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August 1, 2022

Board of Yakima County Commissioners
Yakima County Courthouse
128 N. 2nd Street
Yakima, WA 98901

Re.: Indemnification and Reimbursement – OPMA

Dear Board:

In 1978, the Board of Yakima County Commissioners delegated to the Yakima County Prosecutor the task of making the final determination concerning whether, in an action for damages, acts or omissions performed by a county officer, official, agent or employee were made in good faith and within the scope of that person's official county duties. YCC 2.98.050. Additionally, RCW 4.96.041 states the following:

(1) Whenever an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer, employee, or volunteer may request the local governmental entity to authorize the defense of the action or proceeding at the expense of the local governmental entity.

(2) If the legislative authority of the local governmental entity, or the local governmental entity using a procedure created by ordinance or resolution, finds that the acts or omissions of the officer, employee, or volunteer were, or in good faith purported to be, within the scope of his or her official duties, the request shall be granted. If the request is granted, the necessary expenses of defending the action or proceeding shall be paid by the local governmental entity. Any monetary judgment against the officer, employee, or volunteer shall be paid on approval of the legislative authority of the local governmental entity or by a procedure for approval created by ordinance or resolution.

Currently, you, the Commissioners, are facing two lawsuits that have been filed dealing with the Open Public Meetings Act, RCW 42.30. The two lawsuits, *Angie Girard, Citizen of Washington vs. County of Yakima, et alia*, No. 21-2-00768-39, and *Arthur West vs. Yakima County Council, et al.*, No. 21-2-00879-39, are pending court hearings to determine whether the members of the Board violated provisions of the Open Public Meetings Act. One Board member, Ron Anderson, has settled his part of the lawsuit with Plaintiff Arthur West prior to any finding of a violation. Commissioner Anderson was not included in the suit filed by Ms. Girard.

Furthermore, as you are aware, the Board is a named party as well as you three in your individual and private capacities. Once again, Comm. Anderson was only named personally in the West lawsuit which has been settled. Based upon you being sued in your private capacity, it was my advice, along with our Corporate Counsel Division, that you hire private counsel to defend and protect your private interests. Subsequently, all three of you obtained counsel as we directed. Up to this time, those counsel have been paid at your own expense. All three of you have formally asked that I determine whether you should be reimbursed and indemnified in these lawsuits under YCC 2.98 and RCW 4.96.041. Currently, no finding of violations has been made involving the lawsuits with any of you as they continue to work their way through the court system.

After reviewing the above law and examining the facts underlying the two suits named above, it is my decision to have Yakima County reimburse and indemnify all three of you under YCC 2.98. You were performing your official duties in good faith. Additionally, the goal is to limit taxpayer expense. The necessary expenses of defending these two suits shall be paid by Yakima County as well as any final monetary settlement. Comm. Anderson will be reimbursed accordingly for his settlement and attorney costs. This decision has precedent and is consistent with the previous decision to pay for the settlement of an alleged OPMA case filed by attorney Elizabeth Hallock in *Elizabeth Hallock v The Board of Yakima County Commissioners and Commissioners Mike Leita, Ron Anderson and Rand Elliott*, No. 18-2-02034-39, on August 11, 2020.

Additional factual and legal analysis is necessarily limited in this letter due to the current and ongoing litigation involving these two lawsuits. This letter will be forwarded on to your respective counsel as well.

If you have any questions, please do not hesitate to ask.

Sincerely,



Joseph A. Brusic
Yakima County Prosecutor