

Chapter 3

DEFENSE AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES

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GENERAL REFERENCES

Code of Ethics - See Ch. 4.

§ 3-1. Legislative intent.

The purpose of this chapter is to provide legal and financial protection for those individuals serving the Town of Canton from losses which may be brought against them in their individual capacity for actions taken while in the performance of their official duties and responsibilities. In enacting this chapter, 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 local personnel. By enactment of this chapter, the Town Board does not intend to limit or otherwise abrogate any existing right or responsibility of the town 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 is presently provided for state employees, so as to continue to attract qualified individuals to local government service.

§ 3-2. 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 Town of Canton, whether or not compensated, or a volunteer expressly 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.

§ 3-3. Duty to provide for defense; exception.

- A. Upon compliance by the employee with the provisions of § 2-5 of this chapter, 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 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 42 U.S.C. § 1981 or 1983. 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 Canton.

- B. Subject to the conditions set forth in Subsection 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 interest 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. 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 attorneys' fees and litigation expenses shall be paid by the town to such private counsel from time to time during the pendency of the civil action or proceeding 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 Town Supervisor. 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 a defense to the Town Attorney as required by § 2-5 of this chapter, the Attorney shall take the necessary steps, including the retention of private counsel under the terms and conditions provided in Subsection B of this section 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.

§ 3-4. Certain actions not covered; review of settlement by Town Attorney; filing and certification of judgment.

- A. The town 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 section 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 Town Board any proposed settlement which may be subject to indemnification by the town and, if not inconsistent with the provisions of this chapter, the Supervisor shall certify such settlement and submit such settlement and certification to the Town 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 town. Nothing in this section shall be construed to authorize the town to indemnify or save harmless an employee with respect to a settlement not so reviewed and approved by the Town 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 Supervisor; and if not inconsistent with the provisions of this chapter, such judgment or settlement shall be certified for payment by such Supervisor. If the Attorney concurs with such certification, the judgment or settlement shall be paid upon the audit and warrant of the Town Supervisor.

§ 3-5. Conditions for defense.

The duty to defend or indemnify and save harmless provided by this chapter shall be conditioned upon delivery to the Town 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 ten (10) days after he is served with such document, and the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the town 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 town provide for his defense pursuant to this chapter.

§ 3-6. Extension of benefits restricted.

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 provision of this chapter be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

§ 3-7. Effect on 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.

§ 3-8. Effect on pending actions.

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

§ 3-9. Construal.

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 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.