

LOCAL LAW NO. 1 FOR THE YEAR 1992 DEFENSE & INDEMNIFICATION OF OFFICERS AND EMPLOYEES

This chapter shall be entitled "A Local Law Providing for the Defense and Indemnification of officers and Employees of the Town of Busti."

Section 14-200. Definitions

As used in this chapter, unless the context requires otherwise, 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, but shall not include a volunteer, any person not compensated for his services or an independent contractor. The term "employee" shall include a former employee, his estate or his judicially appointed personal representative. Members of all town boards, such as the Busti-Lakewood Recreation Commission, Board of Assessment Review, Planning Board and the Zoning Board of Appeals, shall not be considered volunteer, and the Town Attorney shall not be considered an independent contractor.

TOWN BOARD - The Town of Busti Town Board

Section 14-300. Provisions for defense

A. Upon compliance by the employee with the provisions of Section 14-400 of this chapter, the town shall provide for the defense of the employee in any criminal or civil action or proceeding in any state or federal court, including any action to enforce a provision of any civil rights statute of the State of New York or of the United States, arising out of any alleged act or omission which occurred or is alleged in the information or complaint to have occurred while the employee was acting, or in good faith purporting to act, within the scope of his or her public employment or duties. Such defense shall not be provided where such action or proceeding is brought by or on behalf of the town pursuant to authorization of the Town Board.

B. Subject to the conditions set forth in this chapter, the employees shall be represented by the Town Attorney or an attorney employed or retained by the town for the defense of the employee. The Town Board shall employ or retain an attorney for the defense of the employee whenever the town does not have a Town Attorney; The Town Board determines, based upon its investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be inappropriate; or a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Town Attorney. Reasonable attorney's fees and litigation expenses shall be paid by the town to such attorney employed or retained, from time to time, during pendency of the civil action or proceeding, subject to certification by the Town Supervisor that the employee is entitled to representation under the terms and conditions of this chapter. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the town. Any dispute with respect to representation of multiple employees by the Town Attorney or by an attorney employed

or retained for such purposes or with respect to the amount of the fees or expenses shall be resolved by the court.

C. Where the employee delivers process and a request for a defense to the Town Attorney or, if none, to the Town Supervisor as required by this section of this chapter, the Town Attorney or the Supervisor, as the case may be, shall take the necessary steps, including the retention of an attorney 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 relating to the obligation of the town or provide a defense.

Section 14-400. Conditions for defense

The duties to defend and indemnify and save harmless provided in this chapter shall be contingent upon:

A. Delivery to the Town Attorney, or, if none, to the Town Supervisor of the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after the employee is served with such document. Such delivery shall be deemed a request by the employee that the town provide for his or her defense pursuant to this chapter, unless the employee shall state, in writing, that a defense is not requested; and

B. 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 town based upon the same act or omission and in the prosecution of any appeal.

Section 14-500. Judgments and settlements

A. The town shall indemnify and save harmless any employee whose defense was provided pursuant to this chapter in the amount of any judgment obtained against such employee, including any fine, or in the amount of any settlement or compromise approved by the Town Board. The town shall not indemnify and save harmless the employee:

(1) Where the injury, damage or wrongful act has been determined by a court of competent jurisdiction to have occurred while the employee was not acting within the scope of his public employment or duties.

(2) Where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

(3) For any punitive or exemplary damages or penalties.

(4) For money recovered from the employee pursuant to Section 51 of the General Municipal Law.

B. The claim or compromise settlement which may be subject to indemnification by the town shall not be paid unless it is presented to and approved by the Town Board.

C. Upon entry of final judgment against the employee or upon settlement or compromise of a claim as approved by the Town Board, the employee shall cause to be served upon

the Town Supervisor a copy of such judgment or settlement, personally or by certified or registered mail, within ten (10) days of the date of entry or settlement. Such judgment or settlement shall be processed and paid in the same manner that other judgments or settlements of claims are paid by the town.

Section 14-600. Restriction of applicability

The benefits of this chapter will 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 provisions of the Workers' compensation Law.

Section 14-700. Effect on insurers

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

Section 14-800. Abrogation and greater restrictions

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 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 14-900. Effect on pending proceedings

The provisions of this chapter shall apply to all actions and proceedings specified herein which have been commenced, instituted, or brought on or after the effective date of this chapter.

Section 14-950. Date effective

This local law shall take effect immediately.

Adopted February 24, 1992.