

TOWN OF ALLEGANY, NEW YORK

LOCAL LAW NO. 2 OF 1987

AN ACT RELATING TO THE DEFENSE AND INDEMNIFICATION OF TOWN OFFICERS AND EMPLOYEES.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF ALLEGANY, NEW YORK, AS FOLLOWS:

Section 1. PURPOSE AND INTENT:

The purpose of this Local Law is to provide legal defense and financial protection for those individuals serving the Town of Allegany from liability by reason of claims and lawsuits which may be brought against them in their individual capacity for actions taken by them while in performance of their official duties and responsibilities. In enacting this Local Law, the Town Board finds that the State of New York has enacted similar provisions for the legal and financial security of its officers and employees, and further finds that such security is also required for personnel employed by said Town. By enactment of this Local Law, the Town Board does not intend to limit or otherwise abrogate any existing right or responsibility of the Town or of its employees with regard to indemnification or legal defense. It is solely the intent of this Local Law to provide similar coverage for local employees as is presently provided for state employees, so as to continue to attract qualified individuals to local government service.

Section 2. DEFINITIONS:

As used in this Local Law, unless the context otherwise requires, the term "employee" shall mean any person holding a position, whether by election, appointment or full-time or part-time employment in the service of the Town of Allegany, whether or not compensated, or a volunteer especially authorized to participate in a municipally-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.

Section 3. PROVISION AND PAYMENT FOR DEFENSE:

(a) Upon compliance by the employee with the provisions of Section 5 of this Local Law, the Town shall provide for the defense of the employee in any

civil action or proceeding in any state or federal court, arising out of any alleged act or omission which occurred or is alleged to have occurred while the employee was acting within the scope of his public employment or duties, or which is brought to enforce a provision of Section 1981 or 1983 of Title 42 of the United States Code. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the Town of Allegany.

(b) Subject to the conditions set forth in paragraph (a) of this Section, the employee shall be entitled to be represented by the Town Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Town Attorney determines, based upon his investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be inappropriate, or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interests exists and that the employee is entitled to be represented by private counsel of his choice. The Town Attorney shall notify the employee in writing of such determination, i.e., that the employee is entitled to be represented by private counsel of his choice. The Town Attorney may require, as a condition to payment of the fees and expenses of such representation that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this Section, the Town Attorney shall so certify to the Town Board. Reasonable attorney's fees and litigation expenses shall be paid by the Town to such private counsel, either at the termination of such proceeding, or as, from time to time during the pendency of such proceeding, as may be determined by the Town Board. However, and in all such events, payment of such fees is subject to certification by the head of the department, commission, division, office or agency in which such employment is employed, and upon audit and warrant of the Town Clerk. Any dispute with respect to representation of multiple employees by a single counsel, or the amount of litigation expenses or the reasonableness of attorney's fees shall be resolved by the Court upon motion or by way of special proceeding.

(c) Where the employee delivers process and a request for defense to the Town Attorney, as required by Section 5 of this Local Law, the Attorney shall take the

necessary steps on behalf of the employee to avoid entry of a default judgment, pending resolution of any question pertaining to the obligation on the part of the Town to provide for such defense.

Section 4. INDEMNIFICATION OF EMPLOYEES:

(a) The Town shall indemnify and save harmless its employees from any judgment obtained against any such employee in any state or federal court, provided that the act or omission from which such judgment arose occurred while the employee was acting within the scope of his public employment or duties; however, and in no case, shall the duty to indemnify and save harmless prescribed by this Section arise where the injury or damage resulted from intentional wrongdoing, fault or act on the part of such employee.

(b) In any claim or lawsuit to which this Local Law applies, the Town of Allegany shall have the sole right to enter into any settlement agreement or consent decree. This shall apply both to actions defended by the Town Attorney and to actions defended by private counsel. Any settlement or consent decree which has not been approved by a resolution of the Town Board shall be an unauthorized act with regard to the Town, and shall have no force or effect as to the Village.

(c) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail, within thirty (30) days of the date of entry or settlement, upon the Supervisor of the Town and the Town Clerk.

Section 5. DUTY OF EMPLOYEE:

The duty to defend or indemnify and save harmless, as provided for in this Local Law, shall be conditioned upon (i) delivery to the Town Attorney, at his office, by the employee, of the original or a copy of any summons, complaint, process, notice, demand or pleading, within ten (10) days after such employee is served with such document, provided that the time to answer such document is at least twenty (20) days. In the event that the time to answer such document is less than twenty (20) days, the employee shall deliver the original or copy of such process to the Town Attorney, at his office, within five (5) days of the date of service. However, and in all cases, delivery of the

documents shall be made to the Town Attorney prior to the time allowed for response thereto, and the employee so served must not be in default at the time of delivery to the Town Attorney; (ii) at the same time that a copy of the process is served upon the Town Attorney, a copy thereof shall be served upon the Town Clerk; (iii) during the continuation of such claim, and until its final resolution, the town employee shall give full cooperation to the Town and the Attorney in the defense of such action or proceeding, and in defense of any action or proceeding against the Town based upon the same acts complained of against the employee, and in the prosecution of any appeal from any interlocutory or final judgment therein.

The delivery of such process, both to the Town Attorney and to the Town Clerk, shall be deemed a request by the employee that the Town provide for his defense, in accordance with the provisions of this Local Law.

Section 6. LIMITATION:

The benefits of this Local Law shall inure only to employees as defined herein, and shall not enlarge or diminish the rights of any other party, nor shall any provision of this Section be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

Section 7. CONSTRUCTION:

(a) The provisions of this Local Law shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(b) In the event that the Town carries any liability insurance which would be applicable under the facts alleged in the complaint, notice or other process served, the Town employee agrees to comply with all terms and provisions of such insurance, and further agrees that the terms and conditions of such policy or contract of insurance shall be incorporated by reference into this Local Law, and the conduct of such Village employee shall be subject thereto.

(c) Except as otherwise specifically provided in this Local Law, the provisions of this Local Law 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 Town, 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 provision of state or federal statutory or common law.

Section 8. VALIDITY:

If any provision of this Local Law 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 shall in no way affect or impair any other provision of this Local law or the application of such provision to any other person or circumstance.

Section 9. EFFECTIVE DATE:

This Local Law shall take effect immediately upon filing with the Secretary of State, and shall apply to all actions or proceedings pending on such effective date or those actions or proceedings thereafter instituted.