

INDEMNIFICATION OF OFFICERS

Directive: 6.59

- A. In the past, under the City's general liability insurance policy, the City and its employees were insured against civil liability of the types of complaints commonly brought against police officers, such as excessive use of force, false arrests, etc. Under this policy, the insurance company would undertake to defend the City and its officers and to pay any judgement.
- B. In retrospect, and as is the case with any insurance policy of this nature, the insurer would **not cover "willful misconduct."** Willful misconduct generally refers to **intentional or bad faith acts taken by the insured.**
- C. A further explanation of benefits may be found in Section "D", which is a reprint of Section 20-67 of the City Code. This sets out the standards for defense and indemnification of City employees.

An employee is covered for his good faith acts in the course of employment and proper authority. The only activities not covered are those activities which are "willful, malicious or wanton."

It should go without saying that this does not exclude defense and indemnification for mere negligence. Simply stated, employees would be covered for incidents such as motor vehicle accidents, good faith false arrests, etc. Even though the City has been placed in a position of going uninsured, police officers have substantially identical protection now as was available under prior insurance coverage.

D. Indemnification of Officers and Employees

Sec. 20-67. Right of representation and indemnification.

- 1. The city solicitor shall undertake the representation or defense without charge of any city officer or employee with respect to any claim or cause of action arising out of or related to the performance by such officer or employee of his public duties; provided, however, that where the city solicitor shall determine that a conflict exists by reason of the legal obligation of the city solicitor to represent, actually or potentially, any other party to the claim or cause of action, the city solicitor shall authorize the officer or employee to obtain independent counsel on his behalf.

2. An officer or employee who is held liable for the payment of any claims arising out of a civil action, or settlements, judgements, expenses, costs and awards of attorney's fees arising therefrom, or who incurs attorney's fees by reason of his authorized retention of independent counsel in defense of any such claim, shall be entitled to indemnification therefor where the claim shall have been determined by the city solicitor, but subject to the approval of the mayor, to have resulted from activities which:
 - a. Were done in good faith; and
 - b. Were done in the reasonable belief that such activities were in the best interest of the city and in the furtherance of the official practices and policies of the city; and
 - c. Were within the scope of authority of the person so acting; and
 - d. Were within the course of employment of the person so acting; and
 - e. Were not willful, malicious or wanton.
3. The director of finance is hereby authorized to enter into contracts of insurance for the indemnification of city officers and employees who are determined to be entitled thereto in accordance with subparagraph (b) of this section.
4. The city solicitor, subject to approval by the mayor, is hereby authorized to approve the reimbursement of legal fees in whole or in part, incurred by a non-elected city officer or employee for representation in a criminal action, if the charge arose directly out of and in the course of city employment. The city council may, upon resolution, approve by a two-thirds majority vote of council, authorize the reimbursement of legal fees, in whole or in part, incurred by an elected city officer for representation in a criminal action, if the charge arose directly out of and in the course of city employment. The city solicitor or the city council, as the case may be, in reviewing the application for reimbursement shall make a determination of whether or not the claim resulted from activities which:
 - a. Were done in good faith; and
 - b. Were done in the reasonable belief that such activities were in the best interest of the city and in the furtherance of the official practices and policies of the city; and
 - c. Were within the scope of authority of the person so acting and said conduct was not excessive at any stage of the actions taken; and

- d. Were within the course of employment of the person so acting; and
- e. Were not willful, malicious or wanton.

In no event shall reimbursement under this section be authorized where the non-elected or elected city officer or employee has been found guilty, after trial and appeal, or has entered a plea of nolo contendere to a crime alleging official misconduct, profiteering, bribery, receiving unlawful gratuities, improper influence or other abuse of his office or employment.

- 5. For purposes of this section, the term "non-elected city official or employee" shall include all include all appointed officers and all non-elected employees of the City of Wilmington. The term "elected city officer" shall mean the mayor, the members of city council, and the city treasurer.
- 6. Nothing in this section shall be construed as waiving the city's defense of governmental immunity where such defense exists in any action brought against the city, its officers, or employees. (Ord. No. 75-021, Section 1; Sub. No.2 to Ord. No. 85-136, Section 1, 12-5-85)