

**MINUTES OF THE SELMA CITY COUNCIL MEETING
HELD ON MONDAY, JULY 9, 2001**

The Selma City Council met in a regular session in the Council Chambers of City Hall on Monday, July 9, 2001 at 5:00 p.m. with the following members present: President George P. Evans and Council members Glenn Sexton, Rita S. Franklin, Jean T. Martin, Nancy G. Sewell, Samuel Randolph, Benny L. Tucker, Bennie Ruth Crenshaw, and James Durry. Others present were Mayor James Perkins, Jr., City Attorney Jimmy Nunn, City Clerk Jackie Smith, and the Mayor's Administrative Assistant Sherri James. The Reverend Kenny Hatcher gave the invocation.

After roll call, President Evans declared a quorum present and the meeting was opened for the transaction of business as set forth on the agenda. President Evans asked if there were any additions or corrections to the agenda prepared for this meeting. Councilwoman Franklin asked that the agenda be amended to include WIMG report. Councilwoman Sewell asked that the agenda be amended to include a R.I.F. update. Councilman Sexton asked that the agenda be amended to include the Suttle Volunteer Fire Department. There being no other amendments to the agenda, on motion made by Councilwoman Sewell and seconded by Councilwoman Crenshaw, the agenda was approved with the stated amendments.

President Evans asked if there were any additions or corrections to the minutes of the June 25, 2001 Council meeting. Councilwoman Franklin asked that the minutes be corrected to state that the Selma WaterWorks & Sewer Board invoices are to be paid for with bond funds. There being no other additions or corrections to the minutes, on motion made by Councilwoman Martin and seconded by Councilwoman Sewell, the minutes were approved as amended.

I. MAYOR'S REPORT

A. Recognition of Fire Department Heroic Actions. Mayor Perkins stated Chief Allen and the members of the Selma Fire Department were asked to be present so that appreciation could be expressed to them for their heroic actions in saving the life of an elderly woman from a burning house. Chief Allen explained that firefighters were dispatched to a house fire in the 1200 block of Lauderdale Street and upon arrival, they were notified that an elderly woman was entrapped. Chief Allen stated the Fire Department worked as a team and were very instrumental in rescuing the lady from the burning house. The Mayor and the Council expressed their sincere appreciation to the firefighters and thanked them for a job well done.

B. Summer Youth Employment Initiative Update. Mayor Perkins informed the Council that the Summer Youth Employment Initiative has placed seventy-five youths at thirty-two sites. Mayor Perkins commended Mr. Darryl Thomas for his efforts in managing this project. Out of the seventy-five youths there has only be one case where disciplinary action was required. Mayor Perkins stated Mr. Thomas would like to present each youth a commemorative tee shirt for the excellent job they have done. Mayor Perkins further stated Mr. Thomas is accepting personal donations towards the purchase of the tee shirts.

C. Assistant Police Chief & Code Enforcement Officer Vacancies. Mayor Perkins stated due to stricter enforcement of City Codes, twenty-two structures has been identified as dilapidated and slated for condemnation and he is expecting another ten structures to be reported by the end of this week. For these reasons, Mayor Perkins stated he is recommending the search process be implemented, through the Personnel Department, to fill the vacancy of a Code Enforcement Officer.

Mayor Perkins also informed the Council that Assistant Police Chief Ken Smith retired on June 29, 2001 and due to work overload of the current staff he is recommending the search process, through the Personnel Department, be implemented to fill the vacancy of Assistant Chief of Police. Councilwoman Martin made a motion that the search process be implemented to fill the vacancies of a Code Enforcement Officer and Assistant Chief of Police. The motion was seconded by Councilwoman Crenshaw and passed with a unanimous vote of the Council.

I. MAYOR'S REPORT

D. Central Selma Sanitary Sewer System. Mrs. Elizabeth Driggers, Director of Community Development stated bids were opened for the Central Selma Sewer project on June 27, 2001 and provided each Councilperson with a bid tabulation form. Mrs. Driggers stated the project was advertised throughout the State and only one vendor submitted a bid on the project. The low and only bidder on the project is Stewart Construction Company for \$493,382.00 and Mrs. Driggers stated it is her recommendation that Stewart Construction be awarded the contract for this project. Mrs. Driggers further stated a local contractor owns Stewart Construction Company and he is licensed to perform such work and will be bonded for performance. Councilman Sexton motioned to accept the bid of Stewart Construction Company in the amount of \$493,382.00 for the Central Selma Sewer project. Councilwoman Martin seconded the motion and on roll call vote, the motion passed with a unanimous vote of the Council.

E. Proposal for the development of Comprehensive Pay Plan. Mayor Perkins stated at the request of several Council members, Personnel Director Valeria Jones sought proposals from several different agencies to develop a job description and comprehensive pay plan system for city employees. Ms. Jones stated it is her recommendation that the City of Selma accept the proposal received from the Auburn University Center for Governmental Services to develop job analyses, job descriptions, performance appraisals and a pay plan for city workers at a contract amount of \$25,000. Ms. Jones stated the proposal submitted by Auburn University gives a six-month time frame for completion.

A brief discussion followed whereby several Council members stated they felt the contract is more costly than expected because they knew the City contracted for similar work a couple of years ago. Mayor Perkins stated the previous study was incomplete because it only included job descriptions and a pay plan for certain job classifications. President Evans recommended this matter be tabled for further discussion and until the Council have the opportunity to get clarification on contract terms. Mayor Perkins asked the Council to act expediently on this matter for budgetary reasons.

II. CITY ATTORNEY'S REPORT

A. Contract – Williams Painting and Construction. Attorney Nunn stated he is in the process of drafting a contract between Williams Painting and Construction and the City of Selma to repair a leak and paint the walls and ceiling in the evidence vault at the Selma Police Department. Attorney Nunn stated the contract amount is \$1,350.00. Councilwoman Crenshaw motioned to authorize the execution of the contract with Williams Painting and Construction in the amount of \$1,350.00. Councilwoman Sewell seconded the motion and on roll call vote, the motion passed with a unanimous vote of the Council.

B. Claim of Yeargan Construction. Attorney Nunn stated the City Attorney's Office received a bill from Yeargan Construction for sewer work performed by Roto-Rooter and Mr. Yeargan feels the City should have been responsible for. Attorney Nunn notified Mr. Yeargan of the proper procedure to follow in filing a claim and a notarized claim was received on Friday, July 6th. Attorney Nunn stated the claim has been forwarded to Public Works Director Tommy Smith for investigation.

C. Claim of Mrs. Shelia Jean Vickers. Attorney Nunn stated he is in receipt of a claim filed by Mrs. Shelia Jean Vickers alleging she stepped into a hole, in the parking lot next to the Down Towner Restaurant, fell and broke her wrist. Mrs. Vickers is claiming \$24,500 in damages for the injuries she sustained. Attorney Nunn presented the Council with a letter from Mr. Tommy Smith, Director of Public Works, stating the City had no prior notice of a defect in the parking lot and that the parking lot was repaired immediately upon notification. Attorney Nunn stated it is his recommendation that this claim be denied since the City had no prior knowledge or notice of a defect. Councilwoman Sewell motioned to deny the claim of Mrs. Shelia Jean Vickers. Councilwoman Martin seconded the motion and it passed with a unanimous vote of the Council.

II. CITY ATTORNEY'S REPORT

D. Claim of Mr. Charles Dennis. Attorney Nunn stated he is in receipt of a claim filed by Mr. Charles Dennis alleging the Public Works Department caused damage to his driveway. The claim states Public Works was filling in a ditch near his house when a piece of heavy equipment damaged his concrete driveway. Attorney Nunn presented the Council with a letter from Mr. Tommy Smith, Director of Public Works, stating the Public Works Department did cause some damage to the driveway and recommends the driveway be repaired. The letter further states Councilman Glenn Sexton has volunteered to use monies from his discretionary fund to pay for the repairs. Attorney Nunn stated he concurs with the recommendation of Mr. Smith to pay this claim. Councilman Sexton motioned to accept the recommendation to repair Mr. Dennis' driveway with funds from his discretionary fund account. Councilwoman Franklin seconded the motion and on roll call vote, the motion passed with a unanimous vote of the Council.

E. Claim of Mr. Edward Harris C01-011. Attorney Nunn informed the Council that he is in receipt of a claim from Mr. Edward Harris related to an incident that occurred in July 2000 involving the Selma Police Department. Attorney Nunn stated this claim is in the investigative stage.

F. Attorney General Opinion on Payment of Legal Fees. Attorney Nunn stated he has received a response from the Attorney General Office on the request for an opinion as to whether the City has to pay the legal fees for an employee who engages an attorney to represent him or her at a personnel hearing. Attorney Nunn stated attorneys P. Henry Pitts and John Kelly, III has submitted a statement for approximately \$3,100 in legal fees charged to represent Assistant Chief Robert Green at his personnel hearing. Attorney Nunn made reference to page two of the opinion where it states a municipality should not pay legal expenses that are clearly ultra vires or where no benefit inures to the municipal corporation.

A lengthy discussion followed whereby several Council members stated they felt the City should not pay the legal fees because precedence would be set that could have future repercussions. Also, there were several Council members who stated they felt the legal fees should be paid to prevent spending additional funds to defend this matter in court. Mayor Perkins stated he strongly recommended the Council follow the Attorney General Opinion and not pay the legal fees because it would only create havoc. President Evans stated this matter would be tabled for further discussion and addressed at the next Council meeting.

G. Selma WaterWorks and Sewer Board. Attorney Nunn stated there are currently no contracts in existence between the City of Selma and the Selma WaterWorks and Sewer Board that relates to the All-Lock/BWD facility or the garbage fee collection. Attorney Nunn stated it is mutually agreeable that contracts should be in writing for both agreements. A meeting was held this morning with City officials and WaterWorks officials to clarify some issues regarding the invoices submitted when Water Board Attorney Gary Thompson presented contracts on the garbage fee collection and the All-Lock BWD facility for review and discussion at a later date. Attorney Nunn stated the garbage fee contract states either party may terminate with a sixty-day notice and water service cannot be disconnected for non-payment of garbage fees because they (WaterWorks) are a separate entity. Attorney Nunn explained the All-Lock BWD facility contract for the well monitoring services, states the City will pay a monthly fee of \$850 plus expenses, rather than the \$7,500 plus expenses currently paid to monitor, sample, test and report to ADEM on the wells. Attorney Nunn stated both contracts are for review only and some revisions would be necessary.

Attorney Nunn stated the amount of the invoices the City owes to the Selma WaterWorks totals \$30,251.20, which covers expenses through July 9, 2001. Councilman Durry made a motion to approve payment of the Selma WaterWorks & Sewer Board invoices in the amount of \$30,251.20. Councilwoman Sewell seconded the motion and on roll call vote, the motion passed with a majority vote of the Council. There were seven affirmative votes and two negative votes. Council members Crenshaw and Randolph cast the negative votes.

II. CITY ATTORNEY'S REPORT

G. Selma WaterWorks and Sewer Board.

Attorney Nunn presented the Council with City of Selma Ordinance #36 and Ordinance #37 where it outlines in section two and three certain duties and responsibilities relative to water distribution and to sewer that the WaterWorks has not been performing. Attorney Nunn also stated he wanted to inform the Council that it was discovered in Ordinance #36 and Ordinance #37, dated August 12, 1966, that the City of Selma granted a water and sewer franchise to the WaterWorks and Sewer Board to be in effect for a period of thirty years. Attorney Nunn stated according to the ordinances, the franchise expired in 1996. Water Board Chairman Billy Hicks addressed the Council and presented City of Selma Ordinance # 10-8687 and Ordinance # 11-8687, dated June 24, 1987 that was adopted to extend the water and sewer franchise an additional thirty years, through 2017. Mr. Hicks stated due to bond indebtedness, the franchise date must extend at least until the bond issue expires.

After a brief discussion, Mayor Perkins stated he wanted the record to show the City did not receive the invoices in question until April 2001 and City officials were researching costs and other expenditures associated with the invoices. Councilwoman Crenshaw stated the WaterWorks should be more accountable for their duties and responsibilities and the Mayor, as Superintendent, could resolve some of these differences.

H. Ordinance – Wireless Communication Tower. Attorney Nunn presented the Council with documents he received from Monroe Telecom Associates regarding to development of a wireless communication ordinance. Attorney Nunn noted some of the important facts contained in the documents were no fee to prepare an ordinance; adoption of a temporary resolution; wireless tower applications fee of \$7,500 application fee to pay consulting costs; Monroe Telecom Associates are contracted with thirty cities; Monroe Telecom Associates encourage co-existence with towers already in place; Monroe Telecom Associates recommend placing towers on city-owned property to generate revenue.

Councilwoman Franklin asked if the City would be responsible for consulting fees that exceeds the \$7,500 application fee? Attorney Nunn stated further inquiry would be necessary to determine how excess-consulting fees would be paid. President Evans suggested the Council extend the moratorium until August 27th so that counsel has the opportunity to review and make revisions to the documents. Councilman Sexton made a motion to extend the moratorium on the placement of wireless communication towers to August 27, 2001. Councilman Durry seconded the motion and it passed with a unanimous vote of the Council.

I. Health and Sanitation Ordinance Sections 14.67, 14.68, 14.69. Mayor Perkins stated the Health and Sanitation Ordinance Section 14.67 requires every person owning, residing on or having charge or control of any premises or vacant lot within the city to keep the weeds, grass and vegetation cut to within twelve (12) inches of the ground. Section 14.68 provides for the city to give notice to the owner or tenant of premises. Section 14.69 provides for the city to do such work at the expense of the owner and file a lien in the Tax Collector's Office. Mayor Perkins stated the process to identify property owners to provide notice of the violation is a lengthy one. Due to the excessive amount of rain, the grass on these lots is overgrown making a haven for snakes, rats and other dangerous inhabitants. The Mayor asked the Council to amend the Health and Sanitation Ordinance Section 14.68 to delete the phrase "within fifteen (15) days from the date of such notice." Mayor Perkins asked that this amendment be in effect for ninety days (90) and stated it would allow city workers to proceed with cutting the lots and identifying and billing the property owners at a future date.

II. CITY ATTORNEY'S REPORT

I. Health and Sanitation Ordinance Sections 14.67, 14.68, 14.69.

Councilwoman Franklin made a motion to declare a state of emergency and to suspend the rules for immediate action to amend the Health and Sanitation Ordinance Sections 14.68 and 14.69. Councilwoman Martin seconded the motion and on roll call vote, the motion to suspend the rules passed with a unanimous vote of the Council. Councilwoman Franklin then made a motion to amend the Health and Sanitation Ordinance to delete "within fifteen (15) days from the date of such notice." Councilwoman Martin seconded the motion and on roll call vote, the motion passed with a unanimous vote of the Council.

J. Claim of George Grayson vs City of Selma. Attorney Nunn stated he has talked with Mr. George Grayson about settling the claim he has filed against the City alleging a lack of egress and ingress to his home. Attorney Nunn stated he is proposing the City pay to lay pipe in the ditch in front of his house if he will sign a release. Attorney Nunn will report to the Council on this matter at the next meeting.

III. ORDINANCE TO PRESERVE AND PROTECT SELMA'S HISTORY

President Evans asked Councilwoman Franklin for her recommendation on the Ordinance to Preserve and Protect Selma's History. Councilwoman Franklin asked that this ordinance remain on first reading for continuation.

IV. INSURANCE COVERAGE FOR POLICE DEPARTMENT EMPLOYEES

Mayor Perkins stated the two employees of the Selma Police Department were contractual until 1999 when they were placed on the City's payroll on a temporary basis. Mayor Perkins stated he concurs with the recommendation to upgrade their status to permanent so they can receive all employment benefits. Councilwoman Crenshaw made a motion to change the two employees to a permanent status making them eligible for insurance benefits. Councilwoman Sewell seconded the motion and on roll call vote, the motion passed with a unanimous vote of the Council.

V. WIMG REPORT

Councilwoman Franklin informed the Council that she is the incoming President of the National League of Cities Women in Municipal Government. The annual WIMG Conference will be held this year in Phoenix, Arizona from July 24th through July 27th. Councilwoman Franklin asked the Council to approve travel expenditures for City Clerk Jackie Smith to attend the conference to assist in the planning process for next year's conference to be held in Selma. Mayor Perkins stated he was not properly informed and is not in favor of the City Clerk accompanying Councilwoman Franklin on this trip. The Mayor recommended sending the Council Secretary. Councilwoman Crenshaw suggested Councilwoman Franklin meet with Mayor Perkins and discuss this matter with him in detail. President Evans suggested a brief meeting after the Council meeting to discuss the details of the WIMG Conference.

VII. R.I.F. UPDATE

Councilwoman Sewell thanked all the volunteers for supporting the R.I.F. summer distribution project. Councilwoman Sewell stated the project was a huge success with some eight hundred children being encouraged to read by receiving free books. The total expended on this project from the Special Projects Fund was \$1,913,39.

VIII. FINANCIAL REPORT

Finance Director Bob Sanders presented the Council with the June 30th financial report. President Evans asked Mr. Sanders to discuss the report, in detail, at the next Council work session.

IX. SUTTLE VOLUNTEER FIRE DEPARTMENT

Councilwoman Franklin informed the Council that she is in receipt of a letter from Dr. Park Chittom stating the Board of Director of God's Miracle Ranch is not in a position at this time to utilize the surplus fire truck due to problems associated with acquiring property. Councilwoman Franklin stated Mr. Dewayne Beason, President of the Suttle Volunteer Fire Department came before Council with a proposal to accept the surplus fire truck and put it into service. Mr. Beason stated the Suttle Volunteer Fire Department is only thirteen miles from the Dallas County line and they would be glad to assist in Dallas County when called. Councilwoman Franklin made a motion to declare the fire truck surplus property and donate it to the Suttle Volunteer Fire Department. Councilwoman Martin seconded the motion and it passed with a unanimous vote of the Council. Councilwoman Sewell asked that Whitehall is considered for any future donations of surplus equipment.

X. STANDING COMMITTEE REPORTS

RECREATION COMMITTEE REPORT

A. All-Star Tournament Teams. Councilman Randolph informed the Council that Selma will be represented by the 13-year-olds and the 15/16-year-olds in all-star tournament play. The 13 years olds will be playing in Guntersville and the 15/16-year-olds will be playing in Enterprise.

ADMINISTRATIVE COMMITTEE REPORT

A. National Organizers Alliance Conference. Councilwoman Crenshaw informed the Council that she attended the National Organizers Alliance Conference in California from June 27th through July 2nd. Councilwoman Crenshaw stated she would like to share information with the Council on "How to Organize People."

PUBLIC SAFETY COMMITTEE REPORT

The Public Safety Committee report was informational only.

COMMUNITY DEVELOPMENT COMMITTEE REPORT

A. Riverview Association. Councilwoman Martin stated the Riverview Association has been formed to keep the Historic District clean and report code violations.

PUBLIC WORKS/GENERAL SERVICES COMMITTEE REPORT

Councilman Sexton stated he would be visiting other cities over the next two weeks to obtain information and see what garbage pick-up services they are providing.

X. CARL C. MORGAN, JR. LIAISON REPORT

Mr. Carl C. Morgan, Jr., liaison for municipal government, provided a brief report on activities of the past month. Mr. Morgan's report was informational only and contained congressional information as it relates to fiscal appropriations.

XI. LIBERATION SUMMER PROJECT

President Evans informed the Council that Mr. Kobi Little made a request to appear before the Council to request funding assistance for the Liberation Summer Project. Mr. Little had to leave before he was called to present and a letter explaining the project was distributed to Council members. The letter states the interns would like to do two murals in the City of Selma to beautify the community and inspire young people to tell the story of our city. Mayor Perkins stated he would try to locate funds to assist with this project.

XII. OTHER REPORTS AND ANNOUNCEMENTS

A. Funeral Services for Mrs. Addie Lily Roberson. Councilwoman Crenshaw informed the Council of funeral services for her aunt, Mrs. Addie Lily Roberson to be held at 12 noon on Saturday, July 14th at the First Baptist Church. Mrs. Roberson was a renowned community leader and civil rights pioneer.

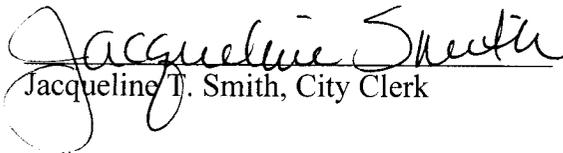
B. Council Work Session. President Evans informed the Council that he will be out of town and unable to attend the Council meeting on Monday, July 23, 2001. Several Council members indicated they would be out of town and unable to attend the Council work session on Thursday, July 19, 2001. A consensus of the Council agreed to change the Council work session to Monday, July 16, 2001 at 8:00 a.m.

There being no further business to come before the Council, on motion made and duly seconded, the Council voted by unanimous consent to adjourn at 7:50 p.m.



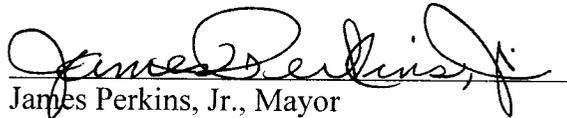
George P. Evans, President

ATTEST:



Jacqueline T. Smith, City Clerk

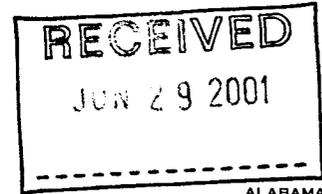
APPROVED:



James Perkins, Jr., Mayor



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL



BILL PRYOR
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June 28, 2001

Honorable Jimmy L. Nunn
Attorney, City of Selma
Post Office Box 450
Selma, Alabama 36702-0450

COPY

Municipalities – Attorneys Fees -
Dallas County

A municipality is not required to pay the legal expenses incurred by an employee to appeal a disciplinary action to the personnel board. A municipality may pay the legal fees if the city council determines that: (1) the city has a proper corporate interest in the action; (2) the actions allegedly committed were done in the discharge of official duties; and (3) the official acted honestly and in good faith. A city may also pay the legal expenses in anticipation of litigation if the city council determines that it is in the best interests of the city to settle the anticipated litigation.

Dear Mr. Nunn:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Selma.

QUESTION

Is there any law that requires the City of Selma to pay attorney's fees of an employee when the employee, at his own will, hires an

attorney to represent him during a personnel disciplinary hearing?

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FACTS AND ANALYSIS

Your request states that the personnel rules of the City of Selma allow an employee to appeal a disciplinary action to the personnel board. The assistant chief of police was suspended by the Mayor of Selma for five days. The assistant chief of police appealed the suspension to the personnel board and requested a hearing. The assistant chief hired an attorney to represent him in the disciplinary hearing. The Personnel Board ruled that the Mayor has the authority to suspend an employee but that the suspension was not warranted in this case. The assistant chief was reimbursed his lost pay, and the suspension was removed from his personnel file. The assistant chief, through his attorney, has requested that the City pay the legal expenses incurred by the assistant chief, or he will file suit to recover the legal expenses. The City's personnel policies do not address payment of legal fees on behalf of employees who appeal disciplinary actions to the personnel board.

* A municipality is not required by statute or case law to pay the legal expenses incurred by an employee to appeal a disciplinary action to the personnel board. In fact, a municipality should not pay legal expenses that are clearly *ultra vires* or where no benefit inures to the municipal corporation. *Greenough v. Huffstutler*, 443 So. 2d 886, 890 (Ala. 1983). A municipality is authorized to pay the legal expenses to defend city officials or officers if the municipality determines that: (1) the city has a proper corporate interest in the action; (2) the actions allegedly committed were done in the discharge of official duties; and (3) the official acted honestly and in good faith. *City of Montgomery v. Collins*, 355 So. 2d 1111 (Ala. 1978); Opinion to Honorable Ronnie Brazzell, Chairman, Elmore Water Authority, dated September 8, 1997, A.G. No. 97-00273; Opinion to Honorable Houston Kennamer, Chairman, Jackson County Commission, dated August 18, 1996, A.G. No. 86-00333. A proper corporate interest may include the risk of litigation against the city. *Id.* A city may, if it determines that payment would be within the best interests of the city, pay the expenses in settlement of anticipated litigation. See Opinions to Honorable Lanelle Beadlescomb, Mayor, Town of Billingsley, dated April 28, 1994, A.G. No. 94-00157; to Honorable Tina M. Stamps, Attorney, Dothan City Board of Education, dated August 3, 1995, A.G. No. 95-00277.

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CONCLUSION

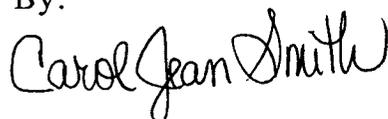
* A municipality is not required to pay the legal expenses incurred by an employee to appeal a disciplinary action to the personnel board. A municipality may pay the legal fees if the city council determines that: (1) the city has a proper corporate interest in the action; (2) the actions allegedly committed were done in the discharge of official duties; and (3) the official acted honestly and in good faith. A city may also pay the legal expenses in anticipation of litigation if the city council determines that it is in the best interests of the city to settle the anticipated litigation.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General

By:



CAROL JEAN SMITH
Chief, Opinions Division

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