

RESOLUTION NO. 164

AUTHORIZING THE DEFENSE AND INDEMNIFICATION OF COUNTY OFFICERS AND EMPLOYEES PURSUANT TO PUBLIC OFFICERS LAW SECTION 18

By Messrs. Commisso, Sherman, Collins and Crummey:

WHEREAS, The County Legislature wishes to declare as the purpose of this resolution that it desires to provide legal and financial protection for those individuals serving the County of Albany from losses which may result from legal actions which may be brought against said individuals in their individual capacity for actions taken in the performance of their official duties and responsibilities, and

WHEREAS, Public Officers Law Section 18 provides for the defense and indemnification of officers and employees of public entities such as the County of Albany whose governing body has agreed by the adoption of, among other options, a resolution, to confer the benefits of Public Officers Law Section 18 upon its employees and be held liable for the costs incurred under these provisions, and

WHEREAS, In adopting this resolution the County Legislature finds that the State of New York has enacted similar provisions for the legal and financial security of its officers and employees, and

WHEREAS, The County Legislature further finds that such security is also required for its officers and employees, and

WHEREAS, By adopting the within resolution the County Legislature does not intend to limit or otherwise abrogate any existing right or responsibility of the County of Albany or its employees with regard to indemnification or legal defense, now, therefore, be it

RESOLVED, That the County Legislature of the County of Albany confers and hereby adopts the provisions of Public Officers Law Section 18 as set out herein and the County assumes and is hereby liable for the costs incurred thereunder as follows:

DEFENSE AND INDEMNIFICATION

1. As used in this resolution, unless the context otherwise requires the term "employee" shall mean any person holding a position by election, appointment or employment in the service of the County, whether or not compensated, or a volunteer expressly authorized to participate in a County-

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.

a. Upon compliance by the employee with the provisions of this resolution, the County 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 section nineteen hundred eighty-one or nineteen hundred eighty-three of title forty-two of the United States code and the act or omission underlying the action occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the County.

b. Subject to the conditions set forth in paragraph "a" of this subdivision, the employee shall be entitled to be represented by the County Attorney, provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the County Attorney determines based upon his investigation and review of the facts and circumstances of the case that representation by the County 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 County Attorney shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. The County 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 County Attorney shall so certify to the Comptroller. Reasonable attorneys' fees and litigation expenses shall be paid by the County 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 Comptroller. 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 County Attorney as required by section 4, the County Attorney shall take the necessary steps including the retention of private counsel under the terms and conditions provided in paragraph "b" of subdivision two of this resolution 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.

2.

a. The County 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, or shall pay such judgment or settlement; 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 or pay prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing on the part of the employee.

b. An employee represented by the County Attorney or by private counsel pursuant to this resolution shall cause to be submitted to the head of the department, commission, division, office or agency in which he is employed any proposed settlement which may be subject to indemnification or payment by the County and if not inconsistent with the provisions of this section such head of the department, commission, division, office or agency in which he is employed shall certify such settlement, and submit such settlement and certification to the County Attorney. The County 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 County. Nothing in this subdivision shall be construed to authorize the County to indemnify and save harmless or pay an employee with respect to a settlement not so reviewed and approved by the County Attorney.

c. Nothing in this subdivision shall authorize the County to indemnify or save harmless an employee with respect to fines or penalties, or money recovered from an employee; provided, however, that the County shall indemnify and save harmless its employees in the amount of any costs, attorney's 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 this State or of the United States. The County Attorney shall promulgate such rules and regulations as are necessary to effectuate the purposes of this subdivision.

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 thirty days of the date of entry or settlement, upon the head of the department, commission, division, office or agency in which he is employed; and if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such head of the department, commission, division, office or agency. If the County Attorney concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the Comptroller. On or before October fifteenth the Comptroller, in consultation with the Department of Law and other agencies as may be appropriate, shall submit to the County Executive and the Legislature an annual accounting of judgments, settlements, fees, and litigation expenses paid pursuant to this resolution during the preceding and current fiscal years. Such accounting shall include, but not be limited to the number, type and amount of claims so paid, as well as an estimate of claims to be paid during the remainder of the current fiscal year and during the following fiscal year.

3. The duty to defend or indemnify and save harmless prescribed by this resolution shall be conditioned upon (i) delivery to the County Attorney by the employee 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 (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the County 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 County provide for his defense pursuant to this section.

4. The benefits of this resolution 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.

5. This section shall not in any way affect the obligation of any claimant to give notice to the County under any other provision of law.

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

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

8. Except as otherwise specifically provided in this section, the provisions of this resolution 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 County or any other level of government, 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, or as provided under the terms of any collective bargaining agreement.

9. If any provision of this resolution 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 of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

and, be it further

RESOLVED, By this Honorable Body that the defense and indemnification provided herein shall apply to all such actions and proceedings arising from acts or occurrences occurring on or after January 1, 1992, and, be it further

RESOLVED, That the effective date of this resolution shall be the date of its adoption by this body, and, be it further

RESOLVED, That the Clerk of the County Legislature be and hereby is directed to forward certified copies of this resolution to the appropriate County Officials.

*Referred to Law Committee
Adopted by unanimous vote.*