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Law Enforcement and Other Officers

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Clerk.⁶⁴⁰ In doing so, the court acknowledged that the county clerk performs both state and local functions and determined that the state is not liable for the local functions.⁶⁴¹ The court found that the office of county clerk is a quasi-state office, and therefore, the home rule provision, which allows local law to provide for election or appointment of officers of local government, does not apply.

THIRD DEPARTMENT

*Thoubboron v. New York State Department of Civil Service*⁶⁴²
(decided July 18, 1991)

The plaintiffs, Albany County sheriffs, contended that the New York State Department of Civil Services (NYSDCS) and the Civil Service Commission (CSC) misinterpreted recently amended article XIII, section 13(a) of the New York State Constitution⁶⁴³ by issuing a memorandum stating that appointees of sheriffs were now brought into the classified civil service system.⁶⁴⁴ The court held that in light of the recent amendment abolishing exclusive personal liability of sheriffs for their appointees' acts or omissions, such appointees were no longer excluded from application of civil service procedures.⁶⁴⁵

The NYSDCS issued a memorandum to all civil service agencies stating that the effect of the amendment was to abolish the exclusion of sheriffs' appointees from application of civil service procedures as had previously been the case.⁶⁴⁶ Moreover, the memorandum stated that the amendment had the effect of overruling the 1908 New York Court of Appeals decision of *Flaherty v. Milliken*.⁶⁴⁷

The court held that article XIII, section 13(a) brought

640. *Id.* at 509-10, 562 N.E.2d at 867-68, 561 N.Y.S.2d at 542-43.

641. *Id.* at 509, 562 N.E.2d at 868, 561 N.Y.S.2d at 543.

642. 572 N.Y.S.2d 494 (3d Dep't 1991).

643. N.Y. CONST. art. XIII, § 13(a).

644. *Thoubboron*, 572 N.Y.S.2d at 494.

645. *Id.* at 495.

646. *Id.* at 494.

647. 193 N.Y. 564, 86 N.E. 558 (1908).

appointees of sheriffs who are performing civil functions into the classified service system and determined that the amendment had the effect of overruling the decision in *Flaherty*.⁶⁴⁸

In reaching its decision, the court explained that the amendment to article XIII, section 13(a) had the effect of deleting the article that exempted a county for the acts of its sheriffs.⁶⁴⁹ The purpose of the amendment was to relieve sheriffs employed by the state from personal liability for their own acts or omissions, or their appointees' acts or omissions when discharging their official duties.⁶⁵⁰

In *Flaherty*, the Sheriff of Kings County brought an action seeking "to compel the . . . state civil service commissioners, to certify to the payroll of certain assistant deputy sheriffs, jail keepers, van drivers and matrons" who were appointees of his office.⁶⁵¹ The CSC argued that such appointments were in violation of its rules and regulations, which required that such positions be filled only by competition as in accordance with state constitution article V, section 9.⁶⁵²

The New York Court of Appeals, in reversing the trial and appellate courts, held that because a sheriff was personally liable for the acts or omissions of its civil appointees, such appointees fell under the personal service of the sheriff and, therefore, did not fall within the civil service provision of the state constitution.⁶⁵³ Article V, section 6 mandates that appointments and/or promotions are to be determined solely on the basis of merit as determined by competitive examinations.⁶⁵⁴

In holding that sheriffs' appointees were no longer to be excluded from the aforementioned civil service provisions, the

648. *Thoubboron*, 572 N.Y.S.2d at 495.

649. *Id.* at 494.

650. *Id.*

651. *Flaherty*, 193 N.Y. at 565, 86 N.E. at 558-59.

652. *Id.* at 565-66, 86 N.E. at 559-60. New York State Constitution article V, § 9 was amended and renumbered in 1925 and now appears at article V, § 6.

653. *Flaherty*, 193 N.Y. at 570, 86 N.E. at 560.

654. *Id.*; N.Y. CONST. art. V, § 6. ("Appointments and promotions in the civil service . . . shall be made according to merit and fitness . . . by examination which, as far as practicable, shall be competitive.").

Thoubboron court explained that the underlying reasoning of *Flaherty* was removed by the amendment of article XIII, section 13(a), which abolished exclusive personal liability of sheriffs of the state.⁶⁵⁵ Consequently, sheriffs' appointees are now subject to the application procedures of the civil service as mandated by article V, section 6 of the New York State Constitution.

SUPREME COURT

OSWEGO COUNTY

Douglas v. County of Oswego⁶⁵⁶
(decided June 19, 1991)

The defendant, County of Oswego, moved for summary judgment dismissing a prisoner's complaint alleging that the county was vicariously liable for injuries sustained as a result of the inadequate treatment received from a jail physician.⁶⁵⁷ The defendant based its motion on the New York State Constitution, article XIII, section 13(a),⁶⁵⁸ which extends immunity to counties for negligent acts of sheriffs, deputies, and other employees hired by the sheriff's office. The court held that the New York State Constitution, article XIII, section 13(a) does not immunize counties from the negligent acts of jail physicians.⁶⁵⁹

655. *Thoubboron*, 572 N.Y.S.2d at 495.

656. 151 Misc. 2d 239, 573 N.Y.S.2d 236 (Sup. Ct. Oswego County 1991).

657. *Id.* at 239-40, 573 N.Y.S.2d at 237.

658. N.Y. CONST. art. XIII, § 13(a). Additionally, the defendant based its motion on New York Correction Law § 500-c, which provides: "Each sheriff . . . shall have custody of the county jails and shall receive and safely keep, in the county jail of his county, every person lawfully committed to his custody." N.Y. CORRECT. LAW § 500-c (McKinney 1987), and on *Wilson v. Sponable*, 81 A.D.2d 1, 439 N.Y.S.2d 549 (4th Dep't 1981), which held that although § 500-c did not remove a sheriff's immunity from liability for a deputy sheriff's negligence while engaged in criminal duties, a sheriff may be held liable for his own negligence in connection with the care and treatment of prisoners custody, *id.* at 10, 439 N.Y.S.2d at 554.

659. *Douglas*, 151 Misc. 2d at 241, 573 N.Y.S.2d at 238.