

THE CITY OF PROVIDENCE  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

# RESOLUTION OF THE CITY COUNCIL

No. 500

Approved October 23, 1990

RESOLVED, that the City Council is hereby authorized to indemnify GLORIA L. LINCOURT, CITY CONTROLLER for any sums that she may be liable for in the McELROY AND ATIGIAN cases, and in any cases that may be brought against her by the Retirement Board, provided that Gloria Lincourt is not finally determined by the Court to have been acting outside the scope of her official duties or employment and/or to have been acting in bad faith.

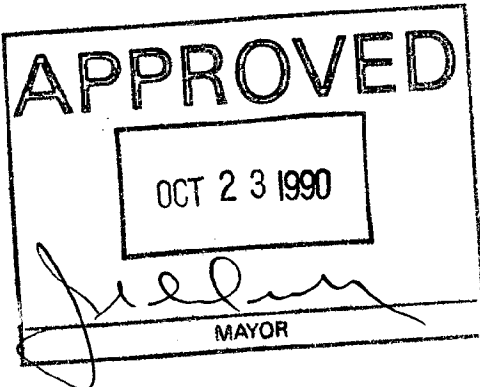
IN CITY COUNCIL

OCT 18 1990

READ AND PASSED

  
PRES.

  
CLERK



THE COMMITTEE ON  
FINANCE

---

Approves Passage of  
The Within Resolution

*Rose M. Mendonca*  
Clerk Chairman

Oct. 15, 1990



Department of Law  
*"Building Pride In Providence"*

October 5, 1990

Councilman David G. Dillon  
Finance Chairman  
c/o City Council Office  
City Hall  
Providence, Rhode Island 02903

RE: INDEMNIFICATION OF MUNICIPAL OFFICIALS

Dear Councilman Dillon:

In your letter to me dated October 3, 1990, you ask that I advise "as to when and how the City can undertake to indemnify these individuals from suffering personal losses for their official acts."

I hopefully have responded below to each of the above, generally and specifically.

The Rhode Island General Assembly, in 1986, passed legislation which has been codified into the General Laws at Title 45, Chapter 15, Section 16, as amended during 1988, which reads as follows:

45-15-16. Indemnity of public officials, employees or elected officials. -Any town or city council or any fire district may, by ordinance or otherwise, indemnify any and all elected or or appointed fire district officials, public employees, fire district employees, officials, members of boards, agencies and commissions appointed by town councils or any fire district or by any other person exercising appointing authority delegated to them by said town council; whether or not the elected or appointed fire district officials, employees,

officials, or members are paid, from all loss, cost, expense, and damage, including legal fees and court costs, if any, arising out of any claim, action compromise, settlement, or judgment by reason of any intentional tort or by reason of any alleged error or misstatement or action or omission, or neglect or violation of the rights of any person under any federal or state law, including misfeasance, malfeasance, or nonfeasance or any act, omission, or neglect contrary to any federal or state law which imposes personal liability on any elected or appointed fire district official, employee, official, or member, if the elected or appointed fire district official, employee, official, or member, at the time of the intentional tort or act, omission or neglect, was acting within the scope of his or her official duties or employment. The town council or any fire district may decline to indemnify any elected or appointed fire district official, employee, official, or member for any misstatement, error, act, omission, or neglect if the same resulted from willful, wanton, or malicious conduct on the part of the elected or appointed fire district official employee, official, or member. The indemnity may be provided by such city or town council or any fire district on a case by case basis or by ordinance of general application. Any ordinance or agreement to indemnify may include, among other things, the provision of legal counsel at the expense of the city or town and/or the reimbursement for attorneys' fees and other expenses incurred in connection with the conduct of the defense, including payment of the judgment thereon. Any city or town council or any fire district may establish a fund into which it may deposit monies appropriated, from time to time, and the fund may be used to defer the costs incurred by any city or town in carrying out the purposes of this section. The amounts contained in that fund at the end of any fiscal year may be carried forward to subsequent fiscal years without any reappropriation except as otherwise may be specifically provided by the ordinance creating that fund or funds. City or town councils are specifically authorized to extend the indemnify contained herein to members of the school committee and any other person employed by the school department of any city or town and any person appointed to any board, agency, or commission by the school committee, whether or not the person is compensated for his or her services.

Summarizing the above, it provides that the city council may

indemnify any elected or appointed official for all loss, cost, expense, and damage, including legal fees and court costs arising out of any claim by reason of any intentional tort or by reason of any alleged error or misstatement or action or omission, or neglect or violation of the rights of any person under any federal or state law, including misfeasance, malfeasance, or nonfeasance or any act, omission or neglect which imposes personal liability provided that at the time of the intentional tort, or act, omission or neglect the person was acting within the scope of their official duties or employment. ✓

The statute goes on to provide that the City Council may decline to indemnify the official if it is determined that the person acted with willful, wanton or malicious conduct.

The statute permits the granting of indemnification both on a case-by-case basis or of general application.

Lastly, the statute allows the provision of legal counsel at the expense of the city and or the reimbursement by the city.

This statute is in substantial accord with the general status of the law throughout the United States, as it is discussed in McQuillan, Municipal Corporations, 3rd Edition Revised, Vol. 3, Section 12.137 entitled Reimbursing or Indemnifying Officer.

McQuillan, states the issue as follows, "where a municipal officers incurs a loss in the discharge of an official duty in a matter in which the corporation has an interest, and in the discharge of a duty imposed or authorized by law, and in good faith, the municipal corporation has the power to appropriate funds to reimburse that officer. Unless expressly forbidden. Roseville v. Tulley 55 Cal App 2d 601, 131 p.2d 395; Frick v. Abell, 198 Colo 508, 602 p2d 852; City of Norwich v. Silverberg 200 Conn 367, 511 A.2d 336.

McQuillan, goes on further to state that this (re-imbursement) is also permissible when it is ultimately determined that the municipal official in good faith exceeded his authority. Plantations Industrial Supply v. Leonelli; 374 A.2d 1031. It is permissible for a municipal corporation where the municipal officer acting within his scope and authority has to defend themselves against an action arising out of a particular incident Filippone v. Mayor of Newton, 16 Mass App 417 452 NE2d 239.

McQuillan, concludes that "(I)n short, as a matter of public policy, public indemnification of public officers serves in part to encourage public service. Filippone v. Mayor of Newton 392 Mass 622, 467 NE2d 182.

The "true test" in deciding to reimburse or indemnify is stated in McQuillan's as follows:

Did the act done by the officer relate directly to a matter in which the city had an interest; or affect municipal rights or property or the right or property of the citizens which the officer was charged with the to protect or defend.

If the answer to the above is yes, then in order to justify the expenditure of municipal funds for a loss occasioned by a municipal officer three things must appear:

(1) The officer must have been acting in a manner in which the corporation has an interest;

(2) that officer must have been acting in the discharge of a duty imposed or authorized by law; and

(3) the officer must have acted in good faith.

Hotchkiss v. Plunkett, 60 Conn 230, 22 A 535; Bailey v. Town of Stratford, 29 Conn. Supp 73, 271 A.2d 122, Golaine v. Cardinale, 142 NJ Super 385, 361 A.2d 593; McQuillan Section 12.137.10.

I will attempt below to apply the test to the different factual matters that you have outlined in your letter.

NANCY DERRIG: This matter (Raymond Tomasso v. Nancy Derrig) arises out of the publication of an article written by Nancy Derrig entitled "Tomorrow's Carousel" which appeared in the Editorial Section of the Providence Journal which is attached for your information. Without reaching the merits of the action, which claims that the attached article is libellous, and the defense to the action, I certainly feel that indemnification is appropriate as:

1. The article was written by the municipal official about a matter that the City has an interest in and it pertains to city property which she has a duty to act accordingly.

2. See above.

3. Under R.I.G.L. <sup>45-2-18</sup> and the Home Rule Charter Ms. Derrig as Superintendent is charged with the responsibilities to protect the interest of the park and its contents.

4. While this is a factual matter for a court to decide I believe that the Finance Committee can make its inquiry of Ms. Derrig to satisfy itself on this element.

GLORIA LINCOURT: These are as of this writing technically two matters which have been brought by members of the Retirement System against Ms. Lincourt as well as other municipal officials (Mayor, John Simmons and Stephen Napolitano are the others).

In the first matter James Betz, et al v. Paolino, et al this matter may by the time this meeting takes place be moot for the following reasons. In the written decision and judgment which was entered the claim against Lincourt, Paolino and Napolitano was denied. While the City has appealed from that portion of the Order that is directed

towards it, Plaintiff's have not. The time for filing their appeal (and it is doubtful if one will be filed) will according to my calculations expire on October 15th.

The other matter McElroy and Atigan have been submitted to the Superior Court on an agreed statement of facts and legal memorandum. Nowhere within the statement of facts or memorandum was it stated or agreed that Ms. Lincourt committed any act which could support a finding of personal liability against her. However, without delving on the merits, applying the test to the facts:

1. The matter which gives rise to the litigation is the actions of the retirement board, which by virtue of her position as City Controller she is a member and which the City has a strong interest in.

2. See a above

3. See 1 above

4. Again, this is a question that ultimately the court may have to decide again; however, I believe the Finance Committee can inquire of Ms. Lincourt to satisfy itself on this element.

LOUIS R. STRAVATO: This was a lawsuit which was brought by a land developer (Vincent Mesolla) against former councilman Stravato arising out of Mr. Stravato's appeal to the zoning board of the decision by the Director of Department of Building Inspections granting the developer a building permit.

The action against Mr. Stravato was dismissed by the Superior Court without any liability found against Mr. Stravato.

This matter is before you on the issue of reimbursement of Attorney's fees.

Utilizing the same test, above, it is my opinion that

1. Mr. Stravato was at the time an elected official concerning a



matter within his ward concerning a topic that the City had an interest in.

2. See 1 above


3. As the Zoning Board and ultimately the Superior Court did decide Mr. Stravato had an interest in either individually or as a councilman

4. Given the lack of findings of the Superior Court both in the suit brought against Mr. Stravato as well as the appeal of the decision of the Zoning Board brought by Mr. Stravato as to his bad faith, it must be presumed that he acted in good faith.

#### CONCLUSION

Hopefully, as a result of this long dissertation, you will find your task easier.

Very truly yours,

  
Edward C. Clifton,  
City Solicitor

ECC/sms

# RESOLUTION OF THE CITY COUNCIL

No. 501

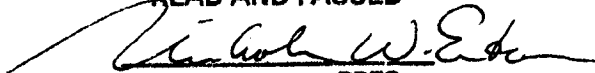
*Approved* October 23, 1990

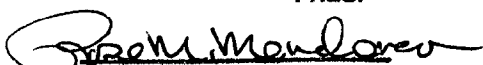
RESOLVED, that the City Council is hereby authorized to indemnify NANCY L. DERRIG, SUPERINTENDENT OF PUBLIC PARKS for any sums that she may be liable to the Plaintiff, RAYMOND A. TOMASSO, arising out of a lawsuit which has been filed and is currently pending in the Providence Superior Court captioned as follows: Raymond A. Tomasso vs. Nancy L. Derrig, C.A. No: 90-857, provided that Nancy L. Derrig is not finally determined by the Court to have been acting outside the scope of her official duties or employment and/or to have been acting in bad faith.

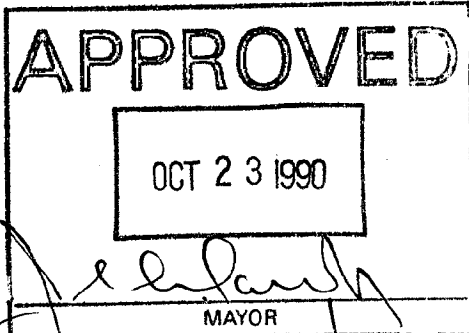
IN CITY COUNCIL

OCT 18 1990

READ AND PASSED

  
PRES.

  
CLERK



IN CITY COUNCIL  
Sept. 6, 1990  
FIRST READING  
REFERRED TO COMMITTEE ON  
Rose M. Menlove CLERK

FINANCE

THE COMMITTEE ON  
FINANCE

Recommends

Be Continued

Rose M. Menlove  
Clerk

Sept 27, 1990

THE COMMITTEE ON  
FINANCE

Approves Passage of  
The Within Resolution

as amended

Rose M. Menlove  
Clerk Chairman

Oct 15, 1990

Councilman Dillon (By Request)

NANCY L. DERRIG  
SUPERINTENDENT OF PARKS



JOSEPH R. PAOLINO, JR.  
MAYOR

## Department of Public Parks

*"Building Pride In Providence"*

July 30, 1990

The Honorable David G. Dillon, Chairman  
Finance Committee of the  
Providence City Council  
292 Waverly Street  
Providence, Rhode Island 02909

Dear David:

As you may know, Mr. Raymond Tomasso has sued Nancy Derrig, Superintendent of Parks, for liable in connection with an Op-Ed piece she authored for the Providence Journal. Even though the commentary was written on Parks Department stationery, cleared through the City Solicitor's Office, and Mrs. Derrig was clearly identified as Parks Superintendent, she is being sued personally, rather than in an official capacity.

City Solicitor Edward Clifton has taken on the case and has assured us that there is virtually no chance of losing. However, we are concerned about the change of administration and the possibility that this case could become mired in politics.

The Board of Park Commissioners would like the City Council to indemnify Mrs. Derrig regarding this issue. I understand from Mr. Clifton that this has been done in the past and that such items are referred to the City Finance Committee for recommendation. Obviously without question, Mrs. Derrig would be very happy to appear before the Finance Committee to outline the facts of the case and to "defend herself".

I would appreciate anything you could do to expedite this issue.

Sincerely yours,

A handwritten signature in cursive script that reads "Matthew J. Smith".

MATTHEW J. SMITH  
Vice Chairman  
Board of Park Commissioners

MJS/rh

COUNCILMAN  
DAVID G. DILLON  
DEPUTY MAJORITY LEADER  
292 WAVERLY STREET  
PROVIDENCE, RI 02909  
Res. 273-7572



COMMITTEES

Finance  
Chairman

Urban Redevelopment,  
Renewal and Planning

Providence  
Redevelopment  
Agency

City of Providence, Rhode Island

October 3, 1990

Mr. Edward C. Clifton  
City Solicitor  
Providence, Rhode Island 02903

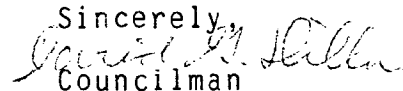
Dear Mr. Solicitor:

I have in the Finance Committee, a Resolution requesting the City to indemnify Nancy Derrig, Superintendent of Parks, in a suit which was brought as a result of an article she wrote for the Providence Journal.

In addition, I have the City Controller, who has expressed concern about the fact that she has been sued in her individual capacity in a number of actions involving the Retirement Board, as well as the City Treasurer in his individual capacity and the Mayor in his individual capacity.

You may recall that we also have a Resolution with regard to Councilman Stravato which again involves suits brought against public officials individually, for actions resulting from their official duties.

Could you kindly advise as to when and how the City can undertake to indemnify these individuals from suffering personal losses for their official acts.

Sincerely,  
  
Councilman  
David G. Dillon  
Finance Chairman

DGD:jb

# Editorial

FRIDAY, FEBRUARY 10, 1989

## Tomorrow's carousel

**Nancy L. Derrig**

SEVERAL letters have been printed recently regarding the carousel in Roger Williams Park. There have been many errors recounted which I would like to take this opportunity to correct.

First of all, the Department of Public Parks has no intention of eliminating the carousel ride from the park. Our intention, quite simply, is to upgrade the current carnival ride with one which is more in keeping with the grandeur and beauty of Roger Williams Park.

Some letter writers have recounted their childhood carousel rides with great affection. I would like to point out, however, that the carousel they are so nostalgically remembering was sold by the current concessionaire. That carousel was a vintage Philadelphia Toboggan Company, 66-jumping horse carousel. This carousel was sold without the knowledge or permission of the Department of Public Parks.

In fact, according to former Public Parks Superintendent Ralph Hartman, that carousel was actually removed after work hours so as to evade the notice of Park officials. The existing carousel is a metal carnival ride which was installed in 1973 after the historic ride was sold.

The childhood carousel which added so much to this park is now at an amusement park in Virginia.

The carousel building itself is in a shocking state of disrepair: The floorboards are rotted through, the historic doors have been replaced with roll-up garage doors, and a great deal of the stained glass has been replaced. Even the tin roof is not original, and is structurally unsafe. The Department of Public

Parks has repeatedly attempted to have the carousel owners respond to its concerns.

The concessionaire has steadfastly refused to invest any money in restoring or improving the building. In fact, after an automobile crash through the doors last winter, the concessionaire repaired and painted the damaged area only after repeated telephone calls from the Department of Public Parks.

We have officially stated that if the carousel building should have any remaining historical elements, the department would be happy to incorporate these elements into the new building. But leaving this deteriorated structure in place endangers the children who visit it.

Why hasn't the concessionaire improved the carousel building? That is a good question, and one which confuses me, since apparently business is quite brisk and their rent exceptionally low. From 1944 until 1988, the rental for the carousel was a mere \$1,600 per year. At 75 cents per ride, I believe that there must have been capital funds available for the improvements to the building. But no improvements were made — including something so basic as a new coat of paint.

In addition, the termination of the concessionaire's lease could hardly have been a surprise to him since he had been on a month-to-month lease since 1972. I am the third of four superintendents to have attempted to improve the quality of the carousel, and also to attempt to develop an area across the way known as the Children's Entertainment Center.

The decision to move all the children's activities into one area was made for several simple reasons:

First, safety. Park streets were built with the horse and buggy in mind, and because of a lack of parking, cars congest both sides of the

street, making it a scary proposition to escort toddlers to the carousel.

I believe it is a great advantage to parents of young children to pull into a parking lot and be able to let their children ride on a carousel, have a snack, or play on the new children's playground in safety. The new play equipment is a special benefit; after all, not everyone has 75 cents for a carousel ride, and as a service to parents, the playground is, of course, free of charge.

Finally, Roger Williams Park is the site of many extensive renovations, including new road work, handicapped access to buildings and a new parking area, lighting, statutory repair and improvements to our extensive lake system. In addition, we are in the midst of major expansion of the Roger Williams Park Zoo which, in 1990, will welcome a major African Exhibit, including an elephant and a giraffe.

We are also in the process of renovating the Museum of Natural History, and have reopened our Planetarium, which is the only public planetarium in the entire state. We have added two greenhouses to our Charles H. Smith Greenhouse Complex, and many other plans are on the drawing board.

The future of Roger Williams Park is bright indeed. Its unique Victorian character is being preserved, and at the same time, adapted to contemporary needs. We are upgrading the carousel, preserving what we can of the old carousel building (if given any reasonable opportunity by the concessionaire) and we are offering children and parents a safe place to play with at least one free attraction.

I think those are pretty fine goals.

Nancy L. Derrig is Superintendent of Public Parks in Providence.



Department of Law  
*"Building Pride In Providence"*

October 11, 1990

Councilman David Dillon  
c/o City Council Office  
City Hall  
Providence, Rhode Island 02903

RE: INDEMNIFICATION OF MUNICIPAL OFFICERS

Dear Councilman Dillon:

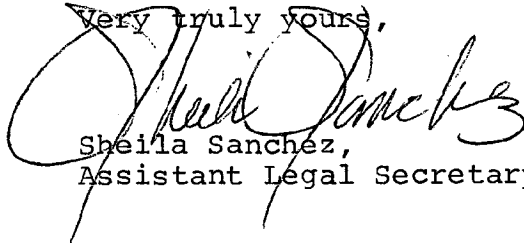
Enclosed please find a copy of the response of Edward Clifton with respect to the above entitled matter.

Please be advised that the enclosed is only a draft of his response and he has not had a chance to review the same.

Since the matter is down for Monday, Mr. Clifton did want you to get a general idea of what his opinion is.

If there is anything that is unclear (keep in mind that he has not reviewed its contents), you should be able to take it up with him on Monday morning when he returns from vacation.

Very truly yours,

  
Sheila Sanchez,  
Assistant Legal Secretary

sms/  
Enclosure; (1)



Department of Law  
*"Building Pride In Providence"*

October 5, 1990

Councilman David G. Dillon  
Finance Chairman  
c/o City Council Office  
City Hall  
Providence, Rhode Island 02903

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I hopefully have responded below to each of the above, generally and specifically.

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1. The article was written by the municipal official about a matter that the City has an interest in and it pertains to city property which she has a duty to act accordingly.

2. See above.

3. Under R.I.G.L. and the Home Rule Charter Ms. Derrig as Superintendent is charged with the responsibilities to protect the interest of the park and its contents.

4. While this is a factual matter for a court to decide I believe that the Finance Committee can make its inquiry of Ms. Derrig to satisfy itself on this element.

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4. Given the lack of findings of the Superior Court both in the suit brought against Mr. Stravato as well as the appeal of the decision of the Zoning Board brought by Mr. Stravato as to his bad faith, it must be presumed that he acted in good faith.

#### CONCLUSION

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Very truly yours,

Edward C. Clifton,  
City Solicitor

ECC/sms