

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

August 22, 2008

**Committee
Report No.**

08-102

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on August 5, 2008, makes reference to County Communication No. 07-9, from the Council Chair, regarding indemnification authorization.

By correspondence dated July 23, 2008, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "INDEMNIFYING THOMAS PHILLIPS, GARY YABUTA, MELVIN W. LORENZO, GREGG A. ROWE, AND CORRINE C. CHANG, IN BARRY H. SHAPIRO V. MAUI COUNTY POLICE DEPARTMENT, ET AL., CIVIL NO. CV07-00517 SPK KSC". Attached to the request is a copy of the complaint, filed on October 11, 2007. The purpose of the proposed resolution is to indemnify Thomas Phillips, Gary Yabuta, Melvin W. Lorenzo, Gregg A. Rowe, and Corrine C. Chang, police officers, in the case.

Your Committee notes that the Plaintiff in the case, Barry H. Shapiro, has sued the named officers alleging various violations of his civil rights and malicious prosecution.

Your Committee notes that Sections 52D-8 and 52D-9, Hawaii Revised Statutes, require the counties to provide legal representation for police officers when the officers are sued for acts committed in the performance of their duties.

Your Committee further notes that under general legal principles, the County may be responsible for the tortious acts of its employees.

At its meeting, your Committee met with a Police Inspector from the Department of Police and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided a brief overview of the case. She indicated that the allegations arise from Mr. Shapiro's arrest on October 7, 2005, for

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operating a vehicle under the influence of an intoxicant. She noted that the Police Commission considered the matter and found that each police officer acted within the course and scope of employment and, therefore, is entitled to legal representation provided by the County.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the proposed resolution.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "INDEMNIFYING THOMAS PHILLIPS, GARY YABUTA, MELVIN W. LORENZO, GREGG A. ROWE, AND CORRINE C. CHANG, IN BARRY H. SHAPIRO V. MAUI COUNTY POLICE DEPARTMENT, ET AL., CIVIL NO. CV07-00517 SPK KSC" be ADOPTED.

Adoption of this report is respectfully requested.

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Resolution

No. _____

INDEMNIFYING THOMAS PHILLIPS, GARY YABUTA,
MELVIN W. LORENZO, GREGG A. ROWE, AND CORRINE C. CHANG,
IN BARRY H. SHAPIRO V. MAUI COUNTY POLICE DEPARTMENT, ET AL.,
CIVIL NO. CV07-00517 SPK KSC

WHEREAS, Thomas Phillips, Gary Yabuta, Sgt. Melvin W. Lorenzo, Gregg A. Rowe, and Corrine C. Chang, who are police officers and employees of the County of Maui, Department of Police, have been named as defendants in their individual capacities in the case of Barry H. Shapiro v. Maui County Police Department, et al., filed in the United States District Court on October 11, 2007 and received by the Department of the Corporation Counsel on April 21, 2008; and

WHEREAS, the complaint alleges loss of income, emotional distress, and deprivation of his rights under the Fifth and Fourteenth Amendments of the U.S. Constitution and violations of his rights under 42 U.S.C. § 1983 for his arrest, detention confinement, search, conspiracy, and prosecution; and

WHEREAS, based upon a preliminary investigation of this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended to the Council that the body act to indemnify the Defendants for any damages that may be assessed against them in the above-referenced lawsuit, said damages being requested within the Complaint are:

Resolution No. _____

general, special, punitive, and costs of suit, including attorneys' fees; and

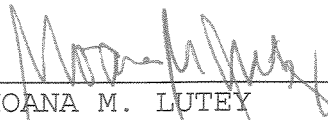
WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would be in the best interest of the County of Maui to indemnify the Defendants in the above-referenced lawsuit, including punitive damages; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That Thomas Phillips, Gary Yabuta, Melvin W. Lorenzo, Gregg A. Rowe, and Corrine Chang are indemnified by the County of Maui for any damages that may be assessed against them in the above-referenced lawsuit, including punitive damages; and

2. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Chief of Police.

APPROVED AS TO FORM AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui

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