

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 25, 1977

To Rodney L. Scribner, State Auditor Dept. Audit

From Joseph E. Brennan, Attorney General Dept. Attorney General

Subject Use of Private Vehicles by State Employees under Maine Tort Claims Act

QUESTION:

By memorandum of March 7, 1977, you have requested an opinion describing the effect of the Maine Tort Claims Act, P.L. 1977, c. 2, on the use of private automobiles by employees of your Department in the course of their official duties.

ANSWER:

The Maine Tort Claims Act does not distinguish between motor vehicles owned by the government and those which are privately owned. The relevant question is whether property damage, bodily injury or death was caused by the negligence of a governmental employee, while acting in that capacity, in operating or maintaining any motor vehicle or other equipment specified in 14 M.R.S.A. § 8104-A-1.

DISCUSSION:

In relevant part, the Maine Tort Claims Act provides:

"A governmental entity shall be liable for its negligent acts or omissions causing property damage, bodily injury or death in the following instances:

"1. Moving vehicles and equipment. In the operation or maintenance of any motor vehicle, aircraft, snowmobile, watercraft or other such moving vehicle or of any equipment, machinery, or furnishings, whether mobile or stationary;" 14 M.R.S.A. § 8104.

Section 1 of P.L. 1977, c. 2 simultaneously repealed 14 M.R.S.A. § 151, the previous statute governing the liability of government agencies for injuries arising from "the use, ownership or operation of a motor vehicle."

As the quoted language plainly indicates, a governmental entity may be liable, subject to the limitations in § 8105, for injuries arising from the use of "any motor vehicle", without limitation. However, for liability to be assessed, certain conditions must be met.

First, there must be a negligent act or omission, meaning, in general terms, an act or omission which is not consistent with an ordinary degree of attention and care.

Second, the injury which forms the claim must have been caused by the negligent act or omission, rather than, for example, by the actions of the injured person or some third party.

Third, the negligent act or omission, in the case of motor vehicles, must have been in its operation or maintenance.


Finally, a governmental entity may be liable only for "its" negligent acts or omissions. Since a governmental body cannot act except through its agents and employees, and since it has no legal control over the private lives of its agents and employees, the governmental body cannot be held responsible for the negligent acts or omissions of those persons unless they occur in the course or scope of governmental duties.

Thus, the Department of Audit may be held responsible for an employee's negligent operation of a motor vehicle, whether state-owned or privately owned, when the vehicle is being used in the course of the employee's duties. If, however, the injury was attributable to the negligent maintenance of the vehicle, then the placement of liability would depend upon who had the responsibility for maintaining the vehicle in safe working order, a responsibility that normally rests with its owner.

Under section 8116 of the Act, the State or the Department independently may procure insurance to protect itself against any liability to which it may be subject under the Act. In addition, the State is authorized to insure its employees against personal liability that they may incur, which could include personal liability arising from the use of personal vehicles on official business.

We would note that the applicability of a private individual's insurance policy will vary. Some insurance policies specifically exclude or limit liability in cases of vehicles used for business purposes. Other policies have liability limitations which are different from the liability limit specified in the Maine Tort Claims Act. Further, some private individual's policies may specify that they would provide coverage only to the extent that the private individual is not reimbursed from other sources (such as a state policy). Accordingly, the applicability of a private individual's insurance to cover accidents while on state business would have to be examined on a case-by-case basis depending upon the activity of the individual (was he or was he not on state business) and the provisions of the individual's policy.

For specific details in development of insurance, including such questions as whether the Department of Audit should purchase a comprehensive policy or only a policy not covered by the policies of its employees, you should contact the Insurance Advisory Board.



Joseph E. Brennan
Attorney General

EB:jg

cc: H. W. McGowen

Insurance Advisory Board