STATE OF NEW YORK

6317

2019-2020 Regular Sessions

IN ASSEMBLY

March 5, 2019

Introduced by M. of A. WALSH, SMULLEN -- read once and referred to the Committee on Local Governments

AN ACT to amend the county law, in relation to allowing a county clerk to employ an attorney-at-law to defend against certain civil actions; and to amend the public officers law, in relation to the removal of public officers by the governor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 409 of the county law is amended by adding a new subdivision 3 to read as follows:

3. (a) Notwithstanding subdivisions one and two of this section or any other inconsistent provision of law, a county clerk may employ an attorney-at-law to defend any civil action or proceeding brought against him or her in his or her official capacity as an agent of the commissioner of motor vehicles as designated under section two hundred five of the vehicle and traffic law.

(b) All damages recovered against, or costs and expenses lawfully incurred by a county clerk, including attorney's fees, in the defense of a civil action or proceeding brought against such clerk in his or her capacity as an agent of the commissioner of motor vehicles for an official act done, or for failure to perform an official act, shall be a state charge and shall be audited and paid in the same manner as state charges. When the act upon which the action or proceeding is based was done in good faith, but without the authority of law or authorization by the commissioner of motor vehicles, the state comptroller may audit and pay the same as state charges, even if such action or proceeding was initiated against the clerk by the commissioner of motor vehicles.

§ 2. Subdivision 1 of section 34 of the public officers law, as amended by chapter 15 of the laws of 1928, is amended to read as follows:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1. In any proceeding for the removal by the governor of a public officer, he **or she** may conduct an investigation into the charges, and may take the evidence as to the truth of the charges at a hearing for such purpose, or he **or she** may direct that such investigation or hearing, or both, shall be conducted by a justice of the supreme court of the judicial district, or the county judge of the county, in which the officer proceeded against shall reside, or by a commissioner appointed by the governor, by an appointment, in writing, filed in the office of the secretary of state. **Except, no such proceeding or investigation shall be undertaken or directed to be undertaken against a public officer on the basis of an action, or failure to act, of such public officer, if done in good faith and with a reasonable belief that the public officer is defending, protecting and upholding the constitution or laws of the United States or of this state, even if it is subsequently determined that such action or inaction was without authority of law or without express authorization.**

§ 3. This act shall take effect immediately.