Memorandum to Presidents

Date: January 25, 1983

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

Subject: Indemnification in Criminal and Civil Proceedings (Amendments to the Public Officers Law)

To: Presidents, State-operated campuses

Recently enacted amendments to the Public Officers Law have expanded the scope of criminal and civil indemnification protection for officers and employees of the State including State University officers, employees, Trustees and Council members serving the State-operated institutions, and authorized volunteers. These changes provide additional protection against personal liability for acts occurring within the scope of public employment or duties.

-- For the first time, reimbursement is authorized for criminal defense expenses incurred by State officers and employees upon acquittal or dismissal of criminal charges brought against the officer or employee. This legislation (L. 1982, ch. 565, eff. July 22, 1982, Attachment A) adds a new section 19 to the Public Officers Law requiring the State to pay reasonable attorneys' fees and litigation expenses incurred by a State officer or employee in the defense of a criminal proceeding in a State or Federal court. The criminal proceeding must arise out of an act which occurred while the officer or employee was acting within the scope of his or her public employment or duties.

Reimbursement will be provided only after the officer or employee is acquitted or the criminal charges are dismissed. The Attorney General is empowered to determine, after investigation and review of the facts and circumstances of the criminal proceeding, whether an officer or employee's application for reimbursement should be granted. In the event the entitlement to reimbursement or the amount of reimbursement is disputed, a court will resolve the issue.
In order to obtain this protection in criminal cases an officer or employee must deliver a written request to the Office of the Attorney General, together with an original or a copy of any accusatory instrument (such as a criminal information or misdemeanor complaint) within ten days after the officer or employee is arraigned (enters a plea) upon such an instrument. All legal papers and requests should be sent to the Attorney General, Division of State Counsel, State Capitol, Albany, New York 12224. A copy of the request for reimbursement and accusatory instrument should also be sent to the Office of the University Counsel, State University Plaza, Albany, New York 12246. The officer or employee is also required to provide his or her full cooperation to the Attorney General in the prosecution of any criminal appeal or in the defense of any civil lawsuit arising out of the same occurrence.

This protection applies to all current and future criminal proceedings until the expiration date of the statute—June 30, 1985. At that time a report on the operation of the statute will be prepared by the Attorney General and the State Comptroller.

-- A separate legislative enactment affects existing indemnification protection in civil litigation. By amendment to section 17(3)(c) of the Public Officers Law (L. 1982, ch. 507, Attachment B), the State will now indemnify its officers and employees for fines or penalties which may be imposed by a court upon a finding that the officer or employee unintentionally violated a prior court order, judgment, consent decree, or stipulation of settlement. The Attorney General is empowered to promulgate rules and regulations to implement these protections.

This amendment is designed to protect officers and employees from fines, penalties and related legal costs associated with their unintentional failure to comply with court orders and consent decrees which may require additional actions by third parties for compliance, or expenditures beyond the employer/agency's budgetary appropriations. All existing procedural requirements in section 17 of the Public Officers Law for civil cases must continue to be followed (see Memorandum to Presidents, Vol. 78, No. 8, August 2, 1978).
It should be noted that both of these additional indemnification measures apply only to State officers and employees. The State University Trustees, however, have proposed in their 1983 legislative program the extension of these additional protections to officers and employees of the community colleges. (For a description of the existing indemnification procedures for community colleges, see Memorandum to Presidents, Vol. 80, No. 10, August 15, 1980.) We will keep you advised of the progress of these proposals.

Sanford H. Levine
Sanford H. Levine

Attachments

cc: Members, Board of Trustees of State University of New York
Chairmen, College and University Councils and Board of Trustees, State-operated Campuses

Copies for information only sent to:

Presidents, Community Colleges
Chairmen, Boards of Trustees, Community Colleges
Deans, Statutory Colleges
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STATE OFFICERS AND EMPLOYEES—INDEMNIFICATION DEFENSE COSTS

LAWS OF 1982

CHAPTER 565

Approved July 22, 1982, effective as provided in section 2

AN ACT to amend the public officers law, in relation to the indemnification of employees of the state.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public officers law is amended by adding a new section nineteen to read as follows:

§ 19. Reimbursement of defense costs incurred by or on behalf of state employees. 1. (a) As used in this section, unless the context otherwise requires, the term "employee" shall mean any person holding a position by election, appointment or employment in the service of the state, whether or not compensated, or a volunteer expressly authorized to participate in a state-sponsored volunteer program, but shall not include an independent contractor. The term employee shall include a former employee, his estate or judicially appointed personal representative and persons who assist the education department or the department of health as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings or criminal prosecutions for unauthorized practice pursuant to title eight of the education law or title II-A of article two of the public health law.

(b) For the purposes of this section, the term "employee" shall include members, officers and other persons in the employment of the New York state energy research and development authority.

(c) For the purposes of this section, the term "employee" shall include members of the state patient qualification review board appointed by the commissioner of health pursuant to article thirty-three-A of the public health law.

2. (a) Upon compliance by the employee with the provisions of subdivision three of this section, and subject to the conditions set forth in paragraph (b) of this subdivision, it shall be the duty of the state to pay reasonable attorneys' fees and litigation expenses incurred by or on behalf of an employee in his or her defense of a criminal proceeding in a state or federal court arising out of any act which occurred while such employee was acting within the scope of his public employment or duties, upon his acquittal or upon the dismissal of the criminal charges against him.

(b) Upon the application for reimbursement for reasonable attorneys' fees and litigation expenses made by or on behalf of an employee as provided in subdivision three of this section, the attorney general shall determine, based upon his investigation and his review of the facts and circumstances of the criminal proceeding, whether reimbursement of reasonable attorneys' fees and litigation expenses shall be paid. The attorney general shall notify the employee in writing of such
determination. Upon determining that reimbursement should be provided for reasonable attorneys' fees and litigation expenses incurred by or on behalf of an employee, the attorney general shall so certify to the comptroller. Upon such certification, reimbursement shall be made for such fees and expenses upon the audit and warrant of the comptroller. Any dispute with regard to entitlement to reimbursement or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by a court of competent jurisdiction upon appropriate motion or by way of a special proceeding.

3. Reimbursement of reasonable attorneys' fees and litigation expenses by the state as prescribed by this section shall be conditioned upon (a) delivery to the attorney general or an assistant attorney general at an office of the department of law in the state by the employee of a written request for reimbursement of defense expenses together with the original or a copy of an accusatory instrument within ten days after he is arraigned upon such instrument, and (b) the full cooperation of the employee in defense of any action or proceeding against the state based upon the same act, and in the prosecution of any appeal.

4. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the state or any other level of government, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provisions of state or federal statutory or common law.

5. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstances.

*Education Law § 350 et seq.
*Public Health Law § 730.
*Public Health Law § 3397-a et seq.

§ 2. This act shall take effect immediately and shall expire on June thirtieth, nineteen hundred eighty-five; on or before March first, nineteen hundred eighty-five, the attorney general and the comptroller shall submit to the legislature a report on the operation of this act.
INDEMNIFICATION OF STATE OFFICERS AND EMPLOYEES—VIOLATION OF JUDGMENT, ORDER OR STIPULATION

Laws of 1982
CHAPTER 507
Approved and effective July 13, 1982

AN ACT to amend the public officers law, in relation to indemnification of state employees.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (c) of subdivision three of section seventeen of the public officers law, as added by chapter four hundred sixty-six of the laws of nineteen hundred seventy-eight, is amended to read as follows:

(c) Nothing in this subdivision shall authorize the state to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to article seven-a of the state finance law; provided, however, that the state shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States. The attorney general shall promulgate such rules and regulations as are necessary to effectuate the purposes of this subdivision.

1 State Finance Law § 123 et seq.

§ 2. This act shall take effect immediately.