

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. XI. AB.1&2
4/26/2022

TO: Mayor and City Council

FROM: Kenneth Jordan, Municipal Counselor

1. Joint Resolution with the Oklahoma City Municipal Facilities Authority authorizing the firm Collins, Zorn, & Wagner, P.C. to represent City employee Brandon Lee in the case of *Charles Kaleb Vanlandingham, Administrator For The Estate Of Charles Lamar Vanlandingham v. The City of Oklahoma City, et al.*, United States District Court for the Western District of Oklahoma Case No. CIV-2022-209-D;

AND/OR

2. Enter into executive session on advice of the Municipal Counselor to receive confidential communications from its attorney concerning the above pending litigation, as authorized by 25 O.S. (2021) §307(B)(4), because disclosure would seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

On September 14, 2021, Plaintiff filed an Amended Petition in Oklahoma State Court. After being served, the City removed the lawsuit to the United States District Court of the Western District Federal of Oklahoma on March 15, 2022. This lawsuit is alleged against The City of Oklahoma City, individual defendant, Oklahoma City Police Department Officer Sergeant Brandon Lee, and four John Doe Firefighters, and American Medical Response Ambulance Service, Inc. The Plaintiff is the administrator of the estate of Charles Lamar Vanlandingham. Plaintiff alleges Lee was a City employee and liable under a theory of excessive force, civil conspiracy, and failure to intervene pursuant to 42 U.S.C. §1983 and violations of the Fourth Amendment. At this time, the facts available indicate that Sergeant Lee was acting within the scope of his employment and in good faith in the course of employment during all times of the events set forth in the above-styled lawsuit. This employee has requested that the firm of Collins, Zorn & Wagner, P.C. represent and defend him in this lawsuit.

Title 51 Section 162 of the Oklahoma Statutes requires:

A. [A]ny political subdivision, subject to the procedure requirements imposed by this section, other applicable statute, ordinance, resolution or written policy, shall:

1. Provide a defense for any employee . . . when liability is sought for any violation of property rights or any rights, privileges or immunities secured by the constitution or laws of the United States when alleged to have been committed by the employee while acting within the scope of employment;

Title 11, Section 23-101 states:

...if an action is brought against a municipal employee in any civil action or special proceeding in the courts of this state or of the United States by reason of any act done or omitted in good faith in the course of employment, the governing body of the municipality shall direct the municipal attorney or other designated legal counsel to appear and defend the action or proceeding on the behalf of the employee in accordance with the provisions of Section 11-23-102 of this title.

Further, Article 26 of the Collective Bargaining Agreement between the Oklahoma City Police Department and the Fraternal Order of Police, Lodge 123 states:

All police officers who are sued for violation of constitutional rights while acting in the capacity of a police officer in which they are individually named as Defendants and punitive damages are sought shall have the right to representation by outside counsel. The officer shall be represented by private counsel who is approved by FOP Lodge 123 and the City Council as having expertise in the defense of police officers in civil rights actions. The City agrees to pay the reasonable fees and costs for said services as set forth in the contract between the City and outside counsel and pursuant to 11 O.S § 23-101.

It is the recommendation of this office that outside counsel be retained to represent employee Brandon Lee and that this representation be at the expense of the City subject to the requirements of 51 Okla. Stat. §151, *et seq.*, 11 Okla. Stat. §23-101, *et seq.*, and applicable case law. Further, it is the recommendation of this office that the Officer, at his request, be defended by Collins, Zorn, & Wagner, P.C pursuant to their comprehensive retainer agreement. If additional discussion is necessary, it is the recommendation of the Municipal Counselor that the Mayor and Council enter executive session to discuss the ongoing litigation.