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Chapter 61

LEGAL SERVICES

61.005 General Policy.
County personnel, particularly those working in the Courthouse, should be especially careful not to give legal advice to persons making inquiries regarding legal questions. There are limited exceptions to this policy. In the performance of assigned duties, County officers and employees may interpret statutes, ordinances, orders or rules which they are by law assigned to administer. Good judgment must be used in the performance of this duty and the advice of Legal Counsel should be sought whenever there is any question about the correct legal interpretation of a statute, ordinance, order, or rule. County officers and employees may also identify certain statutes, ordinances, orders or rules which they know to exist and which may benefit an inquiring person when such statutes, ordinances, orders or rules are related to the function performed by such officer or employee. Good judgment must also be exercised in these matters, keeping in mind also that members of the public can understandably become upset if these inquiries are not carefully handled. Supervisors, Department Directors and Legal Counsel, as necessary, should be consulted when particular fact situations create a problem. *(Revised by Order No. 82-10-13-1; Effective 10.13.82; 16-02-09-03, 2.9.16)*

Sources of Legal Services

61.010 General.
When unable to assist persons making inquiries by providing the answer requested, an acceptable alternate would be to suggest where the person making the inquiry might go to receive the advice he requests. A common and safe referral is the Oregon State Bar. *(Revised by Order No. 82-10-13-1; Effective 10.13.82; 16-02-09-03, 2.9.16)*

61.015 Questions Involving a Private or Government Organization.
Persons should be directed to that organization first as a normal rule. If the person does not know what governmental or private organization is involved, you may assist by helping him or her to consult the Oregon Blue Book or various directories of local services and organizations which are available in Lane County, some of which are:

- Community Services Handbook for Lane County
- Chamber of Commerce Director
- Information and Referral Service for Lane County
- Telephone Directory
- Internet *(Revised by Order No. 82-10-13-1; Effective 10.13.82; 16-02-09-03, 2.9.16)*

61.020 Complaints or Questions Involving Criminal Law.
The Office of the District Attorney should be consulted on general questions regarding the prosecution of criminal offenses. However, if a person has a particular complaint to make regarding a particular incident, and no case has been filed with the District Attorney's Office, they should be first referred to the appropriate state, county, local, or police agency with jurisdiction over the complaint.. *(Revised by Order No. 82-10-13-1; Effective 10.13.82; 16-02-09-03, 2.9.16)*

61.030 Civil Matters.
(1) Referrals of Questions from the Public:

(a) Normally persons will be referred to their own attorney on questions arising out of civil disputes between private parties or between private parties and government or private organizations. Admittedly, it is sometimes difficult to determine when a person is asking a question that involves a civil dispute between private parties, particularly when the government officer or employee being asked has some relation to the subject matter involved in the question. Great care must be taken, nevertheless, to avoid giving someone legal advice that one is not qualified to give or misleading someone who may rely on a County officer or employee, and in the process incur legal liability for the County.

(b) If a person must be referred to an attorney, they should be referred to the Oregon State Bar Association for assistance. If persons to be referred are unemployed or otherwise without funds, they should call Legal Aid Service-Lane County-Inc., on noncriminal matters.

(c) Persons with consumer problems should be directed to the consumer protection section of the Oregon Department of Justice.

(2) County Counsel should be consulted by County employees on legal questions arising from the performance of their duties or relating to their employment status. Such questions should be brought to County Counsel through the Department procedures established to send legal questions to that office. County Counsel provides legal advice on civil matters to the Board of Commissioners and to County Departments. Legal questions on civil matters from the public should be first referred to the appropriate outside agency or to the appropriate County Department. If a County Department needs legal advice based on a question from the public, that question shall be brought to County Counsel through the appropriate Department's procedure.

(3) The attorneys in the Office of Legal Counsel are delegated the authority to accept service of complaints on behalf of Lane County. *(Revised by Order No. 82-10-13-1; Effective 10.13.82; 85-3-13-3, 3.13.85; 16-02-09-03, 2.9.16)*

61.040 Private Attorneys for Departments in Civil Matters.

(1) Conflict Situations.

(a) Departmental Conflicts. In situations where a Department may have a legal problem in a civil matter that creates a conflict of interest or the appearance of a conflict of interest for County Counsel, the Department shall state the nature of the problem in a written request to County Counsel. County Counsel shall review the request to determine whether an ethical conflict exists. If County Counsel determines that an ethical conflict exists for the Office of Legal Counsel, the Department shall be authorized, subject to the availability of budgeted funds, to retain a private attorney under terms consistent with the Lane Manual. Any determination that a conflict exists shall be referred to the Board of Commissioners at its next regularly scheduled meeting. In situations involving a County Commissioner, that Commissioner shall not participate in the decision to authorize a private attorney.

(b) Office of Legal Counsel Conflicts. Whenever an attorney in the Office of Legal Counsel perceives a potential conflict of interest, the attorney shall discuss the conflict with the County Counsel. If the County Counsel determines that a conflict exists, the County Counsel shall take appropriate action to eliminate the conflict and to ensure the County is adequately represented. Such action includes, but is not limited to, retaining a private attorney, subject to the availability of budgeted funds. Any determination that a conflict exists shall be referred to the Board.

(c) Outside Conflicts. When an attorney or law firm identifies a likely conflict of interest arising out of representation of a public or private client and Lane County or a Lane County employee or agent, and requests that the County waive the

conflict, County Counsel shall analyze the risks of waiver for the County Administrator and the Commissioners. Absent specific objection by a Commissioner after a reasonable period of time, the County Administrator is delegated authority to waive the conflict. If a Commissioner has objection, the matter may be considered in executive session by the Board.

(d) Whether or not a legal conflict of interest exists for purposes of this chapter will be determined by referencing the Oregon Rules of Professional Conduct and court opinions and Oregon State Bar opinions on the subject.

(2) Attorney Disciplinary Matters. In disciplinary complaints against attorneys employed by the County involving conduct in the course of employment, the Department shall state the nature of the complaint in a written request to the Board to retain a private attorney. The request shall be considered at the next regularly scheduled meeting of the Board. Complaints against attorneys of the Office of Legal Counsel will be handled following the same procedure as requests for "Defense for Claims Outside the Oregon Tort Claims Act."

(3) Emergency Situations.

(a) Legal Actions Against Individual Public Officials. If it is necessary to protect the County, to protect the insurance carrier or because a conflict of interest has been determined to exist, County Counsel may authorize, subject to the availability of budgeted funds, the public official to retain a private attorney until a written request is brought before the Board.

(b) Emergencies. Whenever it is necessary to protect the County's interest in any litigation or threatened litigation, County Counsel may authorize or employ a private attorney, subject to the availability of budgeted funds, until a timely written request is brought to the Board.

(4) Expert Advice. In situations where County Counsel determines that the Office of Legal Counsel does not have the expertise to handle a particular legal problem, or due to workload demands upon the Office, does not have the time to adequately handle a legal problem, County Counsel is authorized, subject to the availability of budgeted resources, to select a private attorney to perform the work on a personal services contract, in compliance with the procedures of Lane Manual Contract Policies.

(5) Defense Pursuant to Oregon Tort Claims Act. The County shall honor its duty to defend and indemnify its officers, agents and employees according and pursuant to the Oregon Tort Claims Act. The County acknowledges this includes a duty to defend and indemnify for claims of violations of federal civil rights acts. County Counsel shall be responsible for performing the appropriate investigation or causing an investigation to be performed, if it appears that the alleged act is outside the obligation of the County to defend and indemnify. The duty to defend and indemnify does not apply in the case of malfeasance in office, or willful or wanton neglect of duty.

(6) Defense for Claims Outside the Oregon Tort Claims Act.

(a) The County, in its discretion, may provide a defense for claims asserted against a county employee, officer, or agent which arise out of an alleged act or omission occurring in the performance of duty and which are outside the County's duty to defend under the Oregon Tort Claims Act, upon receipt of a written request for defense from the individual, and pursuant to the conditions and limitations described below.

(b) The employee, officer or agent shall cooperate with the County and counsel in the same manner as required by the Oregon Tort Claims Act.

(c) The County will reject a request for defense for instances described in (6)(a) where, after an investigation by the County, it is determined that the claim or demand did not occur out of an alleged act or omission occurring in the performance of duty or that the alleged act or omission amounted to malfeasance in office, or willful or

wanton neglect of duty. Upon such rejection, the rights of the employee, officer or agent shall be determined in the same manner as provided by the Oregon Tort Claims Act.

(d) County Counsel shall provide the defense in the instances described in (6)(a), unless an ethical conflict exists or there are other factors which, after consultation with County Counsel, cause the Board to determine that it is in the best interests of the County to authorize engaging private counsel.

(e) Upon approval of the Board of a request for a private attorney, or upon County Counsel's determination that an ethical conflict exists, or in an emergency situation, County Counsel shall authorize, for payment from appropriate budgeted funds, retaining a private attorney under reasonable terms not to exceed $5,000 (Five thousand dollars and no cents) total fee. If it is necessary to exceed the $5,000 (Five thousand dollars and no cents) fee, the fee agreement shall be handled through the normal contract process.

(f) If a judgment is ultimately entered against the individual after the County has provided a defense, the County reserves the right to seek reimbursement, plus interest at the statutory rate, from the individual for any damages paid by the County and the costs of defense.

(7) Nothing in these provisions is intended to create or confer a right or benefit on a plaintiff alleging a civil rights violation by or against the County or a County officer, agent or employee. *(Revised by Order No. 85-3-13-3, Effective 3.13.85; 98-12-2-5, 12.2.98; 02-9-25-10, 9.25.02; 16-02-09-03, 2.9.16)*

Authority for Settlement

61.050 Policy.

The County recognizes that, given the inherent risks of litigation, it is often in its best interest to settle lawsuits, claims, personnel grievances, and appeals promptly. Settlements promote the good will of the County and allow the government to proceed with its business rather than dwelling on past actions. For these reasons, the County encourages reasonable settlements. *(Revised by Order No. 98-12-2-5; Effective 12.2.98; 13-04-23-03, 4.23.13; 16-02-09-03, 2.9.16)*

61.060 Delegation of Authority.

(1) Self-Insured Litigation. The Office of Legal Counsel is responsible for defending the County in litigation unless the case is covered by an insurance policy and the company chooses to employ outside counsel or a conflict of interest exists. After following the appropriate risk management procedures, including identifying the risks involved, the probable costs, the impact of the settlement, and the source of budgeted funds to be used for any payment, the following individuals are delegated the authority to settle litigation up to the described limit and to execute any documents necessary to finalize the settlement.

(a) The County Counsel or their designee - up to $50,000 (Fifty thousand dollars and no cents).

(b) The County Administrator or their designee - up to $100,000 (One hundred thousand dollars and no cents).

(2) Self-Insured Claims. The Risk Manager is responsible for investigating and managing claims for damages against the County unless the claim is covered by an insurance policy and the company chooses to settle the matter with an alternate method. After following the appropriate risk management procedures, including identifying the risks involved, the probable costs, the impact of the settlement, and the source of budgeted funds to be used for any payment, the following individuals are delegated the

authority to settle claims up to the described limit and to execute any documents necessary to finalize the settlement.

(a) The Risk Manager or their designee - up to $50,000 (Fifty thousand dollars and no cents).

(b) The County Administrator or their designee - up to $100,000 (One hundred thousand dollars and no cents).

(3) Grievances and Appeals. Grievances and appeals involve those personnel matters which are proceeding under Lane Manual Personnel Rules or pursuant to a claim for a violation of a collective bargaining agreement through the procedure in said agreement. Any settlement of a grievance or appeal must have the concurrence of all co-employers. After determining the risks involved in proceeding, the probable costs, the impact of the settlement and the source of budgeted funds to be used for any payment, the following individuals are delegated the authority to settle grievances and appeals up to the described limit and to execute any documents necessary to effect the settlement.

(a) Human Resources Director or their designee – up to $50,000 (Fifty thousand dollars and no cents).

(b) The County Administrator or their designee - up to $100,000 (One hundred thousand dollars and no cents).

(4) Self-Insured Workers' Compensation Claims and Litigation. The Human Resources Director, in consultation with the Workers' Compensation Administrator, Risk Manager, and County Counsel is responsible for ensuring that adequate investigation and claim management takes place. The Workers' Compensation Administrator (WCA) in consultation with County Counsel and the Risk Manager shall arrange a pool of appropriate legal counsel. The WCA shall select counsel from the pool when needed for routine workers' compensation litigation. County Counsel will ensure that appropriate legal counsel is retained in cases involving legal matters other than routine workers' compensation litigation. After following the appropriate risk management procedures, including identifying the risks and exposures involved, the probable costs, the impact of the settlement, the source of budgeted funds to be used for any payment and with the written concurrence of legal counsel or County Counsel (if the case here proceeded to litigation), the following persons are delegated the authority to settle claims up to the described limit and to execute any documents necessary to finalize the settlement:

(a) The Risk Manager, in consultation with the Workers' Compensation Administrator, Human Resources Director, Department Director, and County Counsel - up to $50,000 (Fifty thousand dollars and no cents) on disputed claims, to include any and all payments already made on claim other than defense costs; and up to $50,000 on Permanent Partial Disability issues in addition to payments already made or ordered by Workers' Compensation Department on accepted claims.

(b) The County Administrator, in consultation with the Workers' Compensation Administrator, Human Resources Director, Department Director, and County Counsel - up to $100,000 (One hundred thousand dollars and no cents) on disputed claims, to include any and all payments already made on claim other than defense costs; and up to $100,000 on Permanent Partial Disability issues in addition to payments already made or ordered by Workers' Compensation Department on accepted claims.

(c) The Risk Manager and/or Workers' Compensation Administrator may represent Lane County in all workers' compensation mediations and determine agreeable settlement terms. The Risk Manager, Workers' Compensation Administrator, Human Resources Director, Department Director, and County Counsel will consult prior to mediation to determine an acceptable settlement amount. When the settlement is

estimated to exceed the delegated authority limits set above, increased authority shall be requested from the County Administrator or Board of County Commissioners.

(5) Appeal and Settlement of APD Citations and Penalties. It is the policy of Lane County to appeal citations received from the Accident Prevention Division (APD) of the State of Oregon for workers' safety violations whenever there is any reasonable basis for such an appeal. The County Administrator is delegated the authority to appeal APD citations and any associated financial penalties, and to represent Lane County before APD on such matters through hearing. The County Administrator may further delegate this authority in writing to the Risk Manager or Department Director or to their subordinates with the particular knowledge to represent County interests regarding an APD citation and any associated financial penalties. Appeal of APD citations or any associated financial penalties may result in the opportunity for a settlement of contested issues as a result of an informal conference. After evaluating the proposed settlement and the source of budgeted funds to be used for any payment, and after considering the effort, costs and possible benefits of continuing to pursue the appeal to a formal hearing, the following persons are delegated the authority to approve settlements of the appeal of an APD citation and any associated penalty in the amounts below and to execute any documents necessary to effect the settlement:

(a) Risk Manager, or Department Director or their subordinates as authorized by the County Administrator - up to $50,000 (Fifty thousand dollars and no cents).

(b) County Administrator - up to $100,000 (One hundred thousand dollars and no cents).

(6) Recovery of Moneys Owed to Lane County. The County Administrator is delegated the authority to seek recovery and the Risk Manager is responsible for seeking recovery on the County's behalf from those people who damage or steal County property, injure County employees which causes the County to pay time loss, or cause damages by breaking their contract with the County. In many of these cases, the costs of recovery, comparative negligence or disputes in amounts owed can make a settlement of these claims appropriate. The same persons who can settle claims against the County in LM 61 may also approve settlement of claims for amounts owed to the County with the same limits as in that subsection.

(7) Settlement. Prior to the approval of any settlement over $25,000, the Director of the Department responsible for the budgeted funds to be used for payment shall be informed of the proposed action.

(a) Payment of any of the amounts described above is contingent upon approval of the court in those types of cases where such approval is required by statute.

(8) Board of Commissioners Notification/Review.

(a) The Risk Manager shall prepare and distribute to the Board, for the Commissioners' information, quarterly reports describing any settlements approved.

(b) At any time, a Commissioner may consult with the relevant settling authority as to the specific details of a settlement and the reasons for its approval. If the Board is not satisfied with an approved settlement, the settlement shall not be overturned, but the Board may direct a change be made to the settlement process or in the delegation of authority described above to be effective for all future settlements. *(Revised by Order No. 98-12-2-5; Effective 12.2.98; 13-04-23-03, 4.23.13; 16-02-09-03, 2.9.16)*