



OFFICE OF THE COUNTY ATTORNEY

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OPINION OF THE COUNTY ATTORNEY

October 18, 2000

TO: D. Terry Fleming, Chief
Division of Risk Management
Department of Finance

THROUGH: Charles W. Thompson, Jr.
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Marc P. Hansen
Chief General Counsel

FROM: Judson P. Garrett, Jr.
Principal Counsel for Opinions and Advice

RE: Financial Responsibility for the Payment of Judgments and
Settlements for the Torts of the Sheriff or a Deputy Sheriff

QUESTION PRESENTED

We are responding to your request for our opinion on the question of whether it is the State of Maryland or Montgomery County that ultimately is financially responsible for the payment of a judgment or the settlement of a claim against the Sheriff or a Deputy Sheriff when the claim arose out of an employment relationship tort, *e.g.*, the sexual harassment of another employee of the Sheriff's Office.¹

¹ We understand that this question has arisen because the State Dept. of Budget and Management has asked the State Board of Public Works to determine whether all or part of judgments rendered against several present or former sheriffs or deputy sheriffs (including one in a sexual harassment case by an employee of the Montgomery County Sheriff's Office) should be set off against their respective counties.

ADVICE

We advise that, with limited exceptions, Montgomery County is not financially responsible for the payment of any tort judgment or settlement on behalf of the Sheriff or a Deputy Sheriff, including one arising out of an employment relationship. Because the Sheriff is not responsible for general law enforcement or detention center activities, the payment of all settlements or judgments against the Sheriff or a Deputy Sheriff is — as between the State and the County — the responsibility of the State, unless the settlement or judgment arose out of the *ad hoc* exercise of such a "public safety" activity.²

Our advice is founded on the following applicable law and analysis.³

APPLICABLE LAW

1. *The Duties and Responsibilities of the Sheriff and the Deputy Sheriffs.*

The Maryland Sheriff is a descendent of the English common law sheriff and a constitutional officer.⁴ Although funded by the County, elected on a county-wide basis, and vested with "jurisdiction that generally does not extend beyond the county borders,"⁵ "[s]heriffs . . . are state officials, not local government officials,⁶ who "exercise such powers and perform such duties as [are] fixed by [State] law."⁷ Consequently, "the duties of the sheriffs are those prescribed by the common law, the enactments of the General Assembly, and the rules of the Court of Appeals."⁸

² The exceptions to this advice are those occasions when the Sheriff or a Deputy Sheriff performs *ad hoc* law enforcement or public safety activities, *e.g.*, makes a traffic stop or arrests a person who commits an offense in the officer's presence.

³ Our advice necessarily addresses only the financial responsibility of Montgomery County. As noted below, the financial responsibility of other counties may vary because of differences in State law.

⁴ Note, *The Maryland Sheriff v. Modern and Efficient Administration of Justice*, 3 U. OF BALT. L. REV. 282 (1973); MD. CONST. art. IV, § 44.

⁵ *Kline v. Fuller*, 56 Md. App. 294, 300 (1983).

⁶ *Prince George's County v. Aluisi*, 354 Md. 422, 434 (1999).

⁷ MD. CONST. art. IV, § 44.

⁸ *Prince George's County v. Aluisi*, 354 Md. at 433.

Deputy sheriffs also are State officials, not local government officials.⁹ Under State law, they "perform the duties incidental to the office as assigned to them by the Sheriff."¹⁰ Except as otherwise provided by State law, a deputy sheriff has the same authority as the sheriff,¹¹ and a deputy sheriff's acts "must be regarded as those of the sheriff himself."¹²

The common law duties of a sheriff include "conserving public peace, preserving public order, preventing and detecting crime, enforcing criminal laws . . . , providing security for courts, serving criminal warrants and other writs and summonses, keeping prisoners safely, accepting security for prisoners, and transporting prisoners."¹³ The General Assembly, however, has enacted a number of statutes that affect those duties, and most of these laws do not have statewide effect. Therefore,

[a]lthough the Sheriff is a State official, his duties and authority are not uniform throughout the State [P]rimarily through public local law, the General Assembly has treated the sheriff somewhat differently from county to county. In some counties . . . the sheriff does little more than serve civil process; in others . . . the sheriff and his deputies also act as the county police force."¹⁴

This has resulted in a diverse situation in which the ultimate financial responsibility of the State or County governments for the torts of sheriffs and deputy sheriffs may vary from county to county, depending on the functions of a the sheriff of a particular county.

The General Assembly has required that Montgomery County establish a county police department.¹⁵ Furthermore, State law authorizes charter counties to establish, maintain,

⁹ 354 Md. at 434.

¹⁰ MD. CODE ANN., CTS. & JUD. PROC. § 2-309 (z).

¹¹ *Turner v. Holtzman*, 54 Md. 148, 159 (1880).

¹² *Myers v. Smith*, 27 Md. 91, 114 (1867).

¹³ *Soper v. Montgomery County*, 294 Md. 331, 337-37 (1982).

¹⁴ *Kline v. Fuller*, 56 Md. App. at 300.

¹⁵ See 1939 Md. Laws, ch. 730 (codified at 1939 CODE PUB. LOC. LAWS OF MONT. CO., § 780 ("The County Commissioners of Montgomery County are hereby authorized, empowered and directed to appoint forty-five police officers for Montgomery County at Large . . . to be known as the Montgomery County Police"). Cf. MD. ANN. CODE art. 24 §3 (q) (The statutory authorization of County Commissioners "[t]o

regulate and control county jails and county detention and correctional facilities,¹⁶ and "to choose an alternate prison custodian in lieu of the county sheriff."¹⁷ Montgomery County, therefore, has a County Police Department that is its principal law enforcement entity,¹⁸ and a County Department of Correction and Rehabilitation that operates its detention and correctional facilities.¹⁹ Consequently, although "ordinarily the sheriffs retain the powers they possessed at common law,"²⁰ the Sheriff of Montgomery County and his deputies do not, "as a primary part of their daily activities, ... perform law enforcement duties ordinarily performed by police officers" ²¹ Neither are they responsible for Montgomery County's

provide for the appointment of county police and to prescribe their duties and fix their compensation" is not applicable in Charles and Wicomico Counties).

¹⁶ MD. ANN. CODE art. 25A, § 5(C).

¹⁷ 79 *Op. Att'y Gen.* ___ (1994) [Opinion No. 94-003 (January 7, 1993)], citing MD. ANN. CODE art 87, § 48.

¹⁸ See MONT. CO. CODE, § 1A-201 (establishing the police department); § 2-43 (b) (requiring the Chief of Police to "take such measures as will ensure prompt and vigorous enforcement of all criminal statutes, laws, regulations and ordinances, enforcement of which comes properly within the scope of the police function and power"); § 35-21 (specifying the functions of the County police as the protection of life and property, the preservation of peace and order, the prevention and detection of crime, the arrest of violators of the law, the enforcement of all laws and ordinances, and the prompt service of all summonses and court papers as required by law).

¹⁹ See MONT. CO. CODE, § 1A-201 (establishing, *inter alia*, a department of correction and rehabilitation), § 2-28 ("The department of correction and rehabilitation shall operate all programs pertaining to detention and rehabilitation of persons under the jurisdiction of the county government awaiting trial or having been convicted of a crime in violation of state, federal, county or other local laws"), § 13-1 (d) (making the Director of Correction and Rehabilitation responsible for the safekeeping, care and custody of all inmates committed to the Department).

²⁰ "[O]rdinarily sheriffs retain the powers they possessed at common law[,] including conserving public peace, preserving public order, preventing and detecting crime, enforcing criminal laws by, among other things, raising a posse and arresting persons who commit crimes in their presence, providing security for courts, serving criminal warrants and other writs and summonses, and transporting prisoners." *Soper*, 294 Md. at 336.

²¹ 294 Md. at 343. See also *Rucker v. Harford County*, 316 Md. 275, 288 (1989) ("There is a degree of local control over the operation of the sheriff's office in each county, which results from the provision for local funding. A sheriff is required by an act of the General Assembly to submit his budget to the county in compliance with the county's budget procedure. If a county decides to create its own police department or to use the Maryland State Police, under the 'resident trooper' program, as the principal law enforcement entity in the county, the county officials undoubtedly will not fund the sheriff's office to the same extent that the sheriff's office would be funded if it were the primary law enforcement agency in the county. As a

detention or correctional facilities. These "public safety" activities are the responsibility of County agencies and officials.

2. Applicable Statutes.

Several state statutes address the subject of tort claims against sheriffs and their deputies and the "ultimate financial responsibility" of the State and the Counties for the payment of judgments and settlements that result from those torts. Codified in Title 12 ("Immunity and Liability") of the Maryland Code's State Government Article and Title 9 ("State Insurance Program") of the State Finance and Procurement Article, most of these provisions were amended, in pertinent part, by Chapter 508 (S.B. 813) of the 1990 Regular Session of the General Assembly (the "Rucker Act") in an attempt to divide and clarify the ultimate financial responsibility of the State and the Counties for the torts of sheriffs and deputy sheriffs.

a. The Maryland Tort Claims Act.

Subtitle 1 of Title 12 (the Maryland Tort Claims Act) waives the immunity of the State and its units (subject to certain limitations and exclusions) to tort actions in a court of Maryland²² and grants State personnel, including a sheriff or deputy sheriff, "the immunity from liability described under § 5-522 (b) of the Courts Article."²³ Thus, a sheriff and a deputy sheriff are immune "from suit in courts of the State *and* from liability in tort for a tortious act or omission that is within the scope of [their] public duties . . . and is made without malice or gross negligence" ²⁴

b. The Attorney General Representation Statute.

Subtitle 3 of Title 12 ("Actions Against State Officers and Employees") provides "for the Attorney General to appear in a civil action or special proceeding against a State officer or

practical matter, this will affect the law enforcement functions of the sheriff's office") (citations and footnotes omitted).

²² MD. CODE ANN. STATE GOV'T § 12-104(a).

²³ §§ 12-105 and 12-101(a) (6).

²⁴ MD. CODE ANN. CTS. & JUD. PROC. § 5-522 (b) (emphasis added).

State employee to represent the officer or employee" under certain circumstances.²⁵ This subtitle does not apply to any county officer or unit.²⁶ Acting under this authority, the Office of the Attorney General represented the Deputy Sheriff in the federal sexual harassment litigation that resulted in one of the judgments and settlements the State Dept. of Budget and Management has put before the Board of Public Works. Indeed, it is our understanding that, acting under this provision, the Attorney General always either represents or delegates the representation of sheriffs and their deputies in all tort actions against them.

c. The Payment of State Personnel Settlements and Judgments Law.

Reflecting the legislative policy that "it is essential to protect from liability those State personnel who are acting within the scope of public duties and responsibilities and without malice or gross negligence,"²⁷ Subtitle 4 of Title 12 authorizes the Board of Public Works to "pay wholly or partly a settlement or judgment against the State or any State personnel."²⁸ In this subtitle, "State personnel" includes, among others, "any . . . State officer or State employee,"²⁹ and sheriffs and deputy sheriffs undoubtedly are State officers for these purposes. Indeed, the statute expressly addresses the payment of settlements or judgments against sheriffs and deputy sheriffs:

[The Board] may not pay a settlement or judgment against State personnel unless:

* * *

as to an application on behalf of a sheriff or deputy sheriff of a County or Baltimore City for any claim except those claims directly relating to courthouse security, service of process, or the transportation of inmates to or from court proceedings:

with respect to any settlement, the county solicitor or county attorney files a written report and recommendation and the Attorney General files a written report and recommendation; or

²⁵ MD. CODE ANN. STATE GOV'T § 12-304.

²⁶ § 12-301.

²⁷ § 12-402(5)

²⁸ § 12-404(1).

²⁹ § 12-401(13).

with respect to any judgment, the Attorney General files a written report and recommendation.³⁰

This statute, therefore, views the payment of a settlement or judgment on behalf of a sheriff or deputy sheriff as a State responsibility when the settlement or judgment arose out of a claim that directly related to courthouse security, service of process, or the transportation of inmates to or from court proceedings.

d. *The Board of Public Works "Payment Duties" Statute.*

Subtitle 5 of Title 12 (entitled "Duties of Board of Public Works regarding payments") provides, in pertinent part:

The Board of Public Works may approve payment of a settlement, a judgment, or counsel fees under Subtitles 3 and 4 of this title with or without a hearing, and direct payment from [certain State funds or]:

* * *

in connection with any settlement or judgment paid on behalf of any sheriff or deputy sheriff for any claim except those claims directly relating to courthouse security, service of process, or the transportation of inmates to or from court proceedings:

any tax which has been appropriated in the State budget to the subdivision represented by the sheriff or deputy sheriff on whose behalf the payment is to be made; or

the subdivision's share of any income tax collected by the State Comptroller.³¹

This convoluted language authorizes the Board of Public Works to set-off against certain funds due a County the cost of a tort settlement or judgment against a sheriff or deputy sheriff that is based on activities not directly related to courthouse security, service of process, or the transportation of inmates to or from court proceedings.

³⁰ § 12-405(5)(i)-(ii).

³¹ § 12-501(a) (iv).

e. *The State Insurance Program Law.*

There is a State Insurance Program under which the State Treasurer provides and administers purchased insurance and self-insurance for the State. Among other things, the State Insurance Program law requires that the Treasurer, to the extent that funds are available in the State budget, provide sufficient insurance to cover the liability of the State and its units and personnel under the Maryland Tort Claims Act.³² This statute contains a special provision regarding "any sheriff or deputy sheriff engaged in any activity other than those activities directly relating to courthouse security, service of process, or the transportation of inmates to and from court proceedings."

A county or Baltimore City may obtain insurance to provide the coverage and defense necessary under the Maryland Tort Claims Act for personnel covered by this section.

If a county or Baltimore City does not obtain adequate insurance coverage to satisfy the coverage and defense necessary under the Maryland Tort Claims Act, an assessment for coverage and for payment of any litigation expenses, other than for compensation for the time spent by any State employee working for the Attorney General, shall be set off from:

any tax which has been appropriated in the State budget to the county or Baltimore City; or

the subdivision's share of any income tax collected by the State Comptroller.³³

The State Insurance Program law, therefore, authorizes the City of Baltimore and the Counties to obtain insurance to provide the coverage and defense necessary under the MTCA for any sheriff or deputy sheriff engaged in any activity other than those directly relating to courthouse security, service of process, or the transportation of inmates to and from court proceedings. If a County fails to provide such coverage, the State may obtain the coverage and set-off (against certain funds due the County) the cost of litigation expenses (other than the compensation of employees of the Attorney General) in such cases.

³² MD. CODE ANN. FIN. & PROC. § 9-105 (c).

³³ § 9-108 (b) and (c).

3. *Principles of Statutory Construction.*

A statute is the written will of the Legislature. The cardinal rule for interpreting a statute is to ascertain and carry out the intent of the Legislature,³⁴ and the beginning point for divining legislative intent is the language of the law itself.³⁵ "[W]hat the Legislature has written in an effort to achieve a goal is a natural ingredient of analysis to determine that goal."³⁶ Indeed, "[t]he language of the statute itself is the primary source of this intent; and the words used are to be given 'their ordinary and popularly understood meaning, absent a manifest contrary legislative intention.'"³⁷ However, determining the meaning apparent on the face of a statute need not end the inquiry.³⁸ "Although the words of a statute are the starting point for ascertaining the legislative intent, they must not be read in a vacuum but should be considered in light of other manifestations of legislative intent"³⁹ Our endeavor always is to construe a statute so as to implement the legislative goal, not to frustrate it."⁴⁰ "The key is the purpose of the legislation, determined in the light of the statute's language and context."⁴¹

The search for legislative intent, therefore, begins with the words of the statute, but is "not limited to the words of the statute as they are printed in the . . . Code."⁴² Statutory words are to be considered in light of the statute's context because "the meaning of the plainest words in a statute may be controlled by the context in which it appears."⁴³ "We may and

³⁴ *State v. Pagano*, 341 Md. 129, 133 (1996).

³⁵ *Morris v. Prince George's County*, 319 Md. 597, 603 (1990).

³⁶ *Kaczorowski v. Baltimore*, 309 Md. 505, 513 (1987).

³⁷ *Williams v. State*, 329 Md. 1, 15 (1992).

³⁸ *Privette v. State*, 320 Md. 738, 744 (1990).

³⁹ *In re Douglas P.*, 333 Md. 387, 393 (1994).

⁴⁰ *NCR Corporation v. Comptroller*, 313 Md. 118, 145-46 (1988).

⁴¹ *Warfield v. State*, 315 Md. 474, 499 (1989).

⁴² *Kaczorowski v. Baltimore*, 309 Md. at 515.

⁴³ *GEICO v. Insurance Commissioner*, 332 Md. 124, 131 (1993). *See also Edgewater Liquors v. Liston*, 349 Md. 803, 808 (1998); *Morris v. Prince George's County*, 319 Md. at 604; *Matter of Diana M.*, 317 Md. 652, 658 (1989).

often must consider other 'external manifestations' or 'persuasive evidence'"⁴⁴ These include: the bill's title and function paragraphs; the cause or necessity of the law; its objectives and purposes; its history; applicable reports; amendments that occurred as it passed through the legislature; its relationship to earlier and subsequent legislation; the statute read as a whole; prior and contemporaneous statutes; and other material that fairly bears on the fundamental issue of legislative purpose or goal.⁴⁵

We must, therefore, "look to the context surrounding the enactment of [the applicable] statute[s] to determine the intention of the legislature."⁴⁶ And, in doing so, we are to shun an interpretation that would produce "an absurd, unreasonable, or illogical result, one inconsistent with common sense."⁴⁷

4. *History of the Applicable Statutes.*

As pointed out by then Chief Judge Wilner, for the Court of Special Appeals, the pertinent legislative history of these "sheriff's torts" provisions begins with a 1985 amendment to the Maryland Tort Claim Act. "As rewritten in 1985, [that] Act waived the State's sovereign immunity with respect to certain tortious conduct of 'State personnel,' and defined that term as including 'an individual who, with or without compensation, exercises a part of the sovereignty of the State.'"⁴⁸ Three years later, in *Clea v. City of Baltimore*,⁴⁹ the Court of Appeals concluded that the City was not liable for the tortious conduct of a City police officer because, unlike other municipal or County police departments, the Baltimore City Police Department was a State agency, and, consequently, City police officers were State, not City, employees for tort liability purposes.⁵⁰

⁴⁴ *Kaczorowski v. Baltimore*, 309 Md. at 515.

⁴⁵ *Maryland National Bank v. Pearce*, 329 Md. 602, 619-20, 620 (1993) (quoting *Kaczorowski*, 309 Md. at 514-15).

⁴⁶ *Comptroller v. Jameson*, 332 Md. 723, 733 (1993).

⁴⁷ *First Virginia Bank v. Settles*, 322 Md. 555, 561-62 (1991).

⁴⁸ *State v. Card*, 104 Md. App. 439, 441 (1995), *cert. denied*, 339 Md. 643 (1995) (citing MD. CODE ANN., STATE GOV'T. § 12-101(4) (1984, 1988 Supp.)).

⁴⁹ 312 Md. 662 (1988).

⁵⁰ *Id.* at 668.

Notwithstanding the non-applicability of the 1985 amendments to the conduct at issue in *Clea*, the *Clea* Opinion, filed in June, 1988, certainly raised the specter of State liability for the conduct of persons regarded as State officers but who were neither paid nor directly controlled by the State. The State Treasurer's Office, which was responsible for providing purchased or self-insurance to cover claims made under the State Tort Claims Act (*see* MD. CODE STATE FIN. & PROC. ART., § 9-105(c)), was sufficiently concerned about that prospect to draft and present to the 1989 session of the General Assembly a departmental bill (HB 364) to narrow the scope of the Act.^[51]

At the time, by virtue of the definition of "State personnel" in § 12-101 of the State Government article, the State appeared to have waived its immunity with respect to the conduct of "an individual who, **with or without compensation**, exercises a part of the sovereignty of the State."⁵²

In pertinent part, the 1989 legislation "essentially rewrote the definition of 'State personnel' . . . to exclude from the [MTCA], and thus to restore the State's sovereign immunity with respect to, sheriffs, deputy sheriffs, and other local law enforcement personnel who were compensated for their services but were not paid through the State's Central Payroll Bureau."⁵³

Chief Judge Wilner also noted that in 1989, the Court of Appeals, in response to questions certified to it by the U.S. District Court for the District of Maryland, concluded, in *Rucker v. Harford County*, that Harford County had no obligation to fund expenses associated with tort claims against the sheriff and his deputies that because sheriffs and their deputies are State employees.⁵⁴ Furthermore, although the State has the authority to enact legislation making counties liable for the tortious acts of sheriffs or deputy sheriffs, it had not

⁵¹ This departmental legislation undoubtedly was also prompted by the issues then pending in *Rucker*. Its legislative history contains written testimony in which the State Treasurer's Office stated that the legislation was intended "to address a number of problems that have arisen in the implementation of the Maryland Tort Claims Act," and its fiscal note, prepared by the then Department of Fiscal Services, stated that the bill provides that certain persons . . . , which could include Baltimore City Police Officers and Deputy Sheriffs, are no longer covered under the Maryland Tort Claims Act," thereby reducing State expenditures.

⁵² *State v. Meade*, 101 Md. App. 512, 523 (1994) (emphasis included).

⁵³ *State v. Card*, 104 Md. App. at 442. *See* 1989 MD. LAWS ch. 413.

⁵⁴ *Id.* at 442.

done so.⁵⁵ Indeed, by expressly including certain State agencies and their employees within the scope of the Local Government Tort Claims Act, "the Legislature implicitly excluded other State entities and officials such as sheriffs and deputies."⁵⁶

"[T]he combined effect of *Rucker* and the 1989 statute[, therefore,] was to leave sheriffs and their deputies excluded from both the LGTCA and the State Tort Claims Act [T]hey had only their common law governmental immunity to protect them; to the extent that immunity did not apply or was overcome, they faced the prospect of personal liability for their tortious conduct. [And they,] of course, were without the resources of the county or the State to pay any judgment they might obtain."⁵⁷

Emergency legislation addressing the matter was introduced in the next session as Senate Bill 813. As passed, this Rucker Act was designed "*to sort out the various functions performed by sheriffs and their deputies throughout the State, which varied from county to county, and to provide an umbrella of State protection, with the cost of that protection to be assessed to the State or the county, depending on the function involved.*"⁵⁸

Documents on file with the Department of Legislative Reference indicate that the final version of the Act (1990 Md. Laws, ch. 508) represented a compromise among the Maryland Sheriff's Association, the Maryland Association of Counties, the State Treasurer's Office, the Attorney General, and the Administration. Sheriffs and their deputies were specifically included within the definition of "State personnel" for purposes of the State Tort Claims Act (State Govt. art., § 12-101), but the Board of Public Works was precluded from paying any claim against such persons unless it directly related to courthouse security, service of process, or transportation of inmates to or from court proceedings. *Those were the three functions for which the State assumed ultimate financial responsibility.*

Through a new section (§ 9-108) added to the title of the State Fin. & Proc. art. dealing with the State insurance program, the counties were authorized to obtain insurance coverage with respect to all other tort claims made against

⁵⁵ *Rucker v. Harford County*, 316 Md. at 291-92.

⁵⁶ *Id.* at 293.

⁵⁷ *State v. Card*, 104 Md. App. at 443.

⁵⁸ *Id.* at 444 (emphasis added).

sheriffs and their deputies. To the extent that a county did not obtain insurance adequate "to satisfy the coverage and defense necessary under the Maryland Tort Claims Act," the State was authorized to set off against certain funds due from the State to the county an assessment for coverage and litigation expenses. *See also* State Gov't art., § 12-501(a)(iv), authorizing the Board of Public Works to pay such a claim from one of those funds. The Assistant Executive Director of the Maryland Association of Counties, in a letter to the Senate Judicial Proceedings Committee, characterized the bill, with the agreed-upon amendments, as follows:

"The counties that use the sheriff for police protection and for detention center purposes gain the benefits of the State Tort Claims Act and will pay the insurance costs and will reimburse the state when it pays for any settlements or judgments outside the scope of the Act, such as federal civil rights lawsuits. *The counties that use their sheriff for only courthouse purposes will be covered by the State Tort Claims Act without any cost.*⁵⁹

Furthermore, in a letter to the Chairman of the Senate Judicial Proceeding Committee, the Governor's Chief Legislative Officer (CLO) reported that, as discussed at the Senate hearing on S.B. 813, the Administration had since worked with interested State and County representatives to fashion a compromise to the *Rucker* issue, which he characterized as:

[complicated by] the diversity of responsibility exercised by the 24 different sheriff's offices. In some jurisdictions, sheriffs provide basic law enforcement services for a county, while in others they provide only the traditional courthouse security role. This results in vast differences in exposure to lawsuits.⁶⁰

Under cover of this letter, the CLO forwarded proposed amendments, which, in his words:

represent[ed] a compromise that has been agreed to by the Maryland Sheriff's Association, the Maryland Association of Counties (MACO), the State

⁵⁹ 104 Md. App. 444 (emphasis added).

⁶⁰ *See* March 5, 1990, letter from David S. Iannucci to the Honorable Walter M. Baker, the Chairman of the Senate Judicial Proceedings Committee. A copy of that letter was sent to the Honorable Daniel M. Long, the Chairman of the House Judiciary Committee, under the cover of a March 28, 1990, letter from Mr. Iannucci.

Treasurer's Office, the Attorney General's Office, and the Administration. We believe it fairly assigns liability *while distinguishing the nature of services provided by sheriffs and deputy sheriffs. Sheriffs would be provided the protection of the Maryland Tort Claims Act and would have strengthened immunity arguments, and counties would be financially liable for sheriff's law enforcement and detention center activities.*⁶¹

On the following day, the Attorney General wrote to the Chairman and, referring to the CLO's letter and the amendments, said:

I believe the amendments will rectify the imbalance created by the Court of Appeals of Maryland in the Rucker opinion between legitimate State concerns and those responsibilities which the counties should bear. The amendments represent a fair and equitable approach to the liability problems of the Sheriffs and their deputies and will, if enacted, give certainty to all concerned.⁶²

The Committee adopted the compromise amendments, and the bill was reported favorably to the full Senate. In its floor report, the Committee reviewed the amendments and expressly articulated the compromise and understanding on which the amendments were based:

According to the testimony, this bill represents a compromise that has been agreed to by the Maryland Sheriff's Association, the Maryland Association of Counties (MACO), the State Treasurer's Office, the Attorney General's Office, and the Administration. Testimony indicated that the bill fairly assigns liability because it bases liability on the nature of services provided by sheriffs and deputy sheriffs. Under the bill, sheriffs and deputy sheriffs are provided the protection of the Maryland Tort Claims Act. However, *under the bill counties are financially liable for claims that relate to law enforcement and detention center activities of sheriffs and deputy sheriffs and the State is responsible for liability resulting from the traditional courthouse role of sheriffs and deputy sheriffs.*⁶³

⁶¹ 104 Md. App. 444 (emphasis added).

⁶² See March 6, 1990, letter from the Honorable J. Joseph Curran, Jr. to Chairman Baker.

⁶³ See Senate Judicial Proceeding Committee Floor Report on Senate Bill 813.

ANALYSIS

The language of the Rucker Act limits the State's broad, common law, financial responsibility for paying tort settlements and judgments against a sheriff or deputy sheriff to those "directly related" to three of a sheriff's common-law functions or responsibilities (courthouse security, service of process, and the transportation of inmates) and abrogates the common law by giving Counties ultimate financial responsibility for tort claims resulting from a sheriff's other common law functions or responsibilities. Your question turns, therefore, on whether, for the purposes of that Act, a sexual harassment settlement or judgment against a the Sheriff or a Deputy Sheriff in favor of another of the Sheriff's employees is directly related to courthouse security, service of process or the transportation of inmates.

The legislative history of the Rucker Act demonstrates that the General Assembly considered and adopted the 1990 compromise amendments in the context of what it was told were the Sheriff's five common-law responsibilities or functions: courthouse security, service of process, and the transportation of inmates to or from court proceedings ("the courthouse functions"), and general law enforcement and detention facility operation ("the public safety functions"). That history also demonstrates that the legislation, as amended, was intended: (1) to give the sheriffs and their deputies the full protection afforded by the MTCA; (2) to retain the State's common law responsibility for torts arising out of a sheriff's courthouse functions; and (3) to abrogate the common law by giving the Counties the ultimate financial responsibility for settlements and judgments arising out of a sheriff's public safety functions. The context of Chapter 508 confirms, therefore, that in those Counties in which the Sheriff neither provides detention services nor is primarily responsible for general law enforcement, the compromise amendments gave the Sheriff and the Deputies MTCA coverage without any cost to the County. That compromise enabled the legislation to go forward with the support of both State and County representatives; that compromise constitutes the fundamental legislative scheme of the Rucker Act; and that compromise is of paramount importance, and controls the meaning of the plainest words of the Act.

In light of the premise that the three courthouse functions and the two public safety functions characterize all of a sheriff's functions, there is no discrepancy between the language of the legislation and its context. The statutory language that distinguishes between "courthouse functions and others" and the legislative context that distinguishes between courthouse functions and public safety functions have the very same meaning and effect. The courthouse functions remain State functions for which the State is ultimately financially responsible, and the public safety functions became County functions for which, as between

the State and the County, the County is ultimately financially responsible.⁶⁴ Although the legislation may present interesting questions regarding employment relationship torts in a county in which the Sheriff is responsible for both the State functions and the County functions,⁶⁵ where, as in Montgomery County, the Sheriff is not responsible for any County function, the County can never be financially responsible for torts of the Sheriff or a deputy unless, the Sheriff or a deputy, on a *ad hoc* basis, engages in a public safety activity.⁶⁶

Office management and employee relationships are, in a Sheriff's Office as in any other office, an administrative matter. They are not common law duties or functions of a sheriff; they merely support the sheriff in the performance of the sheriff's duties or functions. Put another way, a sheriff has an office and employees in order to perform courthouse and public safety functions. Because office management and employment relations matters exist solely to support the functions of a sheriff, it would indeed be absurd, unreasonable, illogical, and inconsistent with common sense to read the Rucker Act's fundamental scheme of assigning financial responsibility based on a sheriff's functions as reflecting a legislative intention that a County be ultimately financially responsible for an employment relationship tort when its sheriff is responsible only for performing State functions. In short, when a sheriff performs only State functions (the courthouse house functions), all employment and administrative matters necessarily "directly relate" to those State functions.

We also have considered whether a 1973 state law under which Montgomery County's deputy sheriffs are "considered for all purposes as Montgomery County merit system employees and subject to all rules and regulations of the [Merit System Protection Board] of

⁶⁴ The Rucker Act addressed only "ultimate financial responsibility" as between the State and the Counties. It did not relieve the State of its liability, at common law and under the MTCA, to a plaintiff for the acts of sheriffs and deputy sheriffs.

⁶⁵ See, e.g., *Dotson v. Chester*, 937 F.2d 920 (4TH Cir. 1991) (Dorchester County ultimately responsible for satisfying sheriff's obligation to pay plaintiff's attorneys fees in Civil Rights Action challenging conditions in county jail. Compare *Penhollow v. Cecil County*, 116 Md. App. 263, 296 (1997) ("The negligent hiring/retention claims are state actions and are thus controlled by state law, anything in *Dotson v. Chester*, *supra*, notwithstanding. While in § 1983 actions the Fourth Circuit may have opined that a sheriff, when operating a jail, is a local official, for Maryland actions Maryland law controls. Under it, sheriffs and deputy sheriffs are not county employees but are State officials or employees").

⁶⁶ Because the sheriff and deputy sheriffs continue to have common-law law-enforcement powers, a deputy sheriff who observes a violation of the criminal law undoubtedly has the residual authority to enforce the law. Moreover, there may be occasions when the Sheriff or deputies are asked to assist in or take primary responsibility for the enforcement of the criminal law. In such *ad hoc* law enforcement situations, the County is ultimately financial responsible for a tort claim that arises out of that particular activity.

Montgomery County" prevents them from being "State personnel" for the purposes of the Rucker Act.⁶⁷ Clearly it does not. Although this provision had been law for some seventeen years when Chapter 508 was enacted,⁶⁸ nothing on the face or in the history of the Rucker Act suggests that service in a county merit system would relieve the State of the responsibility for the payment of settlements or judgments arising out of the "courthouse" torts of deputies. Rather, the courthouse/public safety function distinction embodied in the Rucker Act clearly was intended to apply across the board to torts by all deputy sheriffs, regardless of whether they are or are not in a County merit system. Similarly, nothing in the language or history of the 1973 law or the many other enactments that have placed deputy sheriffs in other county merit systems—some before and others after the Rucker Act—suggests a legislative intention that such legislation transfer the financial responsibility for the "courthouse" torts of those deputies from the State to a County.⁶⁹ These "County merit system" statutes merely indicate, in the words of the Attorney General, the General Assembly's "intention that deputy sheriffs [in certain counties] enjoy some form of job

⁶⁷ See MD. CODE ANN. CTS. & JUD. PROC. § 2-309 (q) (3) (ii).

⁶⁸ See 1973 MD. LAWS ch. 189 (House Bill 1479).

⁶⁹ See MD. CODE ANN. CTS. & JUD. PROC. § 2-309 (b) (2) (*Allegany County* deputy sheriffs "are under the county classified service"); § 2-309 (c) (3) (Employees in the *Anne Arundel County* Deputy Sheriffs are in the county merit system); § 2-309 (e) (*Baltimore County* Deputy Sheriffs are "subject to the provisions of the County merit system and the rules and regulations passed by the County Council pursuant to the Charter, as to qualifications, compensation, and other regulations"; § 2-309 (i) (2) (*Cecil County* Deputy Sheriffs are "governed by the rank, salary, and benefit structures of the Cecil County personnel policy;" and "upon completion of the probationary period, shall be subject to the Cecil County personnel regulations and policies in all matters"); § 2-309 (l) (3) (*Frederick County* "deputy sheriffs, except the chief deputy, are subject to the county personnel regulations with regard to matters not covered by the Law Enforcement Officers' Bill of Rights"); § 2-309 (m) (ii) (*Garrett County* deputy sheriffs "are included in the Garrett County classified service system"); § 2-309 (r) (6) (i) (*Prince George's County* deputy sheriffs "that are provided for by the Sheriff in the budget of the County, shall be subject to the County personnel law"); § 2-309 (x) (5) (With certain exceptions, *Wicomico County* deputies "are subject to the 'personnel provisions' of the charter of Wicomico County and subsequent rules and regulations passed by the County Council"). See also MD. ANN. CODE Art. 25, §3F (authorizing the County Commissioners of Dorchester, Queen Anne's, and Somerset to include employees of the Sheriff's Department in their merit systems); CHARLES CO. CODE § 125-4(K)(1) (making "all members of the Sheriff's Office, except the Sheriff, . . . subject to the merit or classified system"); ST. MARY'S COUNTY CODE §120-2(A) (1) ("Except for the Sheriff, all personnel of the Sheriff's office shall participate in the merit system of St. Mary's County and shall be hired and governed by the rules of the system"); CAROLINE COUNTY PERSONNEL ORDINANCE §§3-1 and 3-2 (Including "law enforcement officers" in the Sheriff's department in the classified or merit system).

security."⁷⁰ They do not shift tort liability or financial responsibility from the State to the Counties. This conclusion is supported by the rule, articulated in *Rucker*, that counties "ordinarily bear no common law liability for the tortious acts of State employees,"⁷¹ and by the well-settled principle that the common law is changed only by a plainly manifested legislative intent.⁷²

CONCLUSION

In light of the context of the *Rucker* law, we conclude that because Montgomery County provides its own County Police force and administers its own detention and correctional facilities, it is not financially responsible for the employment torts of the Sheriff or Deputy Sheriffs.

In Montgomery County, the ultimate financial responsibility for any tort of the Sheriff or a Deputy Sheriff (other than those rare cases involving *ad hoc* public safety activities) is in the "good hands" of the State of Maryland.

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⁷⁰ "[T]he General Assembly has, in certain counties, indicated its intention that deputy sheriffs enjoy some form of job security. The measure of security varies from county to county, as reflected in various subsections of CJ §2-309, most of which incorporate the pertinent law of each county. In addition, Article 25, §3(f) of the Code authorizes the county commissioners of Dorchester, Queen Anne's, and Somerset Counties to include employees of the sheriff's department within the merit system of those counties. * * * Similarly, in other counties deputy sheriffs receive job security pursuant to public local law." 79 *Op. Att'y Gen.* ___ (1994) [Op. No. 94-043 (August 17, 1994)] (footnote omitted).

⁷¹ 316 Md. at 292.

⁷² *Lutz v. State*, 167 Md. 12, 15 (1934).