



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

Date: February 27, 2006
To: Ways & Means/Budget Committee
Referral to: None

Subject: Request for Reimbursement of Legal Fees for Officers John Engle and Jason Walters.

Recommendation: That the City Council approve the request of Officers John Engle and Jason Walters for the reimbursement of attorneys' fees payable to Frederic Bruno and Associates in the amount of \$1,108.28 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

Officers John Engle and Jason Walters 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 regarding a fatal shooting on August 1, 2005, at approximately West Franklin and Aldrich Avenues.

Police were called to an attempted robber of the Money Center located at 2006 Lyndale Avenue South. Ricky A. Redin was fleeing from the scene after attempting to over power a clerk at the store. Redin was a level 2 sex offender with a warrant for his arrest for failing to appear for sentencing for sexually molesting a 4 year old child. Redin was pursued and knocked to the ground by Officer Walters. Redin stabbed Officer Walters and

continued to flee. A short distance away, Redin was tacked by Officer Herzog. As Officer Walters approached, he observed Redin stab Officer Herzog. Officer Walters discharged his shotgun at short range. Redin fell to the ground and got back to his feet still holding the knife. Officer Walters fired a second time before falling onto his back. Officer Walters had arrived by motorcycle and fired his weapon after Redin regained his feet and approached Officer Walters with the knife.

The case was investigated by the Minneapolis Police Department. The Office of the Hennepin County Attorney presented the case to a grand jury for consideration of potential criminal charges. On December 15, 2005, the grand jury declined to indict the two officers. Frederic Bruno represented the officers throughout the process.

Mr. Bruno submitted itemized bills for the total hours expended in representing the officers to this office for payment under Minn. Stat. § 465.76. Mr. Bruno billed his legal representation at an hourly rate of \$125.00. The total amount of fees and expenses is \$1,108.28. The hours expended were related to the criminal defense of the officers. The hours expended and expenses appear reasonable. Each officer was prepared for and gave a statement to investigators and was subpoenaed to and testified before the grand jury.

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.

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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 into the death of Ricky A. Redin. The matter was investigated by the police department and submitted to a grand jury for potential criminal charges.

The second criterion is also satisfied. The allegations related to on duty law enforcement activities. The officers were on duty and exercising police powers at the time of the incident.

Regarding the third consideration, the officer acted in good faith. The grand jury determined that the actions of the officers did not violate that law and were within the discretion afforded officers in using force.

Regarding the fourth consideration, we conclude, based upon the police investigation and decision by the grand jury that there was no malfeasance or willful or wanton neglect of duty.

As to consideration number five, the officers were acting pursuant to law and exercising their duties as police officers. The actions of the officers were authorized by law and within their legal authority.

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 arising from mandatory investigations into conduct.

Based on the foregoing it is our recommendation that Officers John Engle and Jason Walters be reimbursed for reasonable criminal defense fees pursuant to Minn. Stat. §465.76.