



**Request for City Council Committee Action
From the City Attorney's Office**

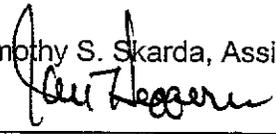
Date: December 5, 2002
To: Ways & Means/Budget Committee
Referral to: None

Subject: Request for Reimbursement of Legal Fees for Council Member Lisa Goodman.

Recommendation: That the City Council determine the reasonableness of the request of Council Member Lisa Goodman for the reimbursement of attorneys' fees and authorize such reasonable amount payable to Douglas R. Peterson payable from Fund/Org. 6900 150 1500 4000.

Previous Directives: None.

Prepared by:  Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

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| <p>Financial Impact (Check those that apply)</p> <p><input type="checkbox"/> No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information)</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Capital Budget</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Operating Budget</p> <p><input type="checkbox"/> Action provides increased revenue for appropriation increase</p> <p><input type="checkbox"/> Action requires use of contingency or reserves</p> <p><input checked="" type="checkbox"/> Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p> |
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| <p>Community Impact: None</p> |
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Background/Supporting Information

Council Member Lisa Goodman was subpoenaed to provide testimony on October 27, 2002, in federal district court in the United States of America v. Joseph Paul Biernat. Council Member Goodman sought legal advice from Douglas R. Peterson of the law firm Leonard, Street and Deinard. Mr. Peterson spoke with former Council Member Biernat's attorney, Janice M. Symchych, and Council Member Goodman was excused from testifying. Council Member Goodman has requested the reimbursement of legal fees pursuant to Minnesota Statute §465.76.

Itemized bills have been submitted to this office for payment under Minn. Stat. § 465.76. The total amount of the bills is \$728.75. The billing is for 2.75 hours at an hourly rate of \$265.00. The hours expended were related to the subpoena in the criminal case. The hours expended appear to be reasonable.

The \$265.00 hourly rate requested by Mr. Peterson is in excess of the standard hourly rate of \$125 normally approved by the City Council. The approval of requests for reimbursement of attorney's fees is entirely within the discretion of the City Council. This Committee and the City Council have the authority to increase or decrease the hourly fee rate requested if the facts warrant. In the past, the City Council has increased the standard hourly rate. For example, in 1999 the City Council approved a request for reimbursement from former Council Member Steve Minn in the amount of \$1,732.50, with an hourly rate of \$158.00. The City has also reduced the requested hourly rate.

Minnesota Statute §465.76 provides:

"If reimbursement is requested by the officer or employee, the governing body of a home rule charter or statutory city or county may, after consultation with its legal counsel, reimburse a city or county officer or employee for any costs and reasonable attorneys fees incurred by the person to defend charges of a criminal nature brought against the person that arose out of the reasonable and lawful performance of duties for the city or county, provided if less than quorum of the governing body is disinterested, that such reimbursement shall be approved by a judge of the district court."

In 1984 the City Council appointed a criminal legal fees task force. The task force was directed to consider and recommend appropriate policies for the City to follow with respect to payment of legal fees. The task force examined the statutes, policies of other jurisdictions, the present policy, case law and alternative procedures. In a letter dated June 18, 1984, the task force ratified the existing system in which the City Council, after the advice of the City Attorney upon the reasonableness of the fees and the scope of employment issues, acts formally on a request for reimbursement. Prior to acting, the Council reviews each case with reference to the general principles as follows:

1. Nature of the inquiry or allegations by the investigating authority.
2. Whether the action arose out of the performance of the officer or employee's duties.
3. Whether he or she acted in good faith.
4. Whether there was malfeasance or willful or wanton neglect of duty.
5. Whether he or she was acting pursuant to directions from a superior or pursuant to law.
6. Whether the morale of other City officers and employees would be adversely affected by paying or not paying the claim.

The above criteria were developed under Minn. Sess. Laws 1969, Chapter 790, Section 2, granting the City of Minneapolis authority to reimburse legal fees to employees in criminal proceedings. Minn. Stat. §465.76 was later enacted. The new section is fundamentally the same, except insofar as it adds the requirement that the incident arise from the "lawful" performance of the duties of the employee. It had been the practice under Chapter 790 to approve reimbursement only upon acquittal or failure to charge the employee. Minn. Stat. §465.76 makes this practice mandatory.

With regard to the first consideration set forth in the letter of the task force, the review of the conduct of Council Member Goodman falls within the statute's parameters. The attorney's fees request arises from a criminal prosecution. It has been the City's historical practice to reimburse fees even though the officer or

employee is not the target of the criminal prosecution when the testimony is subpoenaed in a criminal proceeding. A witness can not be certain of the focus of the investigation.

The second criterion is also satisfied. The proposed testimony related to Council Member Goodman's duties on the Minneapolis City Council.

The third consideration does not apply to the matter under consideration. Council Member Goodman was not the target of the investigation giving rise to the criminal matter for which she was subpoenaed and no testimony was given, therefore, there is no conduct to which a good faith analysis could be applied.

Similarly, the fourth consideration is inapplicable. There can be no malfeasance or willful or wanton neglect of duty without conduct or testimony to examine.

Generally, consideration number five also applies to the conduct that is the focus of the investigation or criminal prosecution. However, in this instance Council Member Goodman's testimony was sought because of her legal activities on the City Council.

Finally, with regard to consideration number six, the denial of the request for attorney fees would have a negative impact on the morale of other officers or employees. City officer and employees who were ordered to testify about their legal duties would be personally responsible for the payment of attorney's fees arising from the lawful performance of their duties if they sought advice about potential criminal liability or to be excused from testifying.

Based on the foregoing it is our recommendation that the City Council determine the reasonableness of Council Member Lisa Goodman's request for reimbursement, and that she be reimbursed for reasonable criminal defense fees pursuant to Minn. Stat. §465.76.