**Proposed "Acknowledgement of Self-Indemnity"**

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| |  | | --- | | **Phil McDuffie** | | | | Jun 16, 2023, 7:30 PM (4 days ago) |
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| |  |  | | --- | --- | | |  | | --- | | to kordscott, michael, George, me | |   Kord,  In reviewing the minutes of the last SB meeting, it’s pretty apparent that you did not understand the intent, nor the contents, of the letter I sent to the SB, on May 19, 2023.  Nowhere in my letter did I state or imply that our Constable doesn’t have the right to carry a firearm. In fact, I stated just the opposite in my letter, and I also stated that I don’t have a problem with him carrying a gun.  That’s his right as a citizen, so please don’t send me the statutes that I’m already aware of.  Since my first letter didn’t elicit a meaningful response, I will try to restate my primary concern. I, as well as a growing number of our fellow citizens, am worried about the financial liability that the town (i.e. us taxpayers) will face in the event that our Constable uses a weapon in the performance of his duties.  And yes, I am aware that the VLCT offers insurance to our town employees, including our constable.  But this insurance is basically there to protect employees from acts of omission and errors in performance of their duties.  If you look closely at the policy, you will see a section where the insurance coverage becomes null and void for any employee who acts outside of their “limits of authority” or breaks a law.  If our constable uses a gun in any manor during the performance of his duties, the insurance company will almost certainly argue that by Vermont statute, he was not an authorized law enforcement officer, and hence, he was acting outside of his limit of authority; consequently, they will very likely withdraw their coverage, unless it is clearly obvious that he was acting solely in self-defense.  But that’s a high hurtle to achieve in this day and age of wrongful-death lawsuits.  If you don’t believe me, check with your (our) lawyer.  What I was hoping to get in response to my letter was at least an acknowledgement that I brought up a number of issues that deserve further consideration.  It’s not only the liability aspect that concerns me, it also affects the character of the town, and how citizens feel about interacting with a constable who’s knowingly carrying a weapon in their presence.  Our constable, who was appointed by you, is the only constable in Windham that I’m aware of who has chosen to openly carry a gun. Whether he knows it or not, he is making a statement to everyone in town, and now that the cat is out of the bag, the SB can’t claim “We weren’t aware that he carried a gun” and hope to get off the liability prize table that litigating lawyers love to chase in times of opportunity.  But obviously, I didn’t get the response I was hoping for. However, I will still offer a potential solution to at least the liability aspect of this dilemma that I hope would enable Windham to keep out of the crosshairs of litigation, should an incident with a firearm occur.  Because believe me, if an incident ever does occur, you can bet there will be litigation.    So here’s my proposal for your consideration-   1. The SB issues a declaration of some sort (Policy? Details are TBD) that specifically states that the Town of Windham does not authorize or condone the carrying of a firearm or lethal weapon by the Constable during the performance of his or her duties.  The document can add several of the points I raised in my previous letter for justification of the policy. It can also include the exception when the Constable is called upon to “dispatch” an animal who presents a risk to the town’s citizens. 2. The Constable signs an Acknowledgement of the SB policy, which is witnessed and notarized.   I’ve taken a first-cut at how that acknowledgement could possibly be worded.  Naturally, it needs to be reviewed by a legal eagle with the intent to provide the town with as much immunity as possible, but here’s my first cut at it-  ***Acknowledgement of Self-Indemnity by the Constable***  ***I hereby acknowledge that the Town of Windham does not authorize or condone the carrying of a firearm, or any other lethal weapon, by the town’s Constable during the performance of his or her duties.  I also acknowledge that as a citizen of Vermont, it is my right to carry a firearm at any time I choose and for any reason I choose.  Therefore, should I decide to carry a lethal weapon during the performance of my duties as Constable, I do so under my solemn rights as a citizen of Vermont, and absolve the Town of Windham from any and all liabilities associated with the use of said weapon.   Any legal or civil proceedings arising from my use of a weapon, regardless of whether it was used during the performance of my duties as Constable, will fall upon me to bear in all manner, as an individual citizen-as is the case for any citizen in Vermont who uses lethal force or the threat of lethal force against another person.***    I hope to attend the next SB meeting and would like to bring up this proposal.  If it is too late to get it on the agenda, I will simply mention it or read it during my 3-minute allotment of time.    Thank you for your time and consideration.    Phil McDuffie |