



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

R 76-174

BRUCE E. BABBITT  
ATTORNEY GENERAL

August 20, 1976

76-266

Honorable James A. Mack  
Arizona State Senator  
1101 East Broadmor Drive  
Tempe, Arizona 85282

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ARIZONA ATTORNEY GENERAL

Dear Senator Mack:

You have asked our advice whether the Attorney General is required by statute to defend members of public boards, commissions and agencies when they are sued in their individual capacities as a member, and if he is not required to do so, is there any provision for or prohibition against such persons being reimbursed by the State or County for the costs incurred by them in defending themselves.

A.R.S. 41-192.02, passed in 1971, to cover situations such as you describe, provides as follows:

"The attorney general in his discretion is authorized to represent an officer or employee of this state against whom a civil action is brought in his individual capacity until such time as it is established as a matter of law that the alleged activity or events which form the basis of the complaint were not performed, or not directed to be performed, within the scope or course of the officer's or employee's duty or employment."

In my view, this statute gives this office full authority to defend public officials sued in their individual capacities so long as we can make a good faith judgment that the act was committed or performed within the scope of employment. I also believe that the statute authorizes us either to handle the defense directly from this office or to retain outside counsel, either from our professional services budget or by an interagency agreement with the agency in question. By a combination of these approaches, we have managed to cover virtually every lawsuit brought to our attention since I took office. I would hasten to add that the problem is getting worse every year, particularly with the so called "1983" suits



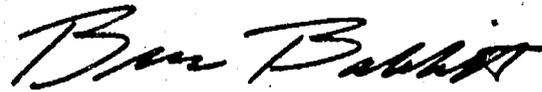
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in federal courts for alleged deprivations of civil rights. Another recent example is the lawsuits against the former Director of Insurance and members and staff of the Corporation Commission arising out of the collapse of Lincoln Thrift.

In a few cases that I know of, individuals have preferred to retain outside counsel on their own; that is of course entirely within their discretion. However, if an individual chooses to retain his own counsel rather than using the services of this office or counsel designated by us, I do not believe that reimbursement is permitted by the statutes. As a matter of general policy I would be opposed to a statute permitting such reimbursement because it would amount to delegating control over litigation without regard to cost or consideration of the State's interest in the particular matter.

Please let me know if we can be of further assistance.

Sincerely,



Bruce E. Babbitt  
Attorney General

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