

LIABILITY RESOLUTION:

WHEREAS, the Town of Windham has always supported and provided insurance coverage for its employees and its elected and appointed officials in connection with any claims asserted against them arising out of the course and scope of their employment or office; and

WHEREAS, due to the increased costs of obtaining liability insurance there is a greater awareness of the potential for claims being asserted against the Town employees and officials; and

WHEREAS, the Board of Selectmen would like to reaffirm the Town's present policy of supporting its employees and officials in cases of claims being asserted against them,

NOW, THEREFORE, BE IT RESOLVED by the Town of Windham Board of Selectmen as follows:

Any elected or appointed official or employee of the Town of Windham who is liable for the payment of any claims or damages, excluding punitive damages, arising out of the course and scope of employment or office shall be entitled to indemnification by the Town provided that the acts or omissions resulting in such liability were done in good faith and without malicious or felonious intent. For the purposes of this resolution, the term "arising out of the course and scope of employment or office" shall not include any action which occurs during a period of time in which the official or employee is engaged in outside employment or is rendering contractual services to someone other than the Town.

Whether the acts were done in good faith, without malicious or felonious intent, and within the course and scope of employment or office shall be determined by the Town, and such determination shall be final for the purposes of the representation and indemnity of this resolution, provided, however, that in the event such representation and indemnity have been denied by the Town, if upon a trial on the merits the Town determines that the official or employee was acting in good faith, without malicious or felonious intent and within the scope of employment or office, the indemnification hereunder shall be granted and reasonable legal expenses incurred in the defense of the claim reimbursed. The Town shall not be liable for any settlement of any such claim or suit effected without its consent and the Town reserves the right to assist any defense and make any settlement of any claim or suit that it deems expedient.

The Town shall have the right and duty to provide legal representation through the Town Attorney, or in its discretion through the selection of outside counsel, to any official or employee sued in connection with any claim for damages or other civil action against such person arising out of the course and scope of employment or office, provided that such official or employee is entitled to indemnification as set forth in this resolution.

Such legal representation shall be provided at no cost to the official or employee, and any official or employee may have his or her own counsel assist in the defense at the sole expense of the official or employee. The official or employee shall cooperate fully with the Town in preparation and presentation of the case, and the failure to cooperate shall waive such official's or employee's right to representation and indemnity.

Any employee or official that becomes aware of a potential claim shall promptly report the basic facts to the Town Administrator and assist in investigations as necessary.

Dated at Windham, NH, this 24th day of October, 1994.

Charles E. McMahon
Galen A. Stearns
Edward J. Milan
Elizabeth A. Dunn
Douglass J. Barker
Board of Selectmen

Re-codified and affirmed by the Board of Selectmen - May 11, 1998

Charles E. McMahon
Douglass L. Barker
Carolyn B. Webber
Margaret M. Crisler
Galen A. Stearns
Board of Selectmen