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Law Enforcement and Other Officers

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 Oswego[656]
(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]

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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.

In denying the defendant's motion, the court interpreted two state statutes: County Law section 652(2),[660] which entrusts the sheriff's office with hiring keepers, guards, clerks, and other necessary employees; and Correction Law, section 501,[661] which states that the board of supervisors has the power to appoint jail physicians.[662]

In interpreting such statutes, the court rejected defendant's argument that "because the doctor is employed at the jail he or she is perforce under the control of the sheriff and, therefore, the county's constitutional immunity from liability for acts of the sheriff, his deputies or employees should attach."[663] The court explained that because the jail physician is solely an employee of the legislative body that hired him, "there is no reason to suppose that the activities of a provider of medical services would or could be supervised by the Sheriff, as would the activities of Deputy Sheriffs and other jail employees."[664] The court concluded that there is, therefore, no reason to consider "the jail physician an extension of the office of the Sheriff, as is the case with Deputy Sheriffs and other jail employees."[665] The court reasoned that jail physicians owe an independent duty of reasonable care to all people, including prisoners in county jails,[666] and malpractice committed by a physician can subject the county to vicarious liability under the doctrine of *respondeat superior*. Because the court declined to extend the immunity provided in article XIII, section 13(a) of the New York State Constitution to include jail physicians, the County of Oswego's motion to dismiss was denied and the county could be found

660. N.Y. COUNTY LAW § 652(2) (McKinney 1991) ("The sheriff may also appoint keepers, guards, clerks and employees as may be authorized by the board of supervisors and such appointees shall serve during his pleasure.").

661. N.Y. CORRECT. LAW § 501 (McKinney 1987) ("The physician to a jail holds his office at the pleasure of the board which appointed him . . . .").

662. *Douglas*, 151 Misc. 2d at 240-41, 573 N.Y.S.2d at 237.

663. *Id.* at 241, 573 N.Y.S.2d at 237-38.

664. *Id.* at 241, 573 N.Y.S.2d at 238.

665. *Id.*; *see also* N.Y. CORRECT. LAW § 501 (McKinney 1987).

666. *Douglas*, 151 Misc. 2d at 241, 573 N.Y.S.2d at 238 (citing Bowers v. County of Essex, 118 Misc. 2d 943, 945, 461 N.Y.S.2d 959, 961 (Sup. Ct. Essex County 1983)).

vicariously liable for the alleged negligence of its jail's physicians.[667]

667. *Id.* at 242, 573 N.Y.S.2d at 238; *see* Delosh v. City of Syracuse, 64 A.D.2d 814, 814, 407 N.Y.S.2d 940, 940 (4th Dep't 1978) (holding that there could be no vicarious liability imposed on a county based on the negligence of a medical care extern hired by the county sheriffs office, because the extern was neither a county employee nor a member of the staff of the county appointed jail physician); Cooper v. Morin, 50 A.D.2d 32, 37, 375 N.Y.S.2d 928, 933 (4th Dep't 1975) (expressing no difficulty in finding a county vicariously liable for the negligent acts of county jail physicians).