



Committee for Professional Policing

4200 Cedar Avenue, Suite 5

Minneapolis, MN 55407

[info@insurethepolice.org](mailto:info@insurethepolice.org)

## MEDIA RELEASE

For Immediate Release

Contact: Michelle Gross 612-703-1612

# SEGAL LEGAL OPINION ON POLICE INSURANCE AMENDMENT IS ABSOLUTELY WRONG

In yet another attempt to circumvent democracy, City Attorney Susan Segal issued an opinion today in which she falsely claimed the Police Insurance Amendment is illegal and urged the City Council to block it from the ballot. She did so by mischaracterizing the city's obligations to the Police Officers Federation of Minneapolis and by claiming that taxpayers are legally obligated to bailout officers in court when they commit misconduct.

### Understanding the Police Insurance Amendment

The Police Insurance Amendment modifies an existing section of the Minneapolis City Charter. This section requires police officers to be licensed as required by state law and outlines their powers. The Police Insurance Amendment adds a requirement to this section that officers carry professional liability insurance coverage—and allows the city to pay the base rate of the insurance. However, any premium increases resulting from the officer's history must be paid by the individual officer, providing a consequence for engaging in misconduct and an incentive not to do so in the future.

### The Police Insurance Amendment Does Not Conflict with State Statutes

Minn. Stat. § 466.07 requires the city to defend and indemnify officers while they are acting within their scope of duty and in good faith. Minn. Stat. § 471.44 applies this same responsibility specifically to police officers. Police misconduct and brutality, by definition, fall outside of the scope of duty because they involve violation of city policy, the law, and/or willful or malicious violation of people's rights.

The city is **not** required to defend and indemnify officers acting outside of their duty. However, the city routinely covers settlements and judgments for misconduct, forcing taxpayers to bail out rogue officers. Under the Police Insurance Amendment, the city indemnifies when it is required to, but is prohibited from indemnifying in any other case.

"If you believe Ms. Segal's reasoning, the city is liable for all police conduct even when it violates the law or policies. The only way that's true is if police misconduct is part of the job—a proposition we can't accept," stated Dave Bicking, Chair of the Committee for Professional Policing.

### The Police Insurance Amendment Does Not Conflict with PELRA

City Attorney Segal has attempted to give legal justification for the Police Federation's claim that the Police Insurance Amendment violates the existing terms of their contract and is therefore illegal under the Public Employment Labor Relations Act (PELRA). However, the Police Insurance Amendment does not conflict with their contract's provisions for city coverage of employee liability—the contract cites the same statute (466.07) discussed above, with the same exceptions. The Police Insurance Amendment creates a new requirement for police union members, and the details of who would pay for it will be negotiated. The requirement itself is a matter of public policy and the new Charter language trumps the contract, as has been clarified in several MN court decisions.

## **The Police Insurance Amendment Does Not Conflict with Public Policy**

Misconduct is defined as an act outside of the scope of duty by violation of law or city policy, or willful or malicious violation of the rights of another. It is wrong for taxpayers to routinely [bailout the same rogue officers repeatedly](#), even when the officer is clearly in the wrong. However, this practice of blanket indemnification is routine in Minneapolis.

Blanket indemnification of misconduct creates three main public policy problems:

- **WRONGFUL PROSECUTION:** The City Attorney's Office is incentivized to pursue criminal charges that may not be justified by the facts of the case since successful prosecution may create a "Heck bar." Under the US Supreme Court decision *Heck v. Humphrey*, conviction on a criminal offense creates a bar to most police misconduct suits.
- **BROKEN COMPLAINT SYSTEM:** The Office of Police Conduct Review and Internal Affairs are incentivized not to sustain and recommend discipline for complaints, lest doing so validates a potential lawsuit and provides documentation of prior officer misconduct. Through the 1<sup>st</sup> quarter of 2016, the OPCR received 1323 complaints, yet only one complaint from a community member was sustained and disciplined.
- **FEW INCENTIVES FOR REFORM:** The city does not engage in the kinds of risk management strategies that insurance companies typically apply. This is because insurance companies have a wider array of claims experiences and engage in studies to understand risk and because they must control costs to ensure profits.

**The Police Insurance Amendment addresses these public policy issues** because it applies the proven strategy of professional liability insurance to the profession of policing. Insurance companies have the experience and financial incentive to sponsor reform of police practices and push for effective training that would reduce police violence and misconduct. Officers would benefit from guaranteed coverage and if the city chooses to cover the base rate—and we hope it will—officers would be granted a new benefit. Officers would be incentivized to engage in quality policing that increases community safety and improves police-community relations. As problem officers experience higher premiums or become uninsurable and leave, officers who serve with honor will experience a better working environment. Minneapolis will become an innovative "city on the hill" that attracts applicants from across the state, improving the overall quality of future classes of officers.

## **City's Efforts to Circumvent Direct Democracy**

Throughout the process of verifying the Police Insurance Amendment petition, city officials have engaged in illegal stalling and disenfranchisement. They violated Minn. Stat. § 410.12 and MN Rules 8205 in the hopes of blocking our amendment from being placed on the ballot. Ms. Segal's specious opinion is a continuation of this tactic.

The City Council has two responsibilities related to charter amendments. 1) They have a duty to place the amendment on the ballot once a sufficient number of signatures have been submitted and 2) they have the duty to craft the ballot language. It is our expectation that the City Council will not violate additional state laws during the Committee of the Whole vote on August 3<sup>rd</sup>.

"We're not backing down," stated Dave Bicking. He added, "If the city continues its efforts to disenfranchise voters or keep the Police Insurance Amendment off the ballot, we will mount a legal challenge to ensure the right of the community to vote on this important police accountability measure."

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