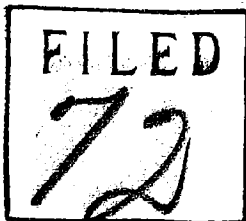


MOTOR VEHICLES:

POLICE DEPARTMENTS:

- 1) Members of Police Departments of this State must produce satisfactory evidence of financial responsibility under the new Motor Vehicle Safety Responsibility Law of this State when involved in an accident.
- 2) Individual members of the Police Department of cities in this State while driving department automobiles are personally, legally liable for negligence involving other persons and property



January 11, 1954

Board of Police Commissioners  
Kansas City, Missouri

Attention: Honorable Harry F. Murphy,  
Secretary.

Gentlemen:

This is the opinion you have requested of this office upon the questions, first, whether, under the new "Motor Vehicle Safety Responsibility Law", a member of the Police Department of Kansas City, Missouri, will be required to produce satisfactory evidence of financial responsibility when he is involved in an accident while driving an automobile belonging to the department at the time he is performing official duties, and,

Second, whether a member of the Police Department of Kansas City, Missouri, is legally personally liable when he is involved in an accident while driving an automobile belonging to the department at a time when he is performing official duties.

Your letter submitting these questions for our opinion reads as follows:

"Under the New Motor Vehicle Responsibility Law we have been requested by a number of the members of the Police Department to explain to them their own personal liability and their responsibility for any accidents in which they might become involved while on official duties in the operation of motor vehicles owned by the Police Department.

"We had in mind that we might be able to provide liability insurance to the men as individuals but we have been unable

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to find any company in the United States that writes such type of insurance. It occurred to us that we might qualify as a self-insurer. The Department of Revenue, however, has written us that we are exempt under Section 303.050.

"We have instructed all personnel to report any accident in which a department motor vehicle might be involved under Section 303.040. Over a period of years we have had very few suits filed against the individual operator charging him with negligence and I know of no case in which a judgment was entered against an officer while he was acting in the performance of his official duties.

"We should like to have an opinion from your office. Under the Act will a member of the Police Department be required to produce satisfactory evidence of financial responsibility when he is involved in an accident while driving an automobile belonging to the department at a time he is performing official duties?

"We should also like to have an opinion as to the legal liability of an officer personally under the same circumstances as stated above."

The new Motor Vehicle Safety Responsibility Law was passed as House Bill No. 19 by the 67th General Assembly of this State.

Your letter states that your Commission is advised by the Department of Revenue that your department is exempt under Section 303.050. By that statement we understand that the Department of Revenue was advising that your department is exempted from the terms of the Act. The specific section of the Act on the subject of exemptions, as we read House Bill No. 19, is Section 303.330, pages 24, 25. That section reads as follows:

"303.330. Notwithstanding else herein contained, this chapter shall not apply with respect to any motor vehicle owned

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by the United States, the state of Missouri, or any political subdivision of this state, or any municipality therein, nor shall this chapter apply to any common carrier or contract carrier whose operations are subject to the jurisdiction of and are regulated by the interstate commerce commission or the public service commission of Missouri, or by regulatory ordinances of the municipalities served by such common or contract carrier, and which shall have satisfied any applicable requirements concerning bond, insurance or proof of financial responsibility imposed by the regulatory authority having jurisdiction over the carrier's operations."

The section numbers contained in said House Bill No. 19, as passed by the 67th General Assembly, have been officially allocated and classified by the Legislative Research Committee by numbers as such sections will permanently appear in V.A.M.S., 1949, when completed, to include this Act. This allocation now appears in pamphlet form, Vernon's June, 1953, Annotation of the laws passed by the last Legislature, page 58.

The Department of Revenue has also issued a compilation in booklet form of the sections of the Act numbered as they appear in said Vernon's June, 1953, Annotation. We shall refer to Vernon's June, 1953, Annotation herein for identification of the numbers of the sections of the Act. In answering your first question we will give consideration first to Section 303.350, Vernon's June, 1953, Annotated Missouri Statutes, page 71, otherwise Section 303.330, House Bill No. 19. This section was first enacted as Subparagraph (b) of Section 4 of C.S. for H.B. No. 317, Laws of Missouri, 1945, page 1207, l.c. 1210. That subsection is identical in wording with said Section 303.350, Vernon's said June, 1953, Annotation, page 71, except that the word "chapter" is twice substituted in said Section 303.350 for the word "act" as used in said Subsection (b) of Section 4 of said C.S. for House Bill No. 317.

This office rendered an opinion dated September 26, 1946, to Colonel Hugh H. Waggoner, Superintendent, Missouri State Highway Patrol, Jefferson City, Missouri, relating to the same subject and question submitted here in your question number 1 asking for the opinion of this office. We believe said opinion of said last named day and date fully answers your first question to the effect that members of the Police

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Department of Kansas City, Missouri, as officers of a municipal corporation are not exempted from the terms of Section 303.350, Vernon's June, 1953, Annotation of the laws passed by the 67th General Assembly of this State, and that under said Act a member of the Police Department of a municipal corporation, including the City of Kansas City, Jackson County, Missouri, will be required to produce satisfactory evidence of financial responsibility when he is involved in an accident while driving an automobile belonging to the department at a time he is performing official duties. We are herewith transmitting to you a copy of that opinion.

Your first question having been answered by the opinion dated September 26, 1946, we will now consider your second question as to the personal legal liability of a member of your Police Department when he is involved in an accident while driving an automobile belonging to your department at a time he is performing official duties.

The members of a Police Department are held to the same degree of care in the performance of their official duties and are held to the same degree of liability for negligence in the performance of such duties as are required of private individuals. 43 C.J. so states in the text of that work, at page 771, as follows:

"Since policemen must exercise their authority in a lawful manner, they may be required to answer for damages for abuse of authority, or for injuries resulting from their negligence while in the performance of their duties, \* \* \*."

We do not find a Missouri case deciding this particular principle of law. This appears to be the rule announced by the Appellate Courts of other States where the question has been considered and decided. The Court of Appeals of Kentucky decided this precise question in *Manwaring vs. Geisler*, 230 S.W. (2d) 918, holding that a police officer is liable for injuries to another while in discharge of his official duties for negligence resulting in such injuries. That Court, l.c. 919, 920, on the question said:

"Appellant Manwaring was acting both as a police officer and fireman at the time

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of the accident to appellee, Geisler, and it is impossible to separate his duties one from the other. In such case the surety may be held liable. The injured party will not be required to draw fine distinctions and determine whether the officer was doing more duty as a policeman than as a fireman, or vice versa, if he was performing any duty as a police officer. Nor is a peace officer exonerated from liability for an injury inflicted on another while in the discharge of official duties on the ground of public necessity if the officer failed to exercise reasonable care for the protection of those whom he knew, or by the exercise of reasonable judgment should have expected, to be at the place of the injury, although he may not be criminally liable. \* \* \*"

We have observed by the provisions of said Section 303.350, Vernon's June Annotation, aforesaid, that, while motor vehicles owned by the State of Missouri or any political subdivision of this State or by any municipality therein are exempt from the terms of the chapter, the drivers thereof are not exempted from any of the terms of the new "Motor Vehicle Safety Responsibility Law" of this State. The text authorities and the Courts, when the Courts have spoken on the question, hold that the driver of a motor vehicle is liable for his negligence even though the municipality is exempt therefrom. 62 C.J.S., page 1110, states this text:

"\* \* \* The fact that a municipality is not liable for the unlawful or negligent act of police officers in discharge of their public duties does not exempt the officers from liability therefor. \* \* \*"

This question was considered and decided by the Appellate Court of Illinois in La Cerra vs. Woodrich, reported 52 N.E. (2d) 461. That Court upheld this rule where the Court, l.c. 465, citing an earlier Illinois case, said:

"\* \* \* City of Chicago v. Williams, 182 Ill. 135, 137, 55 N.E. 123, holds adversely to defendant's contention and

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the opinion cites several cases that hold that the municipality is not liable for illegal acts committed by police officers in the performance of their duties, but that the police officers are liable as individuals for the commission of such acts."

It will be observed from the terms of said Section 303.350, Vernon's June Annotation, and from the opinion of this office dated September 26, 1946, that, although a State or municipally owned motor vehicle itself is exempted from the terms of the Motor Vehicle Safety Responsibility Act in force at that time, the driver of the vehicle was not exempted. That opinion cites and quotes from the Wymore case so holding, 165 S.W. (2d) 618, l.c. 620. Our answer to your second question is that a member of the Police Department of a municipal corporation, including the City of Kansas City, Missouri, is personally, legally liable for negligence resulting in injury or death to another or injury to property if he is involved in an accident while driving an automobile belonging to the department at a time he is performing official duties.

CONCLUSION

It is, therefore, considering the premises, the opinion of this office that:

1) A member of any Police Department of any city in Missouri is required under the new Motor Vehicle Safety Responsibility Law of this State to produce satisfactory evidence of financial responsibility when such officer is involved in an accident while driving an automobile belonging to the department at a time he is performing official duties.

2) A member of any Police Department of a municipal corporation, including the City of Kansas City, Missouri, is personally, legally liable for negligence resulting in injury or death to another, or injury to property, if he is involved in an accident while driving an automobile belonging to the department at a time he is performing official duties.

Board of Police Commissioners:

The foregoing opinion, which I hereby approve,  
was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON  
Attorney General

GWC:irk