Date: November 12, 1976

From: Office of the University Counsel and Vice Chancellor for Legal Affairs

Subject: Procedures for Compliance with Section 17 of the Public Officers Law (Indemnification)

The Attorney General has issued a memorandum to department counsel (copy attached) regarding compliance with Section 17 of the Public Officers Law.

As you know, state officers and employees may be sued individually for money damages. Where the complaint involves an official act, the statute provides that the State will indemnify the officer or employee against any personal loss provided certain prerequisites are met.

The memorandum from the Attorney General is concerned with the lack of proper service of the summons or summons and complaint upon the individual defendant and explains the proper procedure to be followed by those who wish to invoke the protection of the statute. The Attorney General requests that the individual defendant forward the summons or summons and complaint directly to his offices within the prescribed five day period.

We recommend that all personnel located at State-operated campuses outside New York City, Nassau and Suffolk Counties send the summons or summons and complaint to the Attorney General at State Capitol, Albany, New York 12224. All personnel located at State-operated campuses in New York City, Nassau, and Suffolk Counties should send the legal papers to the Attorney General, Two World Trade Center, New York, New York 10047. Following receipt of this material, along with the defendant's request for representation, the Attorney General will determine whether the Law Department will assume the defense of the litigation and will so advise the individual officer or employee. In all cases, a copy of the letter and papers should also be sent to the Office of the University Counsel.

In situations where the summons or notice must be answered immediately, the Office of the University Counsel should
be contacted by telephone so that we may make arrangements with you to deliver the necessary papers to the nearest regional bureau of the Office of the Attorney General.

Where the legal papers name the State University, the State of New York, or State University officers described by their official title, as the party or parties defendant, the summons or summons and complaint should be forwarded to this office in the usual manner. Where there may be some doubt as to whether the defendants are named in a corporate or personal capacity, we'll be glad to advise by telephone.

Walter J. Relihan, Jr.

Attachment

This memorandum addressed to:

Presidents, State-operated campuses

Copies for information to:

Presidents, Community Colleges
Deans, Statutory Colleges
President Rose
Mr. Barlow
MEMORANDUM

TO: DEPARTMENT COUNSEL

FROM: LOUIS J. LEPKOWITZ
ATTORNEY GENERAL

Public Officers Law § 17 provides that in certain actions involving a claim for money damages against a public officer or employee arising from his "alleged negligence or other act" when he was "acting in the discharge of his duties and within the scope of his employment and that such damages did not result from the wilful and wrongful act or gross negligence of such officer or employee," the public officer or employee "shall, within five days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy thereof to the attorney general" and that:

"2. Upon such delivery the attorney general may assume control of the representation of such officer or employee..."

Similar language also appears in Corrections Law § 24 and Mental Hygiene Law § 81.08.

The phrase in the statute "he is served" means personal service of a summons, complaint, process, notice, demand or pleading upon the public officer-defendant sued for personal money damages as required by the federal and
state rules of civil procedure. Nevertheless, requests received by my office from various State departments and agencies for legal representation have not been personally made by the public officer or employee who is sued in his individual capacity and, in some instances, requests have been made on behalf of such defendants (e.g. former or retired officials) for whom service of the Summons and Complaint was accepted by other persons and indeed without the defendants' personal knowledge or express written authorization.

This practice has led to serious problems in some cases and must be terminated. Obviously it is not proper. No service of any Summons and Complaints should be accepted without the personal knowledge or express written authorization of the public officer or employee-defendant. In addition, each request to my office for legal representation pursuant to Public Officers Law § 17 and related statutes with a copy of the Summons and Complaint served should be in writing signed by the defendant and shall be accompanied by the following information: (1) the date, time, place and manner of service and, if possible, the defendants' brief review of the facts involved in the complaint.

Furthermore, such requests for legal representation should be followed as soon as possible thereafter with an evaluation and recommendation by the Commissioner or his Counsel with a memorandum of relevant facts and a copy of relevant documents in the files so that my office may make a proper evaluation as to
whether or not my office should represent the particular defendant or defendants.

The above is intended solely to be most helpful to state officials or employee who may become the subjects of legal action for damages and to avoid any possible confusion.

I shall greatly appreciate your cooperation in this matter.