

	<i>PENNSYLVANIA TURNPIKE COMMISSION POLICY AND PROCEDURE</i>	Number: 10.4
		Approval Date: 8/19/2013
		Effective Date: 9/26/2013
Policy Subject: 10.4 - Indemnification and Hold Harmless Legal Assistance	<i>This is a statement of official Pennsylvania Turnpike Commission Policy</i>	Revised Date:
	Responsible Department: Legal	

A. Purpose:

To provide a consistent policy for requesting, reviewing, and approving or denying employee requests for legal representation for actions initiated against employees as a result of their employment with the PTC.

B. Scope:

This policy applies to all PTC employees as defined in Section D of this policy.

C. General Policy:

It is the policy of the Pennsylvania Turnpike Commission to provide legal representation and indemnification to the fullest extent permitted by law to all employees who are named as defendants in any civil or criminal matters which arise out of actions taken in good faith by the employee in the performance of their duties.

D. Definitions:

“Civil case.” Includes any action in any Federal or State court of competent jurisdiction, or before any Federal or State agency statutorily empowered to investigate and adjudicate any civil issue and impose any penalty based on the constitutions of the United States or the Commonwealth of Pennsylvania, Federal or Pennsylvania statutes, or the common law.

“Criminal case.” Includes any action in any Federal or State court of competent jurisdiction that upon conviction of a defendant may impose a criminal penalty.

“Employee.” Any person who is acting or who has acted within the scope of his office or employment on behalf of the Commission whether on a permanent or temporary basis, a part-time or full-time basis, and whether compensated or not, including any appointed officer or other person designated to work for the Commission. Also included in this definition is any former Employee whose employment with the Commission was not terminated for cause, and who was a Commission employee acting within the scope of his office or employment at the time of the acts or alleged acts which give rise in the litigation, including any employee’s heirs, executors, and

administrators to the extent the employee's estate may be liable for any judgment. Independent contractors under contract to the Commission and their employees and agents and persons performing tasks over which the Commission has no legal right of control are not employees of the Commission.

E. Procedures:

Criminal Cases

Except as otherwise provided in this Resolution, the Commission will not provide an attorney to defend an Employee in a criminal case arising from any acts or omissions alleged to have occurred while an Employee was acting in the scope of his office or employment. If the Chief Counsel or designee determines that there is no basis for the prosecution as a matter of law or fact, the Chief Counsel or designee will so inform the Commission, which will then reimburse the Employee for reasonable attorneys' fees and to that end will make any required advance of these fees, limited by the balance in the retirement account of the Employee.

In a case in which the Chief Counsel or designee determines that there may be a basis for the prosecution in law or fact, the Commission may nevertheless authorize the reimbursement of reasonable attorneys' fees if the Employee's defense is successful.

Civil Cases Involving Unintentional Conduct

When an Employee is sued or threatened with suit in his official or individual capacity for alleged negligence or other unintentional misconduct occurring while in the scope of his employment, the Commission will provide a defense unless the Chief Counsel or designee determines that the act did not occur within the scope of the office or duties of the Employee. If it is subsequently determined that the act occurred within the scope of the office or duties of the Employee, the Commission shall reimburse the Employee for the expense of his legal defense in such amounts as shall be determined to be reasonable by the court.

If an action is brought or threatened against an Employee for damages on account of injury to a person or property and it is not alleged that the act of the Employee which gave rise to the claim was within the scope of his office or duties, and he successfully defends the action on the basis that the act was within the scope of his office or duties, and he has given prior notice to the Commission and the Commission has refused to defend the action, the Employee shall likewise be entitled to the reasonable expenses of the defense.

The Commission may, at its sole discretion, secure its indemnification obligations in any manner permissible by law. If an insurance policy purchased by the Commission affords coverage, the insurance company will undertake the defense with an attorney of its choosing at its expense.

An Employee may engage his own attorney but any attorney fees will not be reimbursed by the Commission and indemnification will be at the sole discretion of the Chief Counsel or designee in accordance with all applicable Commission policies.

The Commission will indemnify the Employee for the amount of the judgment against him in this case. Reimbursement of reasonable fees and costs exclusive of attorney's fees will be at the sole discretion of the Chief Counsel or designee in accordance with applicable Commission policies.

Good faith exercise of authority.

Regardless of the allegations made against the Employee, if it appears to the Chief Counsel or designee that the Employee's conduct giving rise to the cause of action was within the scope of his employment and a good faith exercise of his authority, the Commission, or its insurance company if there is coverage, will undertake the defense with an attorney of its choosing at its expense, and will indemnify the Employee for the amount of a judgment against him or of any settlement that is approved by the Commission. The Employee may engage his own attorney but indemnification and reimbursement of attorneys' fees by the Commission will be in the sole discretion of the Chief Counsel or designee, in accordance with all applicable Commission policies.

Bad faith or malicious conduct, or conduct outside the scope of employment.

If the Chief Counsel or designee determines that the Employee's conduct was or may have been a bad faith exercise of his authority, malicious or outside the scope of his employment, the Chief Counsel or designee, in his/her sole discretion, will determine whether the Commission will undertake the defense of the Employee. The Commission will not indemnify the Employee for a judgment against him, and will notify the Employee that he may be subject to personal liability and should engage his own attorney.

If the Chief Counsel or designee has determined initially that the Employee's conduct was or may have been a bad faith exercise of his authority, malicious or outside the scope of his employment, and the Employee ultimately prevails in the civil action, the Chief Counsel or designee, in accordance with all applicable Commission policies, may determine that the Commission will reimburse the Employee for the costs of defense and fees of his private attorney.

Employee Responsibility

The Commission will not provide a defense to an Employee whose failure to notify the Commission promptly of a suit or prosecution brought against him has jeopardized the defense of the case, and the Commission will not indemnify the Employee for the expense of a judgment under these circumstances.

If the Commission provides a defense to an Employee, the Employee shall cooperate fully in the defense of the case.

To the extent the Commission is indemnifying the Employee, the employee is deemed to authorize the Commission to settle the case as it deems appropriate and is deemed to authorize the Chief Counsel or designee to make other legal and strategic decisions relating to defense of the case as it deems appropriate.

Coordination of Defense Expenses

When multiple Employees are defendants in the same case or when the Commission and one or more Employees are defendants in the same case, the Chief Counsel or designee shall assist in the coordination of defense counsel with the objective of reducing duplication of effort. Where the positions being advanced by more than one defendant are the same, defense counsel shall

designate lead counsel. If defense counsel are unable to agree on a lead counsel, the Chief Counsel or designee shall designate lead counsel.

Liberal Construction

This policy shall be liberally construed and applied to provide the most extensive interpretation permissible by law.

Partial Invalidity

If any provision or any portion of any provision herein dealing with indemnification, or the application thereof to any person or circumstance, shall be held invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Resolution.

Additional Remedies

The indemnification and advancement of expenses provided herein shall not be deemed exclusive of any other right to which an employee seeking indemnification may be entitled under any agreement, vote of the Commission, or otherwise, both as to conduct in the Employee's official or individual capacity.

Sovereign and Official Immunity

The protections afforded under the terms of this resolution are in addition to, severable from, and not intended to constitute a waiver of any protections, rights and immunities afforded to employees under the official and sovereign immunities provided through Federal and Pennsylvania law and all other protections, rights, and immunities elsewhere provided.

This Policy Letter supersedes all previous Policy Letters on this subject.