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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 Officer Tammy Friestleben.

Recommendation: That the City Council approves the request of Officer Tammy Friestleben for the reimbursement of attorneys' fees payable to Frederic Bruno & Associates in the amount of \$3,514.24 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
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

<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>

<p>Community Impact: None</p>

Background/Supporting Information

Minneapolis Police Officer Tammy Friestleben has requested, through her attorney, the reimbursement of legal fees pursuant to Minnesota Statute §465.76. The fees arose from her representation during an investigation by the Hennepin County Sheriff's Office of an incident in which Martha McDonald and Officer Melissa Schmidt were fatally injured. On September 30, 2002, the Hennepin County Sheriff and the Hennepin County Attorney released their findings concluding that Officer Friestleben had acted appropriately. The Hennepin County Attorney announced that they would not convene a grand jury to investigate the matter further. Fred Bruno and Associates represented Officer Friestleben during the investigation.

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The investigation involved an incident that arose on August 1, 2002, where Officers Friestleben and Schmidt responded to an incident involving an armed individual. Officer Schmidt had custody of Martha McDonald and had taken her to the bathroom. Ms. McDonald, who had an alcohol concentration of .24%, produced a firearm and shot and killed Officer Schmidt. Ms. McDonald was killed by shots returned by Officer Schmidt. Officer Friestleben witnessed the entire incident in the bathroom and was shot at and received powder burns on her face. Officer Friestleben did not have an opportunity to discharge her weapon.

Frederic Bruno submitted itemized bills to this office for payment under Minn. Stat. § 465.76. The total amount of the itemized bills is \$3,514.24. The hours expended were related to the criminal defense of the officer. The bill appears reasonable.

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 officer falls within the statute's parameters. The attorney's fees requested arise from a criminal investigation by the Hennepin County Sheriff and the Hennepin County Attorney.

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

Regarding the third consideration, Officer Friestleben acted in good faith. After the investigation, the county attorney declined to issue charges or submit the case to a grand jury for consideration. The investigation concluded that Officer Friestleben had used no force.

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

As to consideration number five, the officer was acting pursuant to law and exercising her duties as a police officer. The actions of Officer Friestleben were authorized by law and within her legal authority, as determined by the Hennepin 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 Officer Tammy Friestleben be reimbursed for criminal defense fees pursuant to Minn. Stat. §465.76.