

Chapter 17: DEFENSE AND INDEMNIFICATION

Article I

HISTORY: Adopted by the Village Board of the Village of South Blooming Grove

GENERAL REFERENCES

Code of Ethics — See Ch. 18.

§ 17-1. Purpose; intent.

The purpose of this chapter is to provide legal and financial protection for individuals serving the Village of South Blooming Grove from lawsuits, 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 Village Board recognizes that the County of Orange, as well as other Villages in New York State, and the State of New York have enacted similar provisions for the legal and financial security of their officers and employees and that such security is also necessary and desirable for local personnel. By enactment of this chapter, the Village Board does not intend to limit or otherwise abrogate any existing right or responsibility of the Village of South Blooming Grove 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 county and state employees, so as to continue to attract qualified individuals to local government service.

§ 17-2. 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 South Blooming Grove, whether or not compensated, or a volunteer expressly authorized to participate in a Village 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 and shall also include a member of any board or Commission or agency appointed by the Mayor and/or Village Board.

§ 17-3. Defense provided; representation by counsel; obligations of Village.

- A. Upon compliance by the employee with the provisions of § 17-5 of this chapter, the Village of South Blooming Grove, through the office of counsel appointed by the Village or by means of any applicable insurance program maintained by 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 Title 42 of the United States Code.
- B. Subject to the conditions set forth in Subsection A of this section, the employee shall be entitled to be represented by counsel appointed by the Village; provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the Village's counsel determines, based upon his investigation and review of the facts and circumstances of the case, that representation by the Village's counsel 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 Board 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

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counsel. 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 Village Board as required by § 17-5 of this chapter, the Village Board shall take the necessary steps, including the retention of counsel under the terms and conditions provided in Subsection B above, 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.

§ 17-4. Applicability; determination of applicability; submission of proposed settlement; final judgment.

- 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 on the part of the employee. The duty to indemnify and save harmless prescribed by this action shall not arise where the act of the employee results in a conviction of a misdemeanor or Felony crime under the New York State Penal Law.
- B. The determination of an issue of whether or not an employee was acting within the scope of his public employment or duties at the time of the occurrence, act or omission-giving rise to a claim, shall be made by the Village Board on advice from counsel for the Village. In such cases where a majority of Village Board members are named as defendants, the determination of whether such Board members were acting within the scope of their employment shall be made by counsel for the Village.
- C. An employee represented by private counsel shall cause to be submitted to the Board of Trustees any proposed settlement which may be subject to indemnification by the Village and if not inconsistent with the provisions of this section, the Village Board 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.
- D. 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 30 days of the date of entry or settlement, upon the Village Board; and if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by the Village Board. If the attorney concurs in such certification, the judgment or settlement shall be paid by the Village Board.

§ 17-5. Conditions required of employee prior to defense.

The duty to defend or indemnify and save harmless provided by this chapter shall be conditioned upon delivery to the Mayor, or 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 pleadings within five 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 Village 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 defense pursuant to this chapter.

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§ 17-6. Employees benefited; effect on Workers' Compensation Law.

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.

§ 17-7. Effect on insurer.

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.

§ 17-8. Applicable actions and proceedings; types of indemnification.

The provisions of this chapter shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted and the amount of any such judgment or order obtained against such employee, or the amount of any Village-approved settlement, for which the Village will indemnify and save harmless an employee consistent with this section, including any amounts designated as compensatory, special, punitive or other damages, including sanctions, fines, costs and attorney fees.

§ 17-9. Construal of provisions.

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 of South Blooming Grove 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.

§ 17-10. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.