

MEMORANDUM OF LAW

DATE: February 1, 1988

TO: Richard L. Christopherson, Assistant  
Director, Building Inspection Department

FROM: City Attorney

SUBJECT: Liability of Public Employees

In a memorandum dated January 8, 1988, you inquired whether, in light of recent court decisions, employees of the Building Inspection Department are really protected from liability for mistakes or errors they make in the performance of their jobs. You also asked whether such protection, if it exists for employees, is also provided to former employees for the actions they had taken while employed by the Building Inspection Department.

Section 825(a) of the Government Code of the State of California, which is applicable to The City of San Diego, provides in part as follows:

If an employee or former employee of a public entity requests the public entity to defend him against any claim or action against him for an injury arising out of an act or omission occurring within the scope of his employment as an employee of the public entity and such request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

This requirement which is imposed upon public entities for the defense and indemnification of employees is applicable to both current employees and former employees. Therefore, to the extent that an employee of the Building Inspection Department is named in a lawsuit, the City is obligated to defend and indemnify

the employee for an injury arising out of an act or omission occurring within the scope of their employment.

You should also be aware that when an employee has acted with actual malice, actual fraud, or corruption, the public entity has the right to recover the amount paid from the responsible employee.

A related aspect of your question deals with the issue of

immunities. However, because the applicability of these immunities depends upon the factual circumstances of each situation, no discussion of that subject has been provided in this response.

Finally, in your memorandum to me you referred to recent court decisions. I am unaware of any recent court decisions which have affected the obligation of a public entity to defend and indemnify its employees as described above. If you have citations to any such cases, please share them with me and I will review them to determine whether they are applicable to this subject.

JOHN W. WITT, City Attorney

By

Thomas F. Steinke

Deputy City Attorney

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