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ATTORNEY GENERAL OPINION NO. 88- 75

The Honorable James E. Lowther
State Representative, Sixteenth District
1549 Berkeley Road
Emporia, Kansas 66801

Re: Automobiles and Other Vehicles--General Provisions;
Regulatory Provisions--Vehicle Identification
Numbers; Check of Assembled Vehicles by Highway
Patrol; Original Kansas Certificate's of Title on
Out-of-State Vehicle; Check by Designee, When

Synopsis: A local government cannot be held liable for a
violation of civil rights by its agents under 42
U.S.C. §1983 on the basis of a respondeat superior
theory. Local governments are liable only when
execution of a government policy or custom inflicts
the injury. Cited herein: K.S.A. 1987 Supp.
8-116a; 42 U.S.C. §1983.

* * *

Dear Representative Lowther:

You request our opinion regarding K.S.A. 1987 Supp. 8-116a.
Specifically, your question is as follows:

"If a designee, pursuant to the referenced statute, employs an
off-duty law enforcement officer, by what theory, if any,
would a municipality otherwise employing the law enforcement
officer be held liable for any acts or omissions performed by
the off-duty law enforcement officer in his capacity as an
employee of the designee?"

Subsection (d) of K.S.A. 1987 Supp. 8-116a prescribes that checks of vehicle identification numbers may be made by a designee of the superintendent of the Kansas Highway Patrol under certain circumstances. Subsection (b) of the statute sets forth the "checks" which may be made by a designee:

"From and after the effective day of this act, any person making application for any original Kansas title for a used vehicle which, at the time of making application, is titled in another jurisdiction, as a condition precedent to obtaining any Kansas title, shall have such vehicle checked by the Kansas highway patrol for verification that the vehicle identification number shown on the foreign title is genuine and agrees with the identification number on the vehicle. Checks under this section may include inspection for possible violation of K.S.A. 8-611 and amendments thereto or other evidence of possible fraud. The verification shall be made upon forms prescribed by the division of vehicles which shall contain such information as the secretary of revenue shall require by rules and regulations. A charge of \$10 per hour or part thereof, with a minimum charge of \$10, shall be made for checks under this subsection. When a vehicle is registered in another state, but is financed by a Kansas financial institution and is repossessed in another state and such vehicle will not be returned to Kansas, the check required by this subsection (b) shall not be required to obtain a valid Kansas title or registration."

In Alvarado v. City of Dodge City, 238 Kan. 48 (1985), the Kansas Supreme Court considered the circumstances under which a city could be held liable for violation of civil rights (under 42 U.S.C. §1983) allegedly committed by an off-duty police officer working as a private security guard. At syllabus two of the opinion, the Court set forth the applicable rule as follows:

"A local government cannot be held liable for violation of civil rights by its agents under 42 U.S.C. §1983 (1982) on the basis of a respondeat superior theory. Local governments are liable only when execution of a government policy or custom inflicts the injury."

In our judgment, the above-quoted rule sets forth the circumstances under which a municipality could be held liable for the acts of an off-duty local enforcement officer who is employed by a "designee" to perform the "checks" prescribed by subsection (b) of 1987 K.S.A. Supp. 8-116a. Accordingly, it is adopted as our response to the question which you pose.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm