

From: Maxine Murray [<mailto:mmurray@cityofflint.com>]

Sent: Wednesday, October 28, 2015 3:36 PM

To: Cline, Richard (Treasury) <cliner1@michigan.gov>; Dempkowski, Angela (Treasury) <DempkowskiA@michigan.gov>

Cc: Natasha Henderson <nhenderson@cityofflint.com>; Sean Kammer <skammer@cityofflint.com>

Subject: Materials for November 12th RTAB Meeting

Good afternoon,

Please find attached materials for the RTAB meeting being held November 12, 2015.

Thank you.

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Dempkowski, Angela (Treasury)

From: Headen, Frederick (Treasury)
Sent: Friday, October 30, 2015 5:54 PM
To: Connors, Paul (Treasury); Workman, Wayne (TREASURY); Koryzno, Edward (Treasury); Saxton, Thomas (Treasury)
Cc: Storberg, Ann Marie (TREASURY)
Subject: RE: Professional Liability Insurance

Paul:

That would not be my interpretation. You did not indicate how Meadowbrook staff reached the conclusion that governmental immunity no longer would apply to Darnell for acts taken by him while at the City of Flint. I will presume that they read § 20(1) of the Act to apply only to an Emergency Manager currently serving in the local government regarding which litigation arises and concluded it would not apply to Darnell since he no longer is Emergency Manager for the City of Flint. That conclusion may appear reasonable if § 20(1) is read in isolation. However, when read as a whole, § 20 is replete with instances where the term "Emergency Manager" refers to past as well as current occupants of that office.

Section 20 was intended to remedy two shortcomings in Act 72: providing legal representation for Emergency Financial Managers while in office and after *leaving* office. Section 20(2) was intended to address the former and § 20(5) to address the latter, which was of particular concern since two former Act 72 Emergency Financial Managers had been subjected to litigation after leaving office.

With one exception, the Attorney General's Office consistently took the position under Act 72 that it would not provide legal representation for Emergency Financial Managers because they were not State officials. Section 20(2) requires such representation, but only if litigation challenges: (a) the validity of the Act, (b) the authority of a State official or officer acting under the Act, or (c) the authority of an Emergency Manager and even then only if he or she was acting within the scope of his or her authority under the Act. If, hypothetically speaking, litigation were to be filed against Darnell for acts taken by him while at the City of Flint, the Attorney General's Office would be obligated to provide legal representation only if such litigation involved (a) or (c); (b) would not apply because Emergency Managers are neither State officials or officers.

As noted above, § 20(5) would address, again hypothetically speaking, litigation filed against Darnell for acts taken by him while at the City of Flint. If not covered by insurance, his litigation-related expenses, actual and *anticipated*, would be assessed against the City of Flint, if approved by the State Treasurer after determining that Darnell's conduct had been within the scope of his authority and occurred on behalf of a local government while it was in receivership. See § 20(5)(a) and (b).

Let me know should you have further questions.

Fred

From: Connors, Paul (Treasury)
Sent: Friday, October 30, 2015 2:00 PM
To: Workman, Wayne (TREASURY) <WorkmanW@michigan.gov>; Koryzno, Edward (Treasury) <KoryznoE@michigan.gov>; Headen, Frederick (Treasury) <HeadenF@michigan.gov>; Saxton, Thomas (Treasury) <SaxtonT@michigan.gov>