

Chapter 12

DEFENSE AND INDEMNIFICATION

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[HISTORY: Adopted by the Board of Trustees of the Village of Kensington 7-30-80 as L.L. No. 2-1980. Amendments noted where applicable.]

§ 12-1. Legislative intent.

The purpose of this chapter is to provide legal and financial protection for those individuals serving the Village of Kensington from losses which may be sustained by them in their individual capacity for actions taken while in the performance of their official duties and responsibilities. In enacting this chapter, the Board of Trustees 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 local personnel. By enactment of this chapter, the Board of Trustees does not intend to limit or otherwise abrogate any existing right or responsibility of the village or its employees with regard to

indemnification or legal defense. It is solely the intent of this chapter to provide similar coverage for local employees as presently provided for state employees, so as to continue to attract qualified individuals to local government service.

§ 12-2. Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEE — Any person holding a position by election, appointment or employment in the service of the Village of Kensington whether or not compensated or a volunteer expressly authorized to participate in a municipally sponsored volunteer program, but the term shall not include an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

§ 12-3. Entitlement to defense.

- A. Upon compliance by the employee with the provisions of § 12-5, the village 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 in the complaint 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 §§ 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 Village of Kensington.
- B. Subject to the conditions set forth in Subsection A, the employee shall be entitled to be represented by the Village Attorney; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Village Attorney determines, based upon his investigation and review of the facts, that representation by the Village Attorney would be inappropriate, or whenever a court of competent jurisdiction,

upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The Village Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel of his choice. The Village 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 Village Attorney shall so certify to the Village Board. Reasonable attorneys' fees and litigation expenses shall be paid by the village to such private counsel from time to time during the pendency of the civil action or proceedings, subject to certification that the employee is entitled to representation under the terms and conditions of this section by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the Village Treasurer. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

- C. Where the employee delivers process and a request for defense to the Village Attorney as required by § 12-5, the Attorney shall take the necessary steps, including the retention of private counsel under the terms and conditions provided in Subsection B on behalf of the employee, to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

§ 12-4. Entitlement to indemnification.

- A. The village shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or settlement arose occurred while the

employee was acting within the scope of his public employment or duties. The duty to indemnify and save harmless prescribed by this subsection shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

- B. An employee represented by private counsel shall cause to be submitted to the Board of Trustees any proposed settlement which may be subject to the indemnification by the village, and if not inconsistent with the provisions of this section, the Mayor shall certify such settlement and submit such settlement and certification to the Village Attorney. The Attorney shall review such proposed settlement as to form and amount and shall give his approval if in his judgment the settlement is in the best interest of the village. Nothing in this subsection shall be construed to authorize the village to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Village Attorney.
- 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 Mayor, and if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such Mayor. If the Attorney concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Village Treasurer.
- D. Nothing in this chapter shall authorize the village to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties; provided, however, that the village 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 the State of New York or of the United States. [Added 12-21-83 by L.L. No. 5-1983]

§ 12-5. Responsibility of employee.

The duty to defend or indemnify and save harmless provided by this chapter shall be conditioned upon delivery to the Village Attorney or his assistant at his office, by the employee, of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document and upon the full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding against the state based upon the same act or omission and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the village provide for his defense pursuant to this chapter.

§ 12-6. Rights of other parties.

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

§ 12-7. Entitlement to statutory benefits. [Added 11-18-81 by L.L. No.4-1981]

Pursuant to the provisions of § 18 of the Public Officers Law,¹ the Village of Kensington hereby confers upon its employees and officers, and agrees to be liable for the costs and expenses of, the benefits of said § 18, which benefits shall supplement and be available in addition to defense or indemnification protection conferred by this chapter.

§ 12-8. Rights of insurers.

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

¹ Editor's Note: In the Public Officers Law, § 18 is entitled "Defense and indemnification of officials and employee of public entities."

§ 12-9. Applicability.

The provisions of this chapter shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

§ 12-10. Legal rights preserved.

Except as otherwise specifically provided in this chapter, the provisions of this chapter 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 village, 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.