

1996

Loni F. DeLand v. Uintah County : Brief of Appellee

Utah Court of Appeals

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BRIEF

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DOCKET NO. 960801-CA

IN THE UTAH COURT OF APPEALS

LONI F. DeLAND, :
Plaintiff/Appellant, : Case No. 960801-CA
vs. : Priority No. 15
UINTAH COUNTY, :
Defendant/Appellee. :

BRIEF OF APPELLEE

ON APPEAL FROM THE SUMMARY JUDGMENT OF THE EIGHTH JUDICIAL
DISTRICT COURT OF UINTAH COUNTY, STATE OF UTAH
THE HONORABLE JOHN R. ANDERSON, JUDGE

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FILED
Utah Court of Appeals

MAR 21 1997

Marilyn M. Branch
Clerk of the Court

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF JURISDICTION.	1
STATEMENT OF ISSUES AND STANDARD OF APPELLATE REVIEW.	1
STATUTORY PROVISIONS AND RULES	3
STATEMENT OF THE CASE.	5
STATEMENT OF THE FACTS	5
SUMMARY OF ARGUMENT.	9

ARGUMENT

I. THE DISTRICT COURT CORRECTLY INTERPRETED SECTION 63-30A-2 U.C.A. AND REFUSED TO ALLOW LEGAL FEES BECAUSE THE INFORMATION WAS NOT QUASHED OR DISMISSED OR RESULT IN A JUDGMENT OF ACQUITTAL IN ITS ENTIRETY	10
A. THE PLAIN LANGUAGE OF SECTION 63-30a-2 UTAH CODE ANNOTATED REQUIRES COMPLETE DISMISSAL OF THE INFORMATION.	10
B. THE LEGISLATIVE HISTORY OF SECTION 63-30a-2 AND OF SIMILAR STATUTES, SECTIONS 63-30-36 AND 63-30-37, DEMONSTRATE A LEGISLATIVE INTENT TO NARROWLY DEFINE THE SITUATIONS WHEN AN EMPLOYEE IS REIMBURSED HIS LEGAL FEES.	14
C. ONLY A "VINDICATED" EMPLOYEE SHOULD BE ALLOWED HIS LEGAL FEES.	18

II. WHEN HE FALSIFIED HIS TIME SHEETS MEACHAM DID NOT ACT DURING THE PERFORMANCE OF HIS DUTIES, WITHIN THE SCOPE OF HIS EMPLOYMENT OR UNDER COLOR OF HIS AUTHORITY.	19
CONCLUSION.	24
ADDENDUM	
Six Count Information.	1
Affidavit.	2
House Bill No. 15.	3
Interim Study Committee Reference Bulletin	4
Section 76-8-402, Utah Code Annotated.	5

TABLE OF AUTHORITIES

CASES

<u>Birkner v. Salt Lake County</u>	
771 P.2d 1053 (Utah 1989)	2,19,21,22,23
<u>Higgins v. Salt Lake County</u>	
855 P.2d 231, 235 (Utah 1993)	2
<u>Hulbert v. State</u>	
607 P.2d 1217, 1224 (Utah 1980)	15,16
<u>J.H. by D.H. v. West Valley City</u>	
840 P.2d 115 (Utah 1992)	24
<u>Perrine v. Kennecott Mining Corp</u>	
911 P.2d 1290 (Utah 1996)	2,11
<u>Salmon v. Davis County</u>	
916 P.2d 890 (Utah 1996)	18
<u>State v. Paul</u>	
560 P.2d 993 (Utah App. 1993)	11,12
<u>State v. Strader</u>	
902 P.2d 638 (Ct. App. 1995)	1
<u>State v. Thurman</u>	
911 P.2d 371 (Utah 1996)	1
<u>Utah County v. Orem City</u>	
669 P.2d 707, 708 (Utah 1985)	12
<u>West Jordan v. Morrison</u>	
656 P.2d 445, 446 (Utah 1982)	11

STATUTES

Utah Code Annotated Section 63-30-36	9,14,16,17
Utah Code Annotated Section 63-30-37	9,14,16,17
Utah Code Annotated Section 63-30a-2	1,2,3,8,9 10,12,14,15,16,18,20
Utah Code Annotated Section 76-1-401	3,4,13
Utah Code Annotated Section 76-1-402	4,13,20
Utah Code Annotated Section 76-1-402(2)	4,13
Utah Code Annotated Section 76-1-403	4,13
Utah Code Annotated Section 76-8-402	5,20,21
Utah Code Annotated Section 76-8-403	20,21
Utah Code Annotated Section 76-8-404	7
Utah Code Annotated Section 77-8a-1	4
Utah Code Annotated Section 78-2-2(3)	1
Utah Code Annotated Section 78-2a-3(2)(j)	1

RULES

Utah R. Civ. P. 56(c)	2
Utah R. Cr. P. 9.5	3,12

OTHER AUTHORITY

House Bill 15, 1987.	17
House Bill 290, 1983	15
Interim Study Committee Reference Bulletin	17
<u>Sutherland Statutory Construction</u>	
Section 46.01 (5th Ed. 1992).	11
Senate Bill 247, March 7, 1977	14,16
Uintah County Personnel Policies and Procedures	
Section 610	23
<u>Webster's Dictionary</u>	
(Pamco Publishing Comp. 1992)	18

STATEMENT OF JURISDICTION

This is an appeal from the Eighth Judicial District Court's ruling which granted Uintah County's Motion for Summary Judgment and denied Deland's Motion for Summary Judgment and Deland's Motion for a New Trial. The Supreme Court had original jurisdiction pursuant to Section 78-2-2(3)(j) Utah Code Ann., but poured it over to this court under Rule 42 Utah R. App. P. This court has jurisdiction pursuant to Section 78-2a-3(2)(j), Utah Code Annotated.

STATEMENT OF ISSUES AND STANDARD OF APPELLATE REVIEW

POINT I

Uintah County agrees with Deland's statement that one of the issues for review is the interpretation of Section 63-30a-2 Utah Code Annotated, and whether or not legal fees should be allowed under that statute when a government employee pleads guilty to three misdemeanor counts, and three felony counts are dismissed on motion of the employee, in a multi-count information.

The trial court's interpretation of a statute presents a question of law, and is thus reviewed for correctness and accorded no particular deference. State v Strader, 902 P.2d 638 (Ct. App. 1995). See also, State v. Thurman, 911 P.2d 371 (Utah

1996).

Summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). Higgins v. Salt Lake County, 855 P.2d 231, 235 (Utah 1993). An appeal from a summary judgment is to resolve only legal issues and the appellate court does not defer to the trial court's conclusions of law but reviews them for correctness. Perrine v. Kennecott Mining Corp., 911 P.2d 1290 (Utah 1996).

POINT II

The issue of whether Meacham acted during the performance of his duties, within the scope of his employment or under color of his authority as required by Section 63-30a-2 when he falsified his time sheets was not reached by the trial court, but was raised by Uintah County. (R. 182-186) This issue only comes into play if this court decides against Uintah County on Point I. This court could decide as a matter of law that Meacham's conduct fell outside the scope of his employment or if it doesn't so decide it should remand the matter to the trial judge for a factual determination. Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989).

STATUTORY PROVISIONS AND RULES

This appeal involves the interpretation of Section 63-30a-2 U.C.A. which states as follows:

Indictment or information against officer or employee - Reimbursement of attorneys' fees and court costs incurred in defense.

If a state grand jury indicts or if an information is filed against an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of his duties, within the scope of his employment or under color of his authority, and that indictment or information is quashed or dismissed or results in a judgment of acquittal, unless the indictment or information is quashed or dismissed upon application or motion of the prosecuting attorney, that officer or employee shall be entitled to recover from the public entity reasonable attorneys' fees and court costs necessarily incurred in the defense of that indictment or information.

Rule 9.5 of the Utah Rules of Criminal Procedure is set forth below:

Charged multiple offenses - To be filed in single court.

(1) (a) Unless otherwise provided by law, complaints, citations, or information charging multiple offenses, which may include violations of state laws, county ordinances, or municipal ordinances and arising from a single criminal episode as defined by Section 76-1-401, shall be filed in a single court that has jurisdiction of the charged offense with the highest possible penalty of all the offenses charged.

(b) The offenses within the complaint, citation, or information may not be separated except by order of the court and for good cause shown.

76-1-401. "Single criminal episode" defined - Joinder of offenses and defendants.

In this part unless the context requires a different definition, "single criminal episode" means all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective.

Nothing in this part shall be construed to limit or modify the effect of Section 77-8a-1 in controlling the joinder of offenses and defendants in criminal proceedings.

76-1-402. Separate offenses arising out of single criminal episode - Included offenses.

(1) A defendant may be prosecuted in a single criminal action for all separate offenses arising out of a single criminal episode; however, when the same act of a defendant under a single criminal episode shall establish offenses which may be punished in different ways under different provisions of this code, the act shall be punishable under only one such provision; an acquittal or conviction and sentence under any such provision bars a prosecution under any other such provision.

(2) Whenever conduct may establish separate offenses under a single criminal episode, unless the court otherwise orders to promote justice, a defendant shall not be subject to separate trials for multiple offenses when:

- (a) The offenses are within the jurisdiction of a single court; and
- (b) The offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first information or indictment.

76-1-403. Former prosecution barring subsequent prosecution for offense out of same episode.

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if;

- (a) The subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and

- (b) The former prosecution:
 - (I) resulted in acquittal; or
 - (ii) resulted in conviction; or
 - (iii) was improperly terminated; or
 - (iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

76-8-402. Misusing public monies.

This section is set forth in its entirety in Addendum 5.

STATEMENT OF THE CASE

Uintah County agrees with Deland's Statement of the Case.

STATEMENT OF THE FACTS

Uintah County does not disagree with any of the facts as stated in the Brief of Appellant (except that the criminal information was filed November 10, 1993, rather than October 10, 1993) but believes that this court should consider the following additional facts.

A six count Information was filed against the Uintah County Sheriff on November 10, 1993. (R. 75-77 and Addendum 1) Three counts (I, II, and III) alleged felony offenses of making profit out of or misusing public monies. Three counts (IV, V, and VI)

alleged misdemeanor offenses of falsification or alteration of government records.

The criminal charges arose from the following factual situation. In June, July, and August of 1993, Uintah County and the United States Forest Service had a contract whereby officers in the Uintah County Sheriff's Department would provide patrols on forest service lands on holidays and weekends during the officers' off duty hours. (R. 177-178) The officers were paid by the Uintah County Treasurer according to a time sheet submitted by the officer. (R. 177) The United States Forest Service would then reimburse the county on an annual basis for all payments made by the county. (R. 177)

The basis for the felony and misdemeanor charges stemmed from false time sheets submitted by Sheriff Meacham, or at his direction, claiming that he patrolled forest lands on dates when he did not perform such work, and subsequent payment of public monies based on the false time sheets. (R. 175) Three time sheets were introduced as evidence at the preliminary hearing in support of all six counts. (R. 83 and 175) Each time sheet formed the basis for a felony count and a misdemeanor count. (R. 175)

The misdemeanor counts were alleged to have occurred June 7,

June 21, and July 6, 1993. (R. 75-77) and stemmed from Meacham presenting, or causing to be presented, time records requesting payment for hours worked on the U.S. Forest Service run, which he knew he had not worked as represented on the forms, intending that the records be received as genuine. (R. 65-73 and 175)

The felony counts were alleged to have occurred June 9, June 23, and July 7, 1993. (R. 75-77) They stemmed from the payments Meacham received from the Uintah County Treasurer, after having filed the false claims. (R. 175)

Prior to trial, counsel for Meacham, Loni Deland, filed a Motion to Dismiss Counts I, II, and III, the felony counts. (R. 170-174) Mr. Deland argued in his Memorandum in Support of his Motion that "In order to be convicted of a criminal violation of Section 76-8-404 the Defendant must be in a fiduciary capacity, and due to a conflict of (business) interest, use his position as a public official/fiduciary in such a way as to make a profit out of his private business dealings vis-a-vis his public office." (R. 173)

On April 11, 1994 Mr. Deland's Motion to Dismiss was argued to Judge Hyde and the three felony counts were dismissed. (R. 81)

Meacham then pled guilty the same day to the three misdemeanor counts and the State agreed not to file an amended

information seeking additional charges against him. (R. 65-73 and 81)

Meacham assigned his claim for legal fees to Deland. (R. 1)

On July 7, 1994 Deland sent his Notice of Claim for \$36,616.50 legal fees incurred in his representation of Meacham on the felony counts to the Uintah County Attorney. (R. 59-61) Uintah County did not formally deny his claim, but refused to pay it.

The Complaint was filed in the Eighth Judicial District Court in Uintah County March 6, 1996. (R. 1-8)

Deland filed a Motion for Summary Judgment on his Second Cause of Action which sought reimbursement pursuant to Section 63-30a-2 Utah Code Annotated (R. 132-133) and Uintah County filed a Motion for Summary Judgment on the Issue of Liability. (R. 137-138)

On August 7, 1996 Judge Anderson granted the county's Motion for Summary Judgment. (R. 198-200) On August 15, 1996 Deland filed a Motion for a New Trial (R. 243-244), which was denied September 17, 1996. (R. 252-253) Deland's Second and Third Causes of Action were dismissed by Stipulation of the parties. (R. 254-257)

SUMMARY OF ARGUMENT

POINT I

The trial court was correct when it ruled that the information had to be dismissed in its entirety before the Uintah County Sheriff was entitled to be reimbursed his legal fees pursuant to Section 63-30a-2 Utah Code Annotated. The plain language of the statute states that the information must be quashed or dismissed or result in a judgment of acquittal. The statute does not contain language such as "dismissed in whole or in part." Each of the felonies was a single criminal episode with one of the misdemeanors, and had to be filed by the state in a single information. Even if the state had filed three separate informations based on the three separate time sheets, none of the informations would have been dismissed in its entirety.

The legislative history of Section 63-30a-2 Utah Code Annotated and of its civil equivalent, Sections 63-30-36 and 63-30-37 Utah Code Annotated, Utah Governmental Immunity Act, reflect a legislative intent to narrowly define the situations when a governmental agency must reimburse an employee for legal fees incurred in his defense.

Case law suggests that the purpose of Section 63-30a-2 Utah Code Annotated is to indemnify a "vindicated" employee, which

Meacham was not, as he plead guilty to three misdemeanors and was punished accordingly.

POINT II

This court could rule as a matter of law that Meacham's actions in falsifying his time sheets was not within the scope of his employment. Such actions violated the Uintah County Personnel Policy and Procedure and also violated the Law Enforcement Code of Ethics. If this court doesn't so find, it should remand this issue to the trial court for a factual determination.

ARGUMENT

POINT I

THE DISTRICT COURT CORRECTLY INTERPRETED SECTION 63-30a-2 U.C.A.
AND REFUSED TO ALLOW LEGAL FEES BECAUSE THE
INFORMATION WAS NOT QUASHED OR DISMISSED OR RESULT IN A
JUDGMENT OF ACQUITTAL IN ITS ENTIRETY

A. THE PLAIN LANGUAGE OF SECTION 63-30a-2 UTAH CODE ANNOTATED
REQUIRES COMPLETE DISMISSAL OF THE INFORMATION

All statutory references contained herein are to the Utah Code Annotated 1953, as amended, unless otherwise stated.

At issue is the interpretation of Section 63-30a-2 which

provides as follows:

"If a state grand jury indicts or if an information is filed against an officer or employee, in connection with or arising out of any act or omission of that officer or employee during the performance of his duties, within the scope of his employment or under color of his authority, and that indictment or information is quashed or dismissed or results in a judgment of acquittal, unless the indictment or information is quashed or dismissed upon application or motion of the prosecuting attorney, that officer or employee shall be entitled to recover from the public entity reasonable attorneys's fees and court costs necessarily incurred in the defense of that indictment or information." (emphasis added)

In Perrine v. Kennecott Mining Corporation, 911 P.2d 1290, 1292 (Utah 1996), our Supreme Court summarized the well-established principles involved in statutory interpretation as follows:

"This Court's primary responsibility in construing legislative enactments is to give effect to the Legislature's underlying intent. West Jordan v. Morrison, 656 P.2d 445, 446 (Utah 1982)...Generally, the best indication of that intent is the statute's plain language. Berube v. Fashion Centre, Ltd., 771 P.2d 1033, 1038 (Utah 1989). Thus, we will interpret a statute according to its plain language, unless such a reading is unreasonably confused, inoperable, or in blatant contravention of the express purpose of the statute. West Jordan, 656 P.2d at 446..."

If the meaning of a statute is plain, the "sole function of the courts is to enforce it according to its terms." State v. Paul, 560 P.2d 992, 993 (Utah App. 1993) citing Norman J. Singer, Sutherland Statutory Construction, Section 46.01 (5th Ed. 1992).

Each term in a statute should be interpreted according to its usual and commonly accepted meaning. Paul, supra, at 993 citing Utah County v. Orem City, 669 P.2d 707, 708 (Utah 1985).

There is nothing confusing or inoperable about Section 63-30a-2. The plain language of the statute requires that the information be quashed or dismissed or result in an acquittal before a public officer is entitled to recover his legal fees incurred in the defense of that information. Had the legislature intended the interpretation urged by opposing counsel, it could have easily done so by adding language such as "dismissed in whole or in part" or "result in an acquittal on all or some of the charges."

Appellant argues that each count in an information should be treated as a separate information. Such an interpretation would conflict with several of our statutes and rules of procedure dealing with the filing of offenses in informations.

Rule 9.5 of the Utah Rules of Criminal Procedure provides that "...informations charging multiple offenses...arising from a single criminal episode...shall be filed in a single court...and the offenses within the...information may not be separated except by order of the court and for good cause shown."

"Single criminal episode" is defined as all conduct which is

closely related in time and is incident to an attempt or accomplishment of a single criminal objective. Section 76-1-401.

A defendant has the right not to be subject to separate trials for multiple offenses that are part of a single criminal episode when these offenses are within the jurisdiction of a single court and known to the prosecuting attorney at the time the defendant is arraigned. Section 76-1-402.

A subsequent prosecution would be barred if it arose out of a single criminal episode. Section 76-1-403 provides as follows:

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if;

(a) The subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution;

Arguably, each of the three separate time sheets submitted by Meacham and the resulting criminal charges could have been filed in three separate informations. However, each false time sheet formed the basis for a misdemeanor charge of falsifying government documents (when it was presented) and a felony charge of misuse of public money (when it was paid a day or two later).

(R. 83 and 175) Each of the felonies was a single criminal episode with one of the misdemeanors and had to be charged in the same information. Counts I and IV of the Information were a single criminal episode, as were Counts II and V, and Counts III and VI. Even though the felony counts were dismissed by Judge Hyde, the informations would not have been quashed or dismissed as required by Section 63-30a-2 as Meacham pled guilty to three misdemeanors.

This court's analysis could stop with the argument set forth above, as the plain language of the statute is not confused or ambiguous and requires the information to be dismissed. However, a response to opposing counsel's discussion of the legislative history may be useful.

B. THE LEGISLATIVE HISTORY OF SECTION 63-30a-2 AND OF SIMILAR STATUTES, SECTIONS 63-30-36 and 63-30-37, DEMONSTRATE A LEGISLATIVE INTENT TO NARROWLY DEFINE THE SITUATIONS WHEN AN EMPLOYEE IS REIMBURSED HIS LEGAL FEES

Section 63-30a-2 was enacted in 1977 as Senate Bill 247.

Comments made on the floor of the Senate indicate the legislative intent was that legal fees were to reimburse an individual who was found innocent of the charges. Senator Barlow commented on the Senate Floor that..."if charges were brought against us for accepting a bribe, it could be absolutely groundless, but we

could be indicted and it could be a very costly legal expense...to finally prove that we are innocent." (emphasis added) (R. 154-156 and Addendum 2) In 1983 House Bill 290 was passed to include the word "information", with no comments from the floor.

It is also interesting to note that during the Senate hearing on March 7, 1977 Senator Jesk inquired of Senator Barlow, the sponsor of the bill, if there were specific people who would benefit presently if the bill were to pass. Senator Barlow replied that two liquor commissioners who were indicted and proven innocent would benefit. (R. 154-156 and Addendum 2)

Presumably one of those liquor commissioners was Gerald E. Hulbert, as it was noted in Hulbert v. State, 607 P.2d 1217, 1223 (Utah 1980) that Hulbert..."actively lobbied before the legislature to have the statute enacted." (referring to Section 63-30a-2) Hulbert was a former Chairman of the Liquor Control Commission who sued the State to recover his legal fees incurred in his successful defense of grand jury indictments issued against him for acts allegedly committed in his official capacity and pursuant to the then recently enacted Section 63-30a-2. In 1975, a state grand jury, over a period of several months, issued twelve indictments against him. The law firm he retained,

represented him over a two and one-half year period, made sixty-five court appearances, conducted two trials, and made two appeals. The court in Hulbert noted that "The result of this vigorous defense was the exoneration of plaintiff on all twelve indictments." The court also held that the benefits of Section 63-30a-2 were to be applied retroactively.

In 1977 at the time the legislature was considering Senate Bill 247 and Mr. Hulbert was lobbying for its passage, Mr. Hulbert's situation was much different than Mr. Meacham's. Mr. Hulbert was completely exonerated on all twelve counts after long and costly litigation; Mr. Meacham pled guilty to three misdemeanor counts and the three felonies were dismissed because the district court's interpretation of the felony statute, not because of a finding of innocent behavior by Mr. Meacham.

Sections 60-30-36 and 63-30-37 (Governmental Immunity Act) are similar to Section 63-30a-2 in that they provide that a governmental entity defend an employee, or reimburse the employee for legal fees incurred by the employee in his defense, in civil actions brought against the employee for actions taken by the employee during the performance of his duties, within the scope of employment, or under color of authority. The governmental entity also is required to pay any judgment entered

against the employee or settlement of the claim. In 1987 Sections 63-30-36 and 63-30-37 were amended by House Bill No. 15. (R. 98-100 and Addendum 3) The changes reflect a legislative intent to tighten the circumstances under which the government agency must defend or pay for judgments entered against its employees in civil suits. (R. 94-97 and Addendum 4) Language was added to Section 60-30-36 and 60-30-37 which allowed a governmental entity to decline to defend an employee or pay for any judgment if the entity determines that the act in question did not occur during the performance of the employee's duties, within the scope of his employment, or under color of authority; or that the injury resulted from fraud or malice of the employee; or that the injury resulted from the employee being under the influence of drugs or alcohol. See Interim Study Committee Reference Bulletin. (R. 94-97 and Addendum 4).

It would be unfair to allow Meacham reimbursement of his defense fees when he pled guilty to criminal acts involving fraud, when another county employee sued civilly because of fraudulent conduct, would not be allowed a defense at government expense. The legislative changes in 1987 further limiting the situations when a governmental entity is required to defend an employee, support the narrow interpretation the trial judge made

of Section 63-30a-2 as requiring a complete acquittal of all charges before an employee is entitled to be reimbursed his legal fees.

C. ONLY A "VINDICATED" EMPLOYEE SHOULD BE ALLOWED HIS LEGAL FEES

Salmon v. Davis County, 916 P.2d 890 (Utah 1996) provides us with the Utah Supreme Court's opinion as to the purpose of Section 63-30a-2 U.C.A. In Salmon, a Deputy Sheriff was charged with two Class B Misdemeanors of assault that arose out of actions taken by him in the course of his employment. Separate trials were held on each count and two separate juries found him not guilty. The issue in Salmon was the amount the deputy sheriff should be reimbursed for legal fees, as the County stipulated that he was entitled to reimbursement. Justice Zimmerman, in concurring that Salmon should be entitled to attorney's fees incurred in litigating his right to attorney's fees, wrote that "I agree that lack of such an award would undermine the purpose of Section 63-30a-2, which is to indemnify a vindicated employee." (emphasis added)

"Vindicate" is defined as, "to clear of accusation, censure, suspicion, etc." Webster's Dictionary, (Pamco Publishing Comp. 1992). Meacham was not vindicated of the criminal charges

because the information was not dismissed in its entirety. Based on his guilty plea to three Class B Misdemeanors, he was sentenced to serve thirty days jail which was suspended; was placed on court probation for one year; and was ordered to pay a fine of \$1,387.50 and restitution of \$450.00. (R. 68-74 and 81)

POINT II

WHEN HE FALSIFIED HIS TIME SHEETS MEACHAM DID NOT ACT DURING THE PERFORMANCE OF HIS DUTIES, WITHIN THE SCOPE OF HIS EMPLOYMENT OR UNDER COLOR OF HIS AUTHORITY

The issue of whether or not Meacham acted during the performance of his duties, within the scope of his employment, or under color of his authority was raised by Uintah County in its Motion for Summary Judgment (R. 182-186 Memorandum in Opposition to Plaintiff's Motion for Summary Judgment...and In Support of Uintah County's Motion for Summary Judgment) but was never reached by the trial court. (R. 198-200) This issue is generally a factual question to be determined by the trier of fact, unless it is so clearly outside the scope of employment that this court can decide it as a matter of law. Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989). This court need only deal with the issue if it decides against Uintah County on Point I discussed above. If this court does not rule that

Meacham's conduct in falsifying time sheets, as a matter of law, was outside his scope of employment, then it should remand the matter to the trial court for a factual determination.

Meacham was originally charged with three felony counts in violation of Section 76-8-402 - misusing public monies. The information followed the language of the charging statute and alleged that "...Meacham, while Sheriff of Uintah County, a public officer, knowingly...committed the crimes of misuse of public money."

This statute however, can be distinguished from Section 63-30a-2, under which Meacham now seeks reimbursement. In Section 76-8-402 the focus is on the public monies and imposes criminal sanctions for any public officer who misappropriates the public monies for his own use. Persons other than public officers, if they receive, safekeep, or disburse public monies and fail to deal with the monies lawfully, are also guilty of a third degree felony. (Section 76-8-403) There is no language or requirement that the public officer act during the performance of his duties, or within the scope of his employment, or under color of his authority when he appropriates the public monies for his own use. In fact, for the reasons stated below, such acts would not be considered within the scope of his employment. Section 63-30a-2

on the other hand, specifically requires that attorney's fees are only reimbursable if the information or indictment is "filed in connection with or arising out of any act or omission of that officer or employee during the performance of his duties, within the scope of his employment or under color of his authority and the information or indictment is dismissed or results in a judgment of acquittal." Thus, under Section 76-8-402, one need only be a public officer who misappropriates public money or under Section 76-8-403 any person who receives, safekeeps, or disburses public monies unlawfully to be guilty of the crimes, whereas, before being entitled to be reimbursed legal fees, a public officer must have acted during the performance of his duties, within the scope of his employment, or under color of his authority.

In Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989) it was held that a therapist employed by the County Mental Health Facility who engaged in sexual misconduct with a patient, was not entitled to indemnification by the County because the act did not occur during the performance of his duties or within the scope of his employment, as required by the statute in effect at the time.

In determining scope of employment, the court in Birkner discussed three criteria that Utah cases have tended to focus on:

(1) The employee's conduct must be of the general kind the employee is employed to perform. The employee must be about the employer's business and the duties assigned by the employer, as opposed to being wholly involved in a personal endeavor.

(2) The employee's conduct must occur within the hours of the employee's work and the ordinary spatial boundaries of the employment.

(3) The employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest.

In Birkner the court held, as a matter of law, that the sexual misconduct was outside the scope of employment.

Meacham's actions should be analyzed using the Birkner criteria:

(1) The employee's conduct must be of the general kind the employee is employed to perform. The employee must be about the employer's business and the duties assigned by the employer, as opposed to being wholly involved in a personal endeavor.

Although Meacham was performing the duties of a peace officer when he patrolled the forest service land, he did so for his own benefit and was ultimately reimbursed for the hours he performed by the U.S. Forest Service. This not a situation where Meacham used excessive force or arrested someone maliciously while acting as a peace officer of Uintah County although being paid by the Forest Service. In such a situation, the Court may well find that his actions were within the scope of his employment or under color of authority as a Uintah County

employee even though he was earning extra money working for the Forest Service.

(2) The employee's conduct must occur within the hours of the employee's work and the ordinary spatial boundaries of the employment.

Meacham was to perform the services for the forest Service on the weekends and holidays when he was not performing his regular duties as Sheriff of Uintah County. (R. 177-178) He was to patrol Forest Service land.

(3) The employee's conduct must be motivated, at least in part, by the purpose of serving the employer's interest.

Meacham's actions in falsify his time sheets, in no way benefited Uintah County and was contrary to the County Policy (see Uintah County Personnel Policies and Procedures Sections 610, which provides that an employee who violates a criminal law is subject to discipline, including dismissal. (R. 150-153) His actions were also contrary to the standards set for peace officers, who are sworn to uphold the laws. (R. 149) Law Enforcement Code of Ethics: "I will be exemplary in obeying the law..." In analyzing the employee's actions and finding them not within the scope of employment, the Court in Birkner found it relevant that the employee's actions violated the employee's professional duties and violated the rules of the Utah Department

of Business Regulation that prohibited a social worker from engaging in sexual activities with clients.

J.H. by D.H. v. West Valley City, 840 P.2d 115 (Utah 1992) also dealt with the issue of whether a police officer who was employed to instruct Explorer Scouts in the area of police work, acted within the scope of his employment when he molested a scout. The court held that the officer's acts were "a complete abandonment of...his employment." Further, such conduct was not motivated in any way to benefit the officer's employer.

Meacham's conduct in falsifying time sheets that gave rise to the criminal charges was not the type of conduct he was to perform as the Uintah County Sheriff. Such conduct was a personal endeavor and not motivated to serve Uintah County's interest.

CONCLUSION

This court should affirm the District Court's ruling that granted Uintah County's Motion for Summary Judgment and denied Deland's Motion for Summary Judgment and Motion for a New Trial. Only if this court denies this relief does it need to reach the issue of scope of employment. It should rule as a matter of law that Meacham's conduct was outside the scope of his employment,

or if this court does not make that determination, it should remand this issue to the District Court for it to make a factual determination of scope of employment.

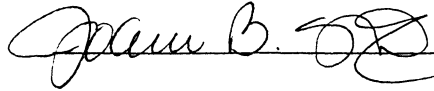
DATED this the 20th day of March, 1997.


JOANN B. STRINGHAM
Uintah County Attorney

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing to Herschell Bullen, Attorney for Plaintiff-Appellant, Stock and Mining Exchange Bldg., 39 Exchange Place, Second Floor, Salt Lake City, Utah 84111.

DATED this the 20th day of March, 1997.


JOANN B. STRINGHAM

ADDENDUM 1

IAN GRAHAM #1231

Attorney General

FREIGHTON C. HORTON II #1542

MICHAEL D. WIMS #4720

Assistant Attorneys General

Attorneys for the State of Utah

236 State Capitol

Salt Lake City, Utah 84114-0910

Telephone: 391-538-1300

IN THE EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF UTAH, STATE OF UTAH

STATE OF UTAH

BAIL

Plaintiff,

vs.

INFORMATION

LLOYD D. MEACHAM

SSN: 528-58-1510

DOB: 9/19/43

Defendant.

Criminal No. 73R00470

Judge

The undersigned, MICHAEL D. WIMS, states on information and belief that the defendant LLOYD D. MEACHAM committed the crime of:

COUNT ONE

MAKING PROFIT OUT OF OR MISUSING PUBLIC MONEYS, a third degree felony, in violation of Section 76-8-403 and 76-2-202 Utah Code Annotated, 1953 as amended and the Constitution of the State of Utah, Article XIII, Section 8, in that LLOYD D. MEACHAM on or about June 8th, 1993, in Uintah County, State of Utah, 1993, while Sheriff of Uintah County, a public officer, knowingly made a profit out of public moneys and/or used the same for a

COUNT TWO

MAKING PROFIT OUT OF OR MISUSING PUBLIC MONEYS, a third degree felony, in violation of Section 76-8-404 and 76-2-202 Utah Code Annotated, 1953, as amended and the Constitution of the State of Utah, Article XIII, Section 3, in that LLOYD D. MEACHAM on or about June 23rd, 1993, in Uintah County, State of Utah 1993, while Sheriff of Uintah County, a public officer, knowingly made a profit out of public moneys and/or used the same for a purpose not authorized by law.

COUNT THREE

MAKING PROFIT OUT OF OR MISUSING PUBLIC MONEYS, a third degree felony, in violation of Section 76-8-404 and 76-2-202, Utah Code Annotated, 1953, as amended and the Constitution of the State of Utah, Article XIII, Section 3, in that LLOYD D. MEACHAM, on or about July 7th, 1993, in Uintah County, State of Utah, 1993, while Sheriff of Uintah County, a public officer, knowingly made a profit out of public moneys and/or used the same for a purpose not authorized by law.

COUNT FOUR

FALSIFICATION OR ALTERATION OF GOVERNMENT RECORD, a class B misdemeanor, in violation of Section 76-8-511 and Section 76-2-202, Utah Code Annotated, 1953, as amended, in that LLOYD D. MEACHAM, in Uintah County, State of Utah, on or about June 7th, 1993, presented or used a thing, to wit: a Uintah County Sheriff's Department Time Record, knowing it to be false and with a purpose that it be taken as a genuine part of information or records received or kept by the government for information.

COUNT FIVE

FALSIFICATION OR ALTERATION OF GOVERNMENT RECORD, a class B misdemeanor, in violation of Section 76-8-511 and Section 76-2-202, Utah Code Annotated, 1953, as amended, in that LLOYD D. MEACHAM, in Uintah County, State of Utah, on or about June 21st 1993, presented or used a thing, to wit: a Uintah County Sheriff's Department Time Record, knowing it to be false and with a purpose that it be taken as a genuine part of information or records received or kept by the government for information.

COUNT SIX

FALSIFICATION OR ALTERATION OF GOVERNMENT RECORD - a class C misdemeanor in violation of Section 76-3-511 and Section 76-3-512 Utah Code Annotated 1953 as amended in that DAVID L. MEADOWHAM in Uintah County State of Utah on or about July 6, 1993 presented or used a thing to wit, a Uintah County Sheriff's Department Time Record knowing it to be false and with a purpose that it be taken as a genuine part of information records received or kept by the government for information.

This information is based upon evidence received as follows:

1. John Laugesen
2. Harry Sonvall
3. Glen McKee
4. Lorna Merrill
5. Bob Adams
6. Mike Williams
7. Diane Tucker
8. Mike Webster
9. Mike Hansen
10. Bob Smith
11. James Hinchman
12. Michael Bernfeldt
13. Ted Latta

Authorized for presentation and filing.

Michael D. Wimer
Assistant Attorney General

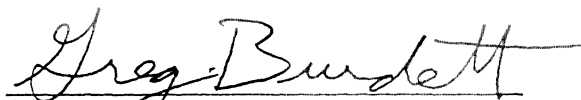
Date

ADDENDUM 2

AFFIDAVIT

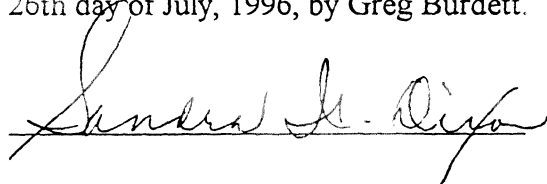
I, Greg Burdett, do solemnly swear that on July 26, 1996, I listened to the record of the Senate debate, which occurred on March 7, 1977, for Senate Bill 247, and I wrote the attached transcription while listening to that record. Moreover, the attached transcript of the Senate's debate for Senate Bill 247 is an accurate transcription of that debate which occurred on March 7, 1977.

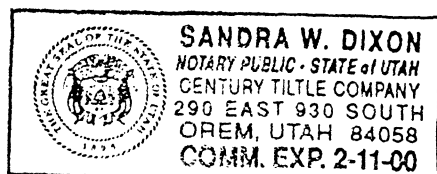
DATED this 26th day of July, 1996.


Greg Burdett

State of Utah)
) ss.
County of Utah)

The foregoing affidavit was acknowledged before me this 26th day of July, 1996, by Greg Burdett.





Senate Bill 247, Reimbursement of Officers and Employees, sponsored by Senators Bowen and Barlow

This bill provides for the reimbursement to officers and employees of the state for legal fees and costs necessarily incurred in the successful defense of grand jury indictments.

March 7, 1977, Senate Floor.

Senator Barlow: Mr. President, Senate Bill 247 relates to the providing for the reimbursement to officers and employees for legal fees and costs incurred in the special defense of a grand jury indictment. Of course, what this means is if they are found innocent and in defending themselves against charges which were not proven, it would simply reimburse them for reasonable attorney fees, for these charges, or for the indictment. And, I just think this could really happen to any one of us, after all we are consider officers of the state as legislators, if charges were brought against us for accepting a bribe, it could be absolutely groundless, but we could be indicted and it could be a very costly legal expense, unless we happen to be an attorney ourselves, even then your time is valuable, but for most of us it would be a very costly legal expense to finally prove that we are innocent. I think that it is absolute right and proper, so I hope you will support us in this bill.

Senator Jesk: Would Senator Barlow yield to a question?

Senator Barlow: Yes. I'll try to.

Senator Jesk: Are there specific people who would benefit presently if this bill would pass and if so would you name them?

Senator Barlow: Yes. I would think the two commissioners who were involved in the -- the liquor commissioners who were indicted and proven innocent, they would be beneficiaries of this bill. There might be some others, but they are the only two I'm aware of.

Unknown Senator: Senator Barlow, my I ask a question Mr. President? Now in answer to Senator Jesk's question, I what was the answer again.

Senator Barlow: The answer was yes. There are two that I am aware of, and I mentioned them.

Unknown Senator: And that is what Section 3 covers in the bill, is that right?

Senator Barlow: Yes, that is correct.

Senate President: There is a quorum present. Do I hear a single dissenting vote?

Unknown Senator: No.

Senate President: I hear one, we will have a roll call vote on Senate bill 247.

Roll Call Vote Conducted.

Senate President: Senate bill 247 has received twenty four (24) aye votes, four (4) no votes, and one (1) not being present has been passed by the Senate and will be sent to the House for further action.

ADDENDUM 3

58.

(7) Any federal or state agency, board, or commission, special district, or municipal corporation that makes a survey of lands within this state shall comply with this section.

Section 9. Section Enacted.

Section 17-23-18, Utah Code Annotated 1953, is enacted to read:

17-23-18. Survey maps and narratives - Amendments.

(1) Any survey map or narrative filed and recorded under the provisions of this chapter may be amended by an affidavit of corrections:

(a) to show any courses or distances omitted from the map or narrative;

(b) to correct an error in the description of the real property shown on the map or narrative; or

(c) to correct any other errors or omissions where the error or omission is ascertainable from the data shown on the map or narrative as recorded.

(2) (a) The affidavit of correction shall be prepared by the registered professional land surveyor who filed the map or narrative.

(b) In the event of the death, disability, or retirement from practice of the surveyor who filed the map or narrative, the county surveyor may prepare the affidavit of correction.

(c) The affidavit shall set forth in detail the corrections made.

(d) The seal and signature of the registered professional land surveyor filing the affidavit of correction shall be affixed to the affidavit.

(3) The county surveyor having jurisdiction of the map or narrative shall certify that the affidavit of correction has been examined and that the changes shown on the map or narrative are changes permitted under this section.

(4) Nothing in this section permits changes in courses or distances for the purpose of redesigning parcel configurations.

Section 10. Sections Repealed.

Section 17-23-8, Utah Code Annotated 1953, as last amended by Chapter 33, Laws of Utah 1961, Section 17-23-9, Utah Code Annotated 1953, as last amended by Chapter 33, Laws of Utah 1961, Section 17-23-10, Utah Code Annotated 1953, as last amended by Chapter 63, Laws of Utah 1979, and Section 17-23-11, Utah Code Annotated 1953, are repealed.

CHAPTER 30

H. B. No. 15

Passed January 30, 1987

Approved March 10, 1987

Effective July 1, 1987

CLARIFICATION OF PUBLIC EMPLOYEES INDEMNIFICATION

By April B. Wilson

AN ACT RELATING TO STATE AFFAIRS IN GENERAL; CLARIFYING CIRCUMSTANCES IN WHICH A GOVERNMENTAL ENTITY MUST REPRESENT, OR MAY REFUSE TO REPRESENT, A PUBLIC EMPLOYEE AGAINST A CIVIL CLAIM; CLARIFYING PAYMENT OF FEES AND COSTS INCURRED BY EMPLOYEE IN DEFENSE OF CRIMINAL CHARGE; AND PROVIDING AN EFFECTIVE DATE.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

63-30-36, AS ENACTED BY CHAPTER 131, LAWS OF UTAH 1983

63-30-37, AS ENACTED BY CHAPTER 131, LAWS OF UTAH 1983

63-30A-3, AS LAST AMENDED BY CHAPTER 194, LAWS OF UTAH 1986

Be it enacted by the Legislature of the State of Utah:

Section 1. Section Amended.

Section 63-30-36, Utah Code Annotated 1953, as enacted by Chapter 131, Laws of Utah 1983, is amended to read:

63-30-36. Defending government employee - Request - Cooperation - Payment of judgment.

(1) Except as provided in Subsections (2) and (3), a governmental entity shall defend any action brought against its employee arising from an act or omission occurring:

(a) during the performance of an employee's duties;

(b) within the scope of the employee's employment; or

(c) under color of authority.

[(+)] (2) (a) Before a governmental entity may defend its employee against a claim, the employee [must] shall make a written request to the governmental entity to defend him [and must request]:

(i) within ten days after service of process upon him; or

(ii) within [such] a longer period [as] that would not prejudice the governmental entity in maintaining a defense on his behalf[.]; or

(iii) within a period that would not conflict with notice requirements imposed on the entity in connection with insurance carried by the entity relating to the risk involved.

(b) If the employee fails to make a request, or fails to reasonably cooperate in the defense, the governmental entity [is] need not [required to] defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.

(3) The governmental entity may decline to defend an action against an employee if it determines:

(a) that the act or omission in question did not occur;

(i) during the performance of the employee's duties; or

(ii) within the scope of his employment; or

(iii) under color of authority; or

(b) that the injury or damage resulted from the fraud or malice of the employee; or

(c) that the injury or damage on which the claim was based resulted from:

(i) the employee driving a vehicle, or being in actual physical control of a vehicle:

(A) with a blood alcohol content equal to or greater by weight than the established legal limit; or

(B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(ii) the employee being physically or mentally impaired so as to be unable to reasonably perform his job function because of the use of alcohol, because of the nonprescribed use of a controlled substance as defined in Section 58-37-4, or because of the combined influence of alcohol and a nonprescribed controlled substance as defined by Section 58-37-4.

(4) (a) Within ten days of receiving a written request to defend an employee, the governmental entity shall inform the employee whether or not it shall provide a defense, and, if it refuses to provide a defense, the basis for its refusal.

(b) A refusal by the entity to provide a defense shall not be admissible for any purpose in the action in which the employee is a defendant.

[2] (5) If a governmental entity conducts the defense of an employee, the governmental entity shall pay any judgment based upon the claim, or any compromise or settlement of the claim, except as provided in Subsection [2] (6).

[2] (6) A governmental entity may conduct the defense of an employee under an agreement with the employee that the [government] governmental entity reserves the right not to pay [the] a judgment, [compromise, or settlement unless it is established that the claim arose out of an act or omission occ-

urring during the performance of his duties, within the scope of his employment, or under color of authority] if the conditions set forth in Subsection (3) are established.

(7) (a) Nothing in this section or Section 63-30-37 affects the obligation of a governmental entity to provide insurance coverage according to the requirements of Subsection 41-12a-301 (3) and Section 63-30-29.5.

(b) A governmental entity may refuse to defend an action against its employee under the conditions set forth in Subsection (3), but shall still provide coverage up to the amount specified in Sections 31A-22-304 and 63-30-29.5.

Section 2. Section Amended.

Section 63-30-37, Utah Code Annotated 1953, as enacted by Chapter 131, Laws of Utah 1983, is amended to read:

63-30-37. Recovery of judgment paid and defense costs by government employee.

(1) Subject to Subsection (2), if an employee pays a judgment entered against him, or any portion of it, which the governmental entity is required to pay under Section 63-30-36, the employee [is entitled to] may recover from the governmental entity the amount of [such] the payment and the reasonable costs incurred in his defense [from the governmental entity].

(2) If a governmental entity does not conduct the defense of an employee against a claim, or [does conduct] conducts the defense under an agreement as provided in Subsection 63-30-36 [2] (6), the employee may recover from the governmental entity under Subsection (1) if:

(a) the employee establishes that the act or omission upon which the judgment is based occurred during the performance of his duties, within the scope of his employment, or under color of authority, and that he conducted the defense in good faith; and

(b) the governmental entity does not establish that the injury or damage resulted from:

(i) the fraud or malice of the employee;

(ii) the employee driving a vehicle, or being in actual physical control of a vehicle:

(A) with a blood alcohol content equal to or greater by weight than the established legal limit;

(B) while under the influence of alcohol or any drug to a degree that rendered the person incapable of safely driving the vehicle;

(C) while under the combined influence of alcohol and any drug to a degree that rendered the person incapable of safely driving the vehicle; or

(iii) the employee being physically or mentally impaired so as to be unable to reasonably perform his job function because of the use of alcohol, because of the nonprescribed use of a controlled substance as defined in Section 58-37-4, or because of the combined use of alcohol and a nonprescribed controlled substance as defined in Section 58-37-4.

Section 3. Section Amended.

Section 63-30a-3, Utah Code Annotated 1953, as last amended by Chapter 194, Laws of Utah 1986, is amended to read:

63-30a-3. Request for defense or reimbursement.

(1) A request ~~[for a defense of a criminal charge or indictment and]~~ for reimbursement of attorneys' fees and court costs shall be filed in the manner provided in Sections 63-30-36 and 63-30-37.

(2) (a) Any reimbursement of attorneys' fees and court costs filed on behalf of an officer or employee of the state shall be paid from funds appropriated to the department or division that employed the officer or employee at the time of the act or omission that gave rise to the indictment or information.

(b) If those funds are unavailable, the reimbursement shall be paid from the General Fund upon approval by the Board of Examiners and legislative appropriation.

Section 4. Effective Date.

This act takes effect on July 1, 1987.

CHAPTER 31**H. B. No. 18**

Passed February 2, 1987

Approved March 10, 1987

Effective April 27, 1987

LICENSE PLATES OF LEASED STATE VEHICLES

By Stephen M. Bodily

AN ACT RELATING TO IDENTIFICATION OF GOVERNMENT VEHICLES; REQUIRING THAT GOVERNMENT VEHICLES BE IDENTIFIED WITH AN IDENTIFICATION MARK AND AN "EX" PLATE; MAKING EXCEPTIONS TO THE IDENTIFICATION REQUIREMENT; AND MAKING TECHNICAL CORRECTIONS.

THIS ACT AFFECTS SECTIONS OF UTAH CODE ANNOTATED 1953 AS FOLLOWS:

AMENDS:

41-1-44.1, AS LAST AMENDED BY CHAPTER 30, LAWS OF UTAH 1985

41-7-1.5, AS ENACTED BY CHAPTER 70, LAWS OF UTAH 1963

REPEALS:

41-7-1, AS LAST AMENDED BY CHAPTER 32, LAWS OF UTAH 1983

Be it enacted by the Legislature of the state of Utah:

Section 1. Section Amended.

Section 41-1-44.1, Utah Code Annotated 1953, as last amended by Chapter 30, Laws of Utah 1985, is amended to read:

41-1-44.1. Plates issued to political subdivisions or state - When letters "EX" are to be displayed - Exceptions.

(1) Every ~~[registration plate issued to any]~~ town, city, board of education, ~~[or other]~~ school district, state ~~[institutions]~~ institution of learning, county, ~~[or]~~ other governmental department, ~~[in the state, or to]~~ subdivision, or district, and the state ~~[itself for use on vehicles they own and operate]~~ shall:

(a) place a registration plate displaying ~~[have displayed upon it]~~ the letters, "EX[;]" ~~[except as provided in Subsections (2) and (3)]~~ on every vehicle owned and operated by them or leased for their exclusive use; and

(b) display an identification mark designating the vehicle as the property of the entity in a conspicuous place on both sides of the vehicle.

(2) The ~~[provisions contained in this section do not include motor vehicles in the service of the governor of the state, the attorney general, or any federal, state, or local governmental departments engaged in investigative work where secrecy is necessary]~~ entity need not display the "EX" registration plate or the identification mark required by Subsection (1) if:

(a) the motor vehicle is in the direct service of the governor or lieutenant governor of Utah or the attorney general, state auditor, or state treasurer of Utah;

(b) the motor vehicle is used in official investigative work where secrecy is essential;

(c) the motor vehicle is provided to an official of the entity as part of a compensation package allowing unlimited personal use of that vehicle; or

(d) the personal security of the occupants of the vehicle would be jeopardized if the "EX" registration plate were in place.

(3) Plates issued to Utah Highway Patrol vehicles may bear the capital letters "UHP," a beehive logo, and the call number of the vehicle for which the plate is issued.

(4) The State Tax Commission ~~[is responsible for the issuance of]~~ shall issue "EX" and "UHP" plates, and shall ~~[promulgate necessary]~~ enact rules ~~[to carry out this duty]~~ establishing the procedure for application and distribution for the plates.

Section 2. Section Amended.

Section 41-7-1.5, Utah Code Annotated 1953, as enacted by Chapter 70, Laws of Utah 1963, is amended to read:

41-7-1.5. Marking of state-owned vehicles for departments, colleges and universities - Duties of department of finance - Exceptions.

(1) (a) All ~~[state-owned and operated]~~ motor vehicles owned, leased for use, or operated by the state shall ~~[be marked as provided in this section]~~ display an identification mark and "EX" plates as required by Section 41-1-44.1.



STATE OF UTAH

OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL

LEGISLATIVE REVIEW LETTER

Date October 9, 1986

19 ⁸⁷

GENERAL

SESSION

H. B. No. 15 Title CLARIFICATION OF PUBLIC EMPLOYEES INDEMNIFICATION

Joint Rule 23.16 requires the Legislative General Counsel or his designee to review and approve all legislation and, with the approval of the sponsor, to make those changes necessary to: (a) insure that it is in proper legal form; (b) remove any ambiguities; and (c) avoid constitutional or statutory conflicts.

The Legislative General Counsel or his designee has reviewed and approved this legislation. The following information outlines the considerations on which the approval was given.

☒ ☐
yes no

1. The bill contains a "single subject" which is clearly expressed in the title as required by the Utah Constitution, Article VI, Sec. 22.

☒ ☐
yes no

2. The bill meets all the form requirements prescribed by legislative rule.

☐
no
conflicts

3. The bill does not have state or federal constitutional conflicts.
(Judgments regarding constitutionality address only obvious constitutional problems and do not represent a detailed review of all issues.)

☒
possible
conflicts

Explanation Very remote possibility that a public employee could allege a due process violation

4. The following information summarizes if applicable, its effects on governmental agencies and existing statutes and case law.

Allows a government entity to refuse to defend an employee under certain circumstances.

John L. Felt
Office of Legislative Research and General Counsel

ADDENDUM 4

Interim Study Committee R
eference Bulletin Report
for the 1987 General Sess
ion

SLATIVE RESEARCH AND GENERAL COUNSEL

Interim Study Committee Reference Bulletin

Report for the 1987 General Session

This bulletin provides a brief summary of studies and recommendations requiring action at the 1987 General Session. Included in each study report are the following:

- **A summary of background information.**
- **A statement of committee action.**
- **A summary of proposed legislation.**
- **A list of available reference sources.**

TORT REFORM/GOVERNMENTAL IMMUNITY

I. Background Information

In the past several years, lawsuits naming governmental entities as defendants have increased dramatically. The large damage awards against governmental entities that plaintiffs have obtained in these lawsuits has made it increasingly difficult for government entities to obtain or afford liability insurance.

A task force coordinated by the League of Cities and Towns proposed three bills that would make it more difficult to obtain a damage award against a government entity.

I. Committee Action

At its September and October meetings, the committee heard from and reviewed draft legislation from the Governmental Immunity Task Force.

The committee made the following recommendations:

- a. Antitrust Amendments - The committee recommended a proposal to prohibit recovery of damages, attorney's fees, or costs against a political subdivision or its representatives, or from anyone who acted at the direction of the representatives of a political subdivision.
- b. Clarification of Public Employees Indemnification - The committee recommended a proposal to allow the government entity to refuse to pay an employee's legal fees if the employee was acting without authority, outside his job responsibilities, or if the employee intentionally lied or cheated in performing the act. The committee also recommended that the government entity be allowed to refuse to defend an employee who caused someone harm because the employee was under the influence of alcohol or drugs.
- c. Governmental Immunity Act Amendments - The committee agreed to the recommendation that the Legislature define everything performed by government as a "governmental function." As so defined, a government entity could be sued only for those acts which the Legislature had specifically allowed them to be sued for.

III. Proposed Legislation

The interim committee has endorsed the following legislation for the 1987 General Session:

House Bill 17, "Amendments to Utah Antitrust Act," limits a plaintiff's ability to recover damages or fees when filing a complaint against a government entity.

House Bill 15, "Clarification of Public Employees Indemnification," outlines public employees' activities that may cause forfeiture of their rights for government defense.

House Bill 16, "Governmental Immunity Act Amendments," defines "governmental function," and "discretionary function" for purposes of the Governmental Immunity Act.

IV. Reference Sources

Fellows, John L., Governmental Immunity Memorandum. Salt Lake City: Office of Legislative Research and General Counsel, September 4, 1986.

State and Local Affairs Interim Committee. Minutes of meetings of August 20 and September 17, 1986.

For additional information in this area, contact Dotti A. Mortensen, Research Analyst, or John L. Fellows, Associate General Counsel, Office of Legislative Research and General Counsel.

* * *

ADDENDUM 5

(ii) medicine other than medicine provided by the facility's health care providers in compliance with facility policy, or

(iii) poison in any quantity

(d) Any person is guilty of a class A misdemeanor who without the permission of the authority operating the correctional or mental health facility fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any

(i) spirituous or fermented liquor,

(ii) medicine, or

(iii) poison in any quantity

(6) The possession distribution or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58 Chapter 37, Utah Controlled Substances Act 1996

76-8-312. Bail-jumping.

(1) A person is guilty of an offense when having been released on bail or on his own recognizance by court order or by other lawful authority upon condition that he subsequently appear personally upon a charge of an offense he fails without just cause to appear at the time and place which have been lawfully designated for his appearance

(2) An offense under this section is a felony of the third degree when the offense charged is a felony, a class B misdemeanor when the offense charged is a misdemeanor and an infraction when the offense charged is an infraction 1974

76-8-313. Threatening elected officials — Commission of assault.

A person commits assault on an elected official when he attempts or threatens, irrespective of a showing of immediate force or violence, to inflict bodily injury to the elected official with the intent to impede, intimidate, or interfere with the elected official in the performance of his official duties or with the intent to retaliate against the elected official because of the performance of his official duties 1996

76-8-314. Threatening elected officials — "Elected official" defined.

As used in this section, "elected official" means

(1) any elected official of the state, county, or city and includes the members of the official's immediate family

(2) any temporary judge appointed to fill a vacant judicial position,

(3) any judge not yet retained by a retention election,

(4) any member of a school board, and

(5) any person appointed to fill a vacant position of an elected official as defined in Subsection (1) 1996

76-8-315. Threatening elected officials — Penalties for assault.

Assault on an elected official is a felony of the third degree if bodily injury is attempted or occurs, otherwise the assault is a class B misdemeanor 1993

76-8-316. Influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole.

(1) A person is guilty of a third degree felony if the person threatens to assault, kidnap, or murder a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official

duties or with the intent to retaliate against the judge or member on account of the performance of those official duties

(2) A person is guilty of a second degree felony if the person commits an assault on a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties, or with the intent to retaliate against the judge or member on account of the performance of those official duties

(3) A person is guilty of a first degree felony if the person commits aggravated assault or attempted murder on a judge or a member of the Board of Pardons and Parole with the purpose to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the purpose to retaliate against the judge or member on account of the performance of those official duties

(4) As used in this section

(a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the officer

(b) "Judge" means judges of all courts of record and courts not of record

(c) "Judge or member" includes the members of the judge's or member's immediate family

(d) "Member of the Board of Pardons and Parole" means appointed members of the board

(5) A member of the Board of Pardons and Parole is an executive officer for purposes of Subsections 76-5-202(k) 1995

PART 4

OFFENSES AGAINST PUBLIC PROPERTY

76-8-401. "Public monies" and "public officer" defined.

As used in this title

(1) "Public monies" means "public funds" as defined in Section 51-7-3

(2) "Public officer" means

(a) all elected officials of the state, a political subdivision of the state, a county, town, city, precinct, or district,

(b) a person appointed to or serving an unexpired term of an elected office,

(c) a judge of a court of record and not of record including justice court judges, and

(d) a member of the Board of Pardons and Parole 1995

76-8-402. Misusing public monies.

(1) Every officer of this state or a political subdivision, or of any county, city, town, precinct, or district of this state, and every other person charged with the receipt, safekeeping, transfer or disbursement of public monies commits an offense if the officer or other charged person

(a) appropriates the money or any portion of it to his own use or to the use of another without authority of law,

(b) loans the money or any portion of it without authority of law,

(c) fails to keep the money in his possession until disbursed or paid out by authority of law,

(d) unlawfully deposits the money or any portion in any bank or with any other person,

(e) knowingly keeps any false account or makes any false entry or erasure in any account of or relating to the money,

(f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;

(g) willfully refuses or omits to pay over, on demand, any public monies in his hands, upon the presentation of a draft, order, or warrant drawn upon such monies by competent authority;

(h) willfully omits to transfer the money when the transfer is required by law; or

(i) willfully omits or refuses to pay over, to any officer or person authorized by law to receive it, any money received by him under any duty imposed by law so to pay over the same.

(2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the second degree if:

(a) the value of the money exceeds \$5,000;

(b) the amount of the false account exceeds \$5,000;

(c) the amount falsely entered exceeds \$5,000;

(d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or

(e) the amount falsely erased, fraudulently concealed, destroyed, obliterated, or falsified in the account exceeds \$5,000. 1995

76-8-403. Failure to keep and pay over public monies.

Every person who receives, safekeeps, transfers, or disburses public monies who neglects or fails to keep and pay over the money in the manner prescribed by law is guilty of a felony of the third degree. 1995

76-8-404. Making profit out of or misusing public monies — Disqualification from office.

A public officer, regardless of whether or not the officer receives, safekeeps, transfers, disburses, or has a fiduciary relationship with public monies, who shall make a profit out of public monies, or shall use the same for a purpose not authorized by law, is guilty of a felony as provided in Section 76-8-402 and shall, in addition to the punishment provided by law, be disqualified to hold public office. 1995

76-8-405. Failure to pay over fine, forfeiture or fee.

Every public officer who receives any fine, forfeiture, or fee and refuses or neglects to pay it over within the time prescribed by law is guilty of a class B misdemeanor. 1973

76-8-406. Obstructing collection of revenue.

Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this state are interested, and which such officer is by law empowered to collect, is guilty of a class B misdemeanor. 1973

76-8-407. Refusing to give tax assessment information, or giving false information.

Every person who unlawfully refuses, upon demand, to give to any county assessor or deputy county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name, or fraudulently refuses to give his true name when demanded by the assessor in the discharge of his official duties, is guilty of a class B misdemeanor. 1973

76-8-408. Giving false tax receipt or failing to give receipt.

Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment for

any tax or license of any kind, or who receives payment for the tax or license without delivering the receipt prescribed by law, is guilty of a class B misdemeanor. 1973

76-8-409. Refusing to give tax assessor or tax or license collector list of, or denying access to, employees.

Every person who, when requested by the assessor or collector of taxes or license fees, refuses to give to the assessor or collector the name and residence of each person in his employ, or to give the assessor or collector access to the building or place of employment, is guilty of a class B misdemeanor. 1991

76-8-410. Doing business without license.

Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law, or by any county, city, or town ordinance, without taking out the license required by law or ordinance is guilty of a class B misdemeanor. 1973

76-8-411. Trafficking in warrants.

No state, county, city, town, or district officer shall, either directly or indirectly, contract for or purchase any warrant or order issued by the state, county, city, town, or district of which he is an officer, at any discount whatever upon the sum due on the warrant or order, and, if any state, county, city, town, or district officer shall so contract for or purchase any such order or warrant on a discount, he is guilty of a class B misdemeanor. 1973

76-8-412. Stealing, destroying or mutilating public records by custodian.

Every officer having the custody of any record, map, or book, or of any paper or proceedings of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering, falsifying, removing, or secreting the whole or any part thereof, or who permits any other person so to do, is guilty of a felony of the third degree. 1973

76-8-413. Stealing, destroying or mutilating public records by one not custodian.

Every person, not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section is guilty of a class A misdemeanor. 1973

76-8-414. Recording false or forged instruments.

Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, is guilty of a felony of the third degree. 1973

76-8-415. Damaging or removing monuments of official surveys.

Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected, or used by persons engaged in the United States or state survey is guilty of a class B misdemeanor. 1973

76-8-416. Taking toll or maintaining road, bridge, or ferry without authority — Refusal to pay lawful toll.

Any person who demands or receives compensation for the use of any bridge or ferry, or who sets up or keeps any road, bridge, or ferry, or constructed ford,