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SPRINGFIELD

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FILE NO. S-1466

COUNTIES:
Property Damage Caused
by Escaped Prisoner

Honorable Tracy W. Resch
State's Attorney
Clark County
Court House
Marshall, Illinois 62441

Dear Mr. Resch:

This responds to your letter wherein you asked for an interpretation of the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1977, ch. 85, par. 1-101 et seq.).

You advised that a prisoner being held in the Clark County jail escaped and stole an automobile which was damaged in a high speed police chase. The automobile was uninsured and the owner is bearing the loss.

In your first question you ask whether section

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4-106(b) of the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1977, ch. 85, par. 4-106(b)) bestows immunity upon a county for property damage as well as personal injury caused by an escaped prisoner. I am of the opinion that the answer to this question is in the affirmative.

Section 4-106(b) provides in pertinent part:

"Neither a local public entity nor a public employee is liable for:

* * *

(b) Any injury inflicted by an escaped or escaping prisoner."

Section 1-204 of this same Act (Ill. Rev. Stat. 1977, ch. 85, par. 1-204) defines the word "injury". It provides in pertinent part:

"'Injury' means death, injury to a person, or damage to or loss of property. * * *"

Statutory definitions control in the construction of the terms in an Act. (Modern Dairy Company, Inc. v. The Department of Revenue et al. (1952), 413 Ill. 55; Bohm v. State Employees' Retirement System (1949), 404 Ill. 117.) Since the definition of "injury" in the Act includes damage to property or loss of property, I am of the opinion that section 4-106(b) of the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1977, ch. 85, par. 4-106(b))

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does bestow immunity upon a county for property damage caused by an escaped prisoner.

In your second question you ask, assuming that the county is immune from liability, may the county board, nevertheless, use county funds to compensate the automobile owner for the actual damages to her automobile by the escaped prisoner.

Since your county is immune from any liability to the owner of the automobile in question, any payment to her would be a gift. A county does not have power to dispose of any of its property by gift. (See, 1974 Ill. Att'y Gen. Op. 328; 1949 Ill. Att'y Gen. Op. 116). I am therefore of the opinion that your county board may not compensate the automobile owner for the damages to her automobile caused by the escaped prisoner.

In your third question you ask if the county board chooses to compensate the owner of the automobile, whether this action would constitute a waiver of immunity in any future instance when an escaped prisoner might cause personal injury or property damage. The opinion I have expressed on the second question answers your third question. The county board has no power to compensate the owner of the damaged automobile and no power to make a gift to her. Accordingly, no action by the county board to compensate

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the owner of the damaged automobile is authorized by law, and it is therefore unnecessary to consider whether a decision to compensate in this case would be a waiver of immunity in future instances.

Very truly yours,

A T T O R N E Y G E N E R A L