The Governor recently approved amendments to the Public Officers Law that affect the scope of criminal and civil indemnification protection generally available for officers and employees of the State of New York. This memorandum revises and updates the January 25, 1983 Memorandum to Presidents (Vol. 83, No. 2), which describes the protection and procedures to be followed by State University personnel under sections 17 and 19 of the Public Officers Law.

In criminal cases, reimbursement has been available under §19 of the Public Officers Law for reasonable attorneys' fees and litigation expenses incurred by an officer or employee in the defense of a criminal proceeding arising out of an act which occurred within the scope of the officer or employee's public duties. Delivery of a copy of the accusatory instrument must be made to the Attorney General with a written request for reimbursement within ten days after arraignment. Reimbursement is made by the State upon a determination by the Attorney General following acquittal or dismissal of the criminal charges.

The 1985 amendments to §19 accomplish two purposes (L. 1985, chs. 767, 769). First, reimbursement of reasonable attorneys' fees will now also be available in connection with an appearance before a grand jury. To be eligible the officer or employee must be required to appear as a result of an act which occurred while the officer or employee was acting within the scope of public duties, and the grand jury must return no "true bill" against such individual (i.e., no indictment is issued).

Secondly, the 1985 revisions delete the previous June 30, 1985 expiration date of the statute and extend coverage indefinitely. Under the terms of the extension, however, §19 protection is not available for State employees in the executive branch serving in positions in negotiating units represented by an employee organization unless and until there is an agreement between the State and the employee organization which provides
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for such coverage. Thus, at present, employees of State University represented by United University Professions do not have §19 protection because the collective negotiations between the union and the State have not concluded. Coverage will be available when UUP negotiates such protection with the State. All other SUNY officers and employees, including management/confidential employees, are covered.

A separate legislative enactment affects defense and indemnification in civil matters when a State officer or employee is sued in an individual capacity. In such cases delivery to the Attorney General of the summons, complaint or pleading must be made within five days of service. Section 17 of the Public Officers Law was amended to clarify that defense and indemnification is only available in federal civil rights actions in those situations in which the act underlying the complaint is alleged to have occurred within the scope of the officer or employee's public employment or duties (L. 1985, ch. 768).

Any questions regarding these amendments should be directed to the Office of University Counsel.

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