



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

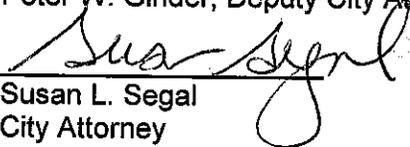
Date: November 27, 2013  
To: Ways & Means/Budget Committee  
Referral to: None

**Subject:** Request for Reimbursement of Legal Fees for Council Member Don Samuels.

**Recommendation:** That the legal criteria for granting the request of Council Member Don Samuels for the reimbursement of attorneys' fees and costs paid to Best & Flanagan in the amount of \$9,083.10 are satisfied and that the Council determine whether to grant the request and the amount of any such reimbursement. If approved, the reimbursement would be charged to Fund/Org. 6900 150 1500 2400.

**Previous Directives:** None.

Prepared by: Peter W. Ginder, Deputy City Attorney, 673-2478

Approved by:   
Susan L. Segal  
City Attorney

Presenter in Committee:

**Financial Impact** (Check those that apply)

- No financial impact - or - Action is within current department budget.  
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 2400
- Request provided to the Budget Office when provided to the Committee Coordinator

**Community Impact:** None

**Background/Supporting Information**

Based on a complaint from a citizen that Council Member Don Samuels had an alleged conflict of interest as a result of his role on the City Council and his former position as one of the founders of the Peace Foundation, the United States Department of Justice initiated an investigation. After an initial inquiry, the Department of Justice concluded that a full investigation was not warranted and the matter was officially closed on January 28, 2013. Council Member Samuels sought legal representation from Thomas B. Heffelfinger of the Best & Flanagan Law Firm. Mr. Heffelfinger assisted Council Member Samuels in communications with the FBI and the United States Attorney. The investigation focused on the possibility

that Council Member Samuels had a conflict of interest as a result of his role on the City Council and chair of the Public Safety, Civil Rights and Health Committee and his former role or activities with the non-profit Peace Foundation and other non-profit organizations. Council Member Samuels 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 payments were \$9,083.10 (\$3.60 of which was for costs). The billing is for 22.75 hours at an average hourly rate of \$399.00. Mr. Heffelfinger billed 14.60 hours at \$460.00 an hour and another partner billed 8.15 hours at \$290.00 an hour. The hours expended were related to the investigation of the complaint made against Council Member Samuels. The hours expended appear to be reasonable.

The hourly rates requested are in excess of the standard hourly rates normally approved by the City when it retains outside counsel through the City Attorney's Office. 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. There is City Council precedent for paying more than the City's current standard hourly rates which are usually between \$135.00 and \$225.00 depending on the nature of the work. In 2002, the City Council approved a request for reimbursement from Council Member Goodman at an hourly rate of \$265.00; in 2004, the City Council approved a request for reimbursement from Deputy Chief Lucy Gerold at an hourly rate of \$319.00; in 2006, the City Council approved requests for reimbursement for Council Members Goodman and Schiff at the hourly rate of \$300.00; and, in 2010, the City Council approved a request from Chief Tim Dolan at hourly rates of \$300.00 and \$400.00 (at an average rate of \$340.00 an hour).

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.

It is our opinion that the first and second criteria, related to the possibility of criminal proceedings and that the investigation related to Council Member Samuel's role on the Council are satisfied.

The third consideration is also satisfied. There is no evidence that Council Member Samuels acted other than in good faith as evidenced by the investigation being closed with no action taken.

Similarly, the fourth consideration is satisfied. There is no evidence of malfeasance or willful or wanton neglect of duty and no inappropriate or criminal conduct was identified.

Regarding consideration number five, Council Member Samuels legal duties as a member of the Minneapolis City Council gave rise to the complaint initiating the investigation.

Finally, with regard to consideration number six, the denial of the request for attorney fees could have a negative impact on the morale of other officers or employees. City officers and employees whose duties gave rise to unfounded complaints would be personally responsible for the payment of attorney's fees arising from the lawful performance of their duties.

Based on the foregoing, it is our opinion that the legal criteria for granting the request of Council Member Samuels for the reimbursement of attorneys' fees pursuant to Minn. Stat. §465.76 in the amount of \$9,083.10 are satisfied.