

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LEWIS COUNTY, WASHINGTON**

**RESOLUTION REGARDING DEFENSE AND
INDEMNITY OF COUNTY OFFICERS AND
EMPLOYEES**

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RESOLUTION NO. 19- 1167

WHEREAS Washington law permits and in some instances requires a County to provide legal representation for any of its officers or employees who are sued for actions taken in good faith and in the course of their duties; and

WHEREAS Washington law further obliges a County to indemnify its officers or employees for non-punitive damages awarded against them in such cases; and

WHEREAS Lewis County would have difficulty recruiting and retaining qualified officials and employees, were it to deny such people indemnification and defense for acts or omissions of the type addressed in this Resolution; and

WHEREAS Lewis County Resolution 03-042 may not address all circumstances in which a County officer or employee may be entitled to such defense and indemnification.

NOW THEREFORE BE IT RESOLVED that Resolution 03-042 hereby is repealed and replaced by the following:

Section 1: REQUEST FOR INDEMNIFICATION AND DEFENSE. In all instances in which Washington law so permits, and whenever a civil action or proceeding seeks a monetary award against any officer or employee of the County or against such officer or employee's marital community, the Board of County Commissioners shall consider a request to indemnify and defend the officer or employee and his (or her) marital community – provided that the employee shall provide the Risk Manager or designee with a copy of the summons and complaint *within five working days* of service upon the employee, along with a written request for defense and indemnification, for determination by the Board.

Section 2: LEGAL DETERMINATION OF THE PROSECUTING ATTORNEY. The Prosecuting Attorney shall advise the Board whether the challenged actions and/or omissions arose while the officer or employee was in good faith performing or purporting to perform his (or her) official duties.

Section 3: GRANT OF INDEMNIFICATION AND DEFENSE BY BOCC. If the Board finds that the challenged actions and/or omissions of the employee were taken in good faith, and were taken either in the course and scope of his (or her) official duties, or in the good-faith belief that they

were in the course and scope of the person's official duties, the Board shall grant the officer's or employee's request. Upon the grant of such request, the necessary expenses of defending the action or proceeding shall be paid by the County, and any final non-punitive money judgment or other non-punitive monetary award against said officer or employee or said marital community shall be paid by the County, unless the finder of fact determines that the acts or omissions in question did not arise from good faith performance of official duties. The Board of County Commissioners may agree to pay an award for punitive damages.

Section 4: CONDUCT OF THE DEFENSE, SETTLEMENT NEGOTIATIONS. Where a County officer or employee or his (or her) marital community is granted a defense and indemnification pursuant to Section 3 of this Resolution, the Prosecuting Attorney shall be responsible for defense of that person or marital community and shall direct recommendations, if any, for settlement of such actions to the Board of County Commissioners. In arriving at any such recommendation for settlement, the Prosecuting Attorney shall consult with the County agency most involved with the litigation and/or named as a party to the action or proceeding and with the County's Risk Manager. The Prosecuting Attorney may permit such other legal counsel as the Prosecuting Attorney may deem appropriate to provide such defense and to assume responsibility for such settlement negotiations.

Section 5: PROHIBITED ACTS BY THE AFFECTED OFFICER OR EMPLOYEE. Except as specifically directed by the Prosecuting Attorney or other lawyer representing the County, no County agency and no County officer or employee may engage in any of the following acts with respect to actions or proceedings defended pursuant to this resolution:

- a) Negotiate or otherwise affect the settlement of such an action or proceeding;
- b) make an admission of liability involving such action or proceeding; or
- c) discuss the action or proceeding, or the facts or circumstance giving rise thereto, other than with or as directed by the County's attorneys, or as required by law.

Should the officer or employee engage in any of these acts the Board of County Commissioners may cease to provide him (or her) with a defense, and it may decline to indemnify the officer or employee as otherwise provided for by this Resolution.

Section 6: DEFENSE IN ADMINISTRATIVE PROCEEDINGS. Whenever a County officer or employee is required to defend actions taken in good faith and in the course and scope of his (or her) duties before an administrative agency, or before a professional regulatory body of the State of Washington, the Prosecuting Attorney may provide representation at County expense.

Section 7: DEFINITION. For purposes of this Resolution the term *officer or employee of the County* means any of the persons for whose acts Lewis County is or may be liable pursuant to RCW 4.96.010, including any of the following:

- a) the elective officials of Lewis County enumerated in RCW 36.16.030, or any of their deputies;
- b) employees and former employees of the County;
- c) members of boards, commissions, committees, or similar entities which operate under the County's supervision or control;
- d) members of County boards, commissions, committees, or similar entities created by State statute as sub-agencies of Lewis County, or which the County is required by State statute to maintain; and
- e) volunteers rendering service to the County at the request of a County elected official, or at the request of the County Manager or a designee of the County Manager.

Section 8: EXCLUSIONS. Legal services shall not be provided by the Prosecuting Attorney, or otherwise at County expense, to officers or employees of the County to defend a charge of official misconduct or to defend the right to hold elected office. In this Section the term *official misconduct* does not include an action taken in the good faith belief that it is legally authorized or required.

Section 9: DEFENSE IN RECALL PETITION HEARINGS. As required by RCW 4.96.041(3), and subject to the approval of both the Board of County Commissioners and the Prosecuting Attorney, the expenses of defending an elected official of the County in a judicial proceeding pursuant to RCW 29A.56.140 and any appeal therefrom shall be paid by the County. The defense shall be provided by the Prosecuting Attorney, or by other counsel approved by the Prosecuting Attorney.

Passed in regular session this seventeenth day of June 2019.

APPROVED AS TO FORM AND SUBSTANCE:
Jonathan Meyer, Prosecuting Attorney

J. David Fine

By: J. David Fine, Deputy Prosecutor

BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON

Robert C. Jackson

Robert C. Jackson, Chair

ATTEST:

Edna J. Fund

Edna J. Fund, Commissioner

Rieva Lester

Rieva Lester, Clerk of the Board

Gary Stamper

Gary Stamper, Commissioner



BOCC AGENDA ITEM SUMMARY

Resolution:

BOCC Meeting Date: Jun 17, 2019

Suggested Wording for Agenda Item:

Agenda Type: Consent

Resolution regarding defense and indemnity of county officers and employees

Contact

Rieva Lester

Phone:

Department:

Action Needed: Approve Resolution

Description

Resolution regarding defense and indemnity of county officers and employees

Cover Letter To

David Fine