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

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

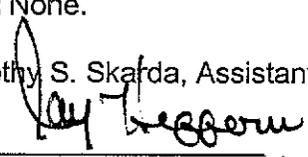
Subject: Request for Reimbursement of Legal Fees for Officers James Brickley and Todd Lappegard.

Recommendation: That the City Council approves the request of Officers James Brickley and Todd Lappegard for the reimbursement of attorneys' fees payable to Frederic Bruno & Associates in the amount of \$4,300.55 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

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 4000
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: None

Background/Supporting Information

Minneapolis Police Officers James Brickley and Todd Lappegard have requested, through their attorney, the reimbursement of legal fees pursuant to Minnesota Statute §465.76. The fees arose from their representation during an investigation of a police pursuit by the Anoka County Attorney and the Minnesota State Patrol in which Dwayne P. Mumm was fatally injured by a vehicle driven by Gerylyne Mornson. On August 29, 2002, the special prosecutor, assistant Anoka county attorney Paul Young, indicated that Ms. Mornson would be charged with a felony and that the conduct of the police officers would not be referred to a grand jury for review. Fred Bruno and Associates represented Officers Brickley and Lappegard.

The investigation involved an incident that arose on March 28, 2002, when Officers Brickley and Lappegard responded to call for assistance in stopping a vehicle containing a mentally ill driver who was fleeing from police. The officers participated in the low speed pursuit south on Interstate Highway 35W. The driver, Ms. Mornson, exited the interstate at 60th Street and turned south on Nicollet Avenue. Earlier in the pursuit, officers had tried a variety of unsuccessful techniques to stop the vehicle. Officers Brickley and Lappegard attempted to accelerate to get in front of the Mornson vehicle as it approached Nicollet Avenue and 63th Street. Ms. Mornson lost control of her vehicle and struck and killed a pedestrian, Dwayne Mumm.

Frederic Bruno submitted itemized bills to this office for payment under Minn. Stat. § 465.76. The total amount of the itemized bills is \$4,300.55. The hours expended were related to the criminal defense of the officers. The bill appears reasonable, especially considering the length of the investigation and media attention.

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 the officers falls within the statute's parameters. The attorney's fees requested arise from a criminal investigation by the Minnesota State Patrol and the Anoka County Attorney.

The second criterion is also satisfied. The officers were on duty, responding to an emergency call for assistance. The officers were acting for a public law enforcement purpose and under color of law.

Regarding the third consideration, the officers acted in good faith. The county attorney declined to seek criminal charges or even further review of the conduct of the officers. At the time that the officers acted they had a reasonable belief that their actions were reasonable and necessary.

Regarding the fourth consideration, we conclude that there was no malfeasance or willful or wanton neglect of duty. The officers were acting pursuant to law and the policies and procedures of the Minneapolis Police Department.

As to consideration number five, the officers were acting pursuant to law and exercising their duties as police officers. The actions of Officers Brickley and Lappegard were authorized by law and within their legal authority, as determined by the Anoka County Attorney.

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 City employees. Police officers who were making a good faith effort to enforce the law would be responsible for the payment of attorney's fees arising from mandatory investigations into conduct.

Based on the foregoing it is our recommendation that Officers James Brickley and Todd Lappegard be reimbursed for criminal defense fees pursuant to Minn. Stat. §465.76.