of the ability to use a bathroom for an extended period of time, failed to conduct a medical appraisal after spraying a chemical at an arrestee, deprived an arrestee of food or a shower for an extended period of time, or otherwise violated the Minneapolis Police Department Policy & Procedure Manual, these "actions could be deemed

requires *different* coverage than that addressed by the Labor Agreement, and the Labor Agreement does not address who would pay the premiums for the coverage required by the proposed amendment.

Therefore, the proposed amendment would not impose a change to any existing term or condition of employment covered by the Labor Agreement.[5]

III. The Proposed Amendment is in Accordance with State Public Policy

The POFM also argues that the proposed amendment violates public policy. The public policy of the state is "disclosed by general laws or its penal code." *Town of Lowell v. City of Crookston*, 252 Minn. 526, 528 (1958). As discussed above, the proposed amendment does not violate the state laws cited by the POFM and, in fact, is in accordance with state public policy.

Furthermore, the status quo is untenable. It places financial responsibility on taxpayers instead of the police officers who violate constitutional rights.

IV. Conclusion

If the City Council precludes Minneapolis voters from deciding on the proposed amendment this November, it will have done so with no legal basis. A challenge by the CFPP in state or federal court would then be in order. Sadly, a special election, which would be required if voters cannot decide on the amendment in November,[6] would cost taxpayers up to two million dollars.

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wrongful, and a willful and wanton neglect of duty." *Anderson v. St. Louis County*, 2005 WL 1389881, at *4 (Minn. Ct. App. June 14, 2005). In other words, § 466.07 would not require that Minneapolis defend and indemnify such an officer.

[5] In addition, the POFM argues that the proposed amendment is preempted by Minn. Stat. § 179A.07, which requires Minneapolis to "meet and negotiate in good faith . . . notwithstanding contrary provisions in a municipal charter, ordinance, or resolution." As the proposed amendment does not impose a change to an existing term and condition of employment, it does not limit or restrict Minneapolis from negotiating in good faith.

[6] *See* Minn. Stat. § 410.12, subd. 4.

Sincerely,

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cc (via email only): Burt Osborne, Asst. City Attorney and Counsel to Minneapolis Charter Commission