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June 28, 1990  
Annual Selectmen  
7/2/90.

## STATEMENT OF POLICY RE INDEMNIFICATION

Purpose: The purpose of this Statement of Policy is to advise Town Officials, paid and volunteer, and Town Employees (herein collectively referred to as a Town Employee, masculine being deemed feminine, and the singular also as plural wherever the context permits) on what the Town's policy is, and the procedure for implementing it, responsive to any request which a Town Employee might make for the provision of legal assistance and/or indemnification if any legal action is brought against him, individually, for actions alleged to have been taken in the course of his employment.

Policy: In the event that a Town Employee is named as a defendant in any legal action where the allegation involves his municipal duties, it is the policy of the Board of Selectmen (1) to protect the Town's interests; and (2) insofar as is consistent with (1) and within the legal authority of the Town, to provide legal assistance to the Town Employee in the defense of the matter, and otherwise ensure that the Town Employee is not jeopardized in his personal affairs on account of his employment (including volunteerism) with the Town.

Procedure: The procedure for implementing the foregoing policy for the purposes hereinabove set forth shall be as follows:

1. A Town Employee who has been named as a defendant in any legal action, and who wishes to be represented and/or indemnified through the Town, shall forthwith make such request in writing to the head of his department. Among whatever supporting matters the Employee deems appropriate to include within his request, it shall include, at a minimum, providing the Town with all relevant legal papers; the full circumstances shall be

explained; and the request shall include whether or not the Town Employee asserts, or waives, any defense he may have had that his actions were taken pursuant to an official or unofficial Town policy.

2. The Department Head shall forthwith deliver the request, and related papers, to the Executive Secretary, who shall forthwith determine whether any of the Town's insurers shall be notified. If the Executive Secretary determines that one or more of the Town's insurers shall be notified, he shall forthwith immediately give such notification and future action on the Town Employee's request shall await the insurer's response.

3. If no insurance is involved, or, if insurance has been involved, at such appropriate time as the Executive Secretary shall determine, the Executive Secretary shall request the Department Head to determine the following:

(1) Whether the acts are alleged to have been taken within the course of employment;

(2) What the facts are in actuality, insofar as can be determined; and

(3) Whether, based on the allegations, and the actual facts as then known, and all other relevant considerations, any reasons exist as to why the Town Employee's request shall not be granted. The Department Head shall then make a recommendation on the matter to the Executive Secretary. If no reasons exist to support a recommendation against granting the request, the Department Head shall recommend favorably.

4. The Executive Secretary shall forthwith review the Department Head's recommendation, make such further investigation as he shall determine, confer with Town Counsel as appropriate, and thereupon make a favorable or unfavorable recommendation to the Board of Selectmen. In making his final recommendation, the Executive Secretary shall consider among other things the following:

(1) Whether the Town appears to be the appropriate party to defend pursuant to G.L. c.258, §2 (a negligent or wrongful act or omission).

(2) Whether the Town appears to be obligated to defend a Town Employee erroneously named as a defendant in an action covered by G.L. c.258, §2 (§2 provides, generally speaking, that the Town "shall" represent and indemnify under such circumstances).

(3) Whether the Town is authorized to indemnify, pursuant to G.L. c.258, §9 (an intentional tort, or loss by reason of any act or omission constituting a violation of the civil rights of any person, if the Town Employee was at the time acting within the scope of his official duties or employment and provided that the Town Employee's actions were not grossly negligent, or in a willful or malicious manner).

(4) Whether the Town is required to indemnify, pursuant to G.L. c.258, §13, accepted by the Town on March 2, 1981 (the Town "shall" indemnify municipal "officers, elected or appointed" by reason of any act or omission, except an intentional violation of civil rights of any person, if the official at the time of such act or omission was acting within the scope of his official duties or employment).

The Executive Secretary shall confer with Town Counsel in reaching his final recommendation when appropriate.

5. The Board of Selectmen shall act on the request, duly considering the Executive Secretary's recommendation. If the request is not granted, the Town Employee shall be notified forthwith.

*Defend* 6. If the Board of Selectmen grants the request, a further determination shall at that point be made whether representation through Town Counsel's office is appropriate. Town Counsel shall be consulted on the question to ensure, among other things, that there is perceived to be no actual or potential conflict of interest between the Town Employee's interests and those of the Town. If no such conflict appears, legal representation shall be offered through Town Counsel's office, and the Employee shall also be notified of his legal right to obtain counsel of his own choosing, but at his own expense. If a conflict is perceived, the Board of Selectmen, after considering the wishes of the employee, shall forthwith decide whether they wish to choose the attorney to represent the employee or not. If the decision is made to choose the attorney, they shall do so, making such fee and other arrangements with such attorney as the Selectmen shall deem appropriate, notifying the Employee of the selection and also his right to engage other counsel, but at his own expense. If the Selectmen determine not to choose the attorney, but rather to leave the selection to the Town Employee, the Selectmen shall decide the extent to which the Town shall provide compensation towards the private attorney's fees, which shall in the usual case be a rate not to exceed the lower of the rate paid by the Town to Town Counsel or the attorney's actual rate, although circumstances may exist warranting a different method of compensation.

7. In advising the Town Employee of the offer of representation, the Board of Selectmen shall advise the Employee whether an appropriation exists in fact for the purpose, or not. In the latter case, the offer of representation to be made by the Board of Selectmen shall be subject to appropriation by Town Meeting, and the Town Employee shall be specifically notified of such.

8. In all cases where representation is offered, whether through Town Counsel's office or otherwise, the Employee shall also be notified that:

(1) The right is reserved to withdraw from further representation at any time when the facts turn out to be other than as believed at the time the offer of representation was made, making the continuing offer of representation contrary to the Statement of Policy as set forth above and/or an inappropriate further use of municipal funds; and

(2) The Town's offer to provide representation does not include any representation that the Town shall indemnify for any adverse judgment nor any other monetary loss that might arise, such further decisions being reserved until final conclusion of the legal proceedings, subject also to further appropriation.

9. Generally:

(1) The Board of Selectmen shall notify the Director of Financial Services, the Chairman of the Advisory Committee and any other appropriate Town Official, in confidence and without naming the Town Employee involved, as soon as possible after the incurring of any obligation to

represent as hereinbefore set forth, keeping those officials informed as substantial events occur, in anticipation of any request for appropriation which might have to be made.

(2) The Board of Selectmen shall periodically review the Town's risk management program.

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