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ORDINANCE NO. 342, 1989

An Ordinance

providing for the defense of Clallam County  
officers and employees

BE IT ORDAINED BY THE BOARD OF CLALLAM COUNTY COMMISSIONERS:

Chapter 3.34

LEGAL REPRESENTATION FOR CLALLAM COUNTY  
OFFICERS AND EMPLOYEES

Sections:

- 3.34.010 Definitions
- 3.34.020 Legal Representation
- 3.34.030 Exclusions
- 3.34.040 Determination of Exclusion
- 3.34.050 Representation and Payment of Claims -  
Conditions
- 3.34.060 Settlements
- 3.34.070 Legal Representation of Marital Community
- 3.34.080 Effect of Compliance with Conditions
- 3.34.090 Failure to Comply with Conditions
- 3.34.100 Reimbursement of Incurred Expenses
- 3.34.110 Conflict with Provisions of Insurance  
Policies
- 3.34.120 Pending Claims

C.C.C. 3.34.010. Definitions. Unless the context indi-  
cates otherwise, the words and phrases used in this chapter  
shall have the following meanings:

(1) "Employee" means any person who is or has been em-  
ployed by the county in either a full- or part-time capacity  
and for compensation or as a volunteer.

(2) "Official" means any person who is serving or has  
served as an elected county official and any person who is  
serving or has served as an appointed member of any board,  
commission or committee created by any elected county  
official.

C.C.C. 3.34.020. Legal Representation. As a condition of service or employment with Clallam County, the county shall provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the county, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such officer or employee resulting from any conduct, act, or omission of such official or employee performed or omitted on behalf of the county in their capacity as a county official or employee, which act or omission is within the scope of their service or employment with the county. Such legal representation shall be provided by the Prosecuting Attorney's Office or by an attorney designated by the Prosecuting Attorney pursuant to RCW 36.27.040.

C.C.C. 3.34.030. Exclusions. The obligations assumed under this chapter by the county and the county Prosecuting Attorney's Office shall not apply to:

(1) Any dishonest, fraudulent, criminal, or malicious act of an official or employee;

(2) Any act of an official or employee which is not performed on behalf of the county;

(3) Any act which is outside the scope of an official's or employee's service or employment within the county; or

(4) Any lawsuit brought by or on behalf of the county.

The provisions of this chapter shall have no force or effect with respect to any accident, occurrence or circumstance for which the county or the official or employee is insured against the loss or damages under the terms of any valid county purchased insurance policy.

C.C.C. 3.34.040. Determination of Exclusion. The determination of whether an official or an employee is entitled to

a defense by the county under the terms of this chapter shall be made by the Prosecuting Attorney. There shall be no appeal from such determination, except to the Superior Court by means of an action for declaratory judgment.

C.C.C. 3.34.050. Representation and Payment of Claims - Conditions. The provisions of this chapter shall be applicable, provided that the following conditions are met:

(1) In the event of any incident or cause of conduct potentially giving rise to a claim for damage or the commencement of a suit, the official or employee involved shall as soon as practicable give the county Risk Manager written notice thereof, identifying the official or employee involved, information with respect to the date, time and place of the incident or conduct giving rise to the claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.

(2) Upon receipt thereof, the official or employee shall forthwith deliver any claim, demand, notice, or summons or other process relating to any such incident or conduct to the county Risk Manager and the Prosecuting Attorney. Said official or employee shall cooperate with the Prosecuting Attorney or any attorney designated by the Prosecuting Attorney, and upon request, assist in making any settlements of any suits and enforcing any claim for any right of subrogation against any persons or organization that may be liable to the county or its officers or employees because of any damage or claim of loss arising from the incident or course of conduct.

(3) Such officials or employees shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining attendance of witnesses and

do all things necessary to defend against the claim or suit; and

(4) Such officials or employees shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense, other than for first aid to others at the time of an incident or course of conduct giving rise to any such claim, loss or damage.

C.C.C. 3.34.060. Settlements. The county may make settlement of any claim or suit as it deems expedient.

C.C.C. 3.34.070. Legal Representation of Marital Community. If an official or employee is entitled to a defense pursuant to this chapter, and the lawsuit in which he/she is named as a party also names his/her spouse or marital community, the defense obligation pursuant to this chapter shall also extend to the named spouse and/or marital community.

C.C.C. 3.34.080. Effect of Compliance with Conditions. If legal representation of any official or employee is undertaken under this chapter, all of the conditions of representation are met, and a judgment is entered against the official or employee, or a settlement made, the county shall pay such judgment or settlement; provided that the county may, at its discretion, appeal as necessary such judgment.

C.C.C. 3.34.090. Failure to Comply with Conditions. In the event that any official or employee fails, neglects or refuses to comply with any conditions of section 3.34.050, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions of this chapter shall be inapplicable, and have no force or effect with respect to any such claim or litigation.

C.C.C. 3.34.100. Reimbursement of Incurred Expenses.

(1) If the Prosecuting Attorney determines that an official or employee does not come within the provisions of this chapter, and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the county shall pay any judgment rendered against the official or employee and costs or expenses, including reasonable attorney's fees, incurred in defending against the claim. The county shall pay any costs or expenses, including attorney's fees, incurred in obtaining the determination that such claim is covered by the provisions of this chapter.

(2) If the Prosecuting Attorney determines that a claim against a county official or employee does not come within the provisions of this chapter, and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the county shall be reimbursed for costs or expenses, including reasonable attorney's fees, incurred in obtaining the determination that such claim is not covered by the provisions of this chapter.

C.C.C. 3.34.110. Conflict with Provisions of Insurance Policies. Nothing contained in this chapter shall be construed to modify or amend any provision of any policy of insurance where any county official or employee thereof is named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this section shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant this chapter, it being the intent of this chapter and section to provide complete coverage outside and beyond insurance policies which may be in effect, while not

compromising the terms and conditions of such policies by any conflicting provision contained in this chapter.

C.C.C. 3.34.120. Pending Claims. The provisions of this chapter shall apply to any pending claim or lawsuit against an official or employee, or any such claim or lawsuit hereafter filed, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit.

ADOPTED this 31 day of January, 1989.

BOARD OF CLALLAM COUNTY COMMISSIONERS

Lawrence Gaydeski  
Lawrence Gaydeski

Dorothy Duncan  
Dorothy Duncan

David Cameron  
David Cameron

ATTEST:

Karen Hores  
Clerk of the Board

cc: All Departments  
Minutes  
File