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Opinion No. 06-063

City Police Escort for Funeral Processions;
Proposed Amendment to Tenn. Code Ann. § 55-8-183

QUESTIONS

1. If House Bill 3048/Senate Bill 3102, a proposed amendment to Tenn. Code Ann. § 55-8-183, were enacted, would the changes to the law be sufficient to protect any Tennessee city or county from claims such as those brought against the City of Chattanooga in *Anderson v. City of Chattanooga*, 978 S.W.2d 105 (Tenn. App. 1998)?

2. Would such legislation, if adopted, mean that the standard of care applicable to a municipality whose police vehicles are leading a funeral procession would be different from the *Anderson* case?

3. Would such legislation, if adopted, excuse a city from providing officers to control traffic at intersections through which the procession proceeds?

4. The opinion request stated that the *Anderson* case held that, having undertaken to provide an escort for a funeral, the municipal defendant had a duty to provide adequate personnel to provide the escort in a safe manner and this duty included providing officers at the intersections along the route of the procession.

Would changing the statute as proposed change the standard for what a safe or proper manner was in this circumstance so that a city would be immune from liability arising from not having provided more than the one lead vehicle?

5. If the answer to the preceding questions is yes, and the impact of the proposed legislative change is that a municipality could provide only a lead police vehicle, would the municipality lose the protection of this statutory standard of care if it chose to do more than the statutory minimum and chose to provide traffic control officers at some (but not all) of the intersections through which the funeral procession passed? In other words, would the *Anderson* case standard reapply if a city exceeded the proposed legislative standard?

6. (a) Does adding "police vehicle using its emergency lights" to Tenn. Code Ann. § 55-8-183(a) give the cars behind it in the procession all of the same legal rights and protections as those following a "lead vehicle" or "properly identified escort" as provided in that statute?

(b) Specifically, may each such vehicle in the funeral procession, being escorted by a police escort, continue through all intersections regardless of traffic signs or signals if each vehicle has its headlights on or has been properly identified by having its flashing lights on or by using a brightly colored funeral sign hanging from the rear view mirror indicating a funeral procession?

7. If a police officer who violated the otherwise applicable rules of the road by speeding or traveling in the turn lane while using only their lights but not their siren to assist in escorting a funeral procession be in violation of Tenn. Code Ann. § 55-8-108 or is there some other provision of the state law that would allow them to act in this way?

OPINIONS

1. No. The standard of care articulated by the *Anderson* court would remain the same for all negligence causes of action.

2. No. The standard of care is not based on the statute. It is based on negligence law.

3. and 4. No. The statute does not require that a municipality provide officers to escort funeral processions. The amendment would not affect this fact.

5. The proposed change in the law does not authorize municipalities to provide only one vehicle to escort a funeral procession, nor does it require a specific number of vehicles.

6. (a) The amendment would not alter the statutory rights and duties of a car in a funeral procession.

(b) The drivers in a funeral procession following the lead car may proceed without stopping regardless of the sign or signal when (1) the lead vehicle has already passed through the intersection and (2) the driver has his headlights on. This statute does not, however, excuse drivers from their duty to drive safely.

7. Authorized emergency vehicles, of which a police vehicle may be one, must obey the rules of the road, unless exempt under Tenn. Code Ann. § 55-8-108. This statute's modification of the rules of the road, however, does not relieve the driver from the duty to drive with due regard for the safety of all persons or from the consequences of reckless driving.

ANALYSIS

Tenn. Code Ann. § 55-8-183 currently reads as follows:

> (a) Funeral processions properly identified by a flashing amber light on the lead vehicle or led by a properly identified escort shall have the right-of-way on any street, highway, or road through which they may pass, subject to the following

provisions: . . . .

If amended by House Bill 3048/Senate Bill 3102, the statute would read as follows (new language is in **bold**):

> (a) Funeral processions properly identified by a flashing amber light on the lead vehicle **or identified as a police escort where such vehicle has visual signals and is equipped with or displays an amber light accompanied by a blue light visible from the front of the vehicle,** or led by a properly identified escort shall have the right-of-way on any street, highway, or road through which they may pass, subject to the following provisions: . . . .

In your opinion request, you refer several times to the case of *Anderson v. City of Chattanooga*, 978 S.W.2d 105 (Tenn. App. 1998). In *Anderson*, the Tennessee Court of Appeals held that the city's decision to send only one police officer to escort a funeral procession was a negligent act not subject to discretionary function immunity. *Anderson*, 978 S.W.2d at 107, 108, 109.

The Court of Appeals stated the facts as follows:

> [This Case arises from a] motor vehicle accident that occurred in Chattanooga on January 12, 1993. Plaintiff Edna Anderson and her son, Jeffrey, had attended a funeral, and while en route to the cemetery in the funeral procession Edna's car which was second from the end in the procession, was struck while traversing the intersection of McCallie and Holtzclaw, by a motor vehicle operated by Samuel Ledford. The traffic light had turned green for Ledford, and he stated that he did not realize that Anderson's car was part of a funeral procession until after the accident.
>
> It was raining at the time of the accident,[1] and defendant Officer Thomas was escorting the funeral procession and had stopped traffic at the intersection of McCallie and Holtzclaw, but at the time of the accident had left that intersection in order to stop traffic at the next intersection before the procession reached that intersection.

Negligence causes of action have three parts: (1) a legally recognized duty owed by the defendant to the plaintiff, (2) the defendant's breach of that duty, and (3) an injury proximately caused by the breach. *Anderson*, 978 S.W.2d at 107. The *Anderson* court found that the city had a duty to plaintiff and breached that duty.

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[1]The Appellate Court characterized the situation as hazardous: "It was raining during the procession, and thus, not only were the streets more hazardous due to the rain, but other vehicles also had their headlights on, making it difficult to distinguish the funeral procession from other cars. Additionally, Officer Thomas testified that he left the left lane unblocked on McCallie because he had to hurry on to the next intersection." *Anderson*, 978 S.W.2d at 108.

The Appellate Court quoted from the Restatement (Second) of Torts:

> One who undertakes, gratuitously or for consideration, to render service to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if
> (a) his failure to exercise reasonable care increases the risk of such harm, or
> (b) he has undertaken to perform a duty owed by the other to the third person, or
> (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Restatement (Second) of Torts, § 324A (1965).

The Court agreed with defendant city that Tenn. Code Ann. § 55-8-183 did not impose a specific statutory duty upon the officer escort to remain at the intersection. *Anderson*, 978 S.W.2d at 107. It went on to say, however, that just because there was not a statutory duty did not mean that there was no duty. "Having undertaken to provide an escort for the funeral, the defendant [city] had a duty to provide adequate personnel so that the escort was conducted properly under the circumstances." *Anderson*, 978 S.W.2d at 107.

1. Municipality's Protection Against Liability When Providing a Police Escort for a Funeral Procession

We do not believe that the proposed change in the law would protect a Tennessee city or county from claims such as those brought against the City of Chattanooga in the *Anderson* case. The amendment's effect would be to include the city in the list of funeral procession escorts found in Tenn. Code Ann. § 55-8-183(a). The provisions of that statute, current or amended, do not relieve funeral procession escorts from liability for negligence.

2. Standard of Care

As earlier stated, the *Anderson* Court determined that the standard of care was to provide adequate personnel so that the escort was conducted properly under the circumstances. The proposed amendment would have no impact on that standard. Tenn. Code Ann. § 55-8-183 outlines certain duties of the funeral procession escort but does not relieve the escort from liability for a negligent act. The duties in Tenn. Code Ann. § 55-8-183 are applicable to all escorts, hired or volunteer, municipal or private — the statute does not distinguish. The statute also does not include a standard of care. Thus the duty and the standard of care articulated by the Court in *Anderson* would still be applicable. We do not see that *Anderson* applies a standard of care to a city or county different from the standard of care for all funeral escorts. The standard for all funeral escorts is the same. *See, e.g., Union Park Mem'l Chapel v. Hutt*, 670 So.2d 64, 66 (Fla. 1996) (holding that once a funeral director undertook to lead a procession, he assumed at least a minimal duty to use good judgment and ensure that the vehicles traveled to the cemetery in a safe manner). Depending upon the circumstances, providing one escort for a funeral procession might or might not be adequate.

3. and 4. Municipality's Liability for Not Providing a Police Officer to Control Traffic at All Intersections Through Which the Procession Passes

You view the *Anderson* case as holding police officers and police vehicles to a higher standard than the standard for other funeral escorts. As stated above, we find no indication that the city has been treated differently from other escorts privately hired or volunteered. The same standard would apply to all: if you accept or volunteer to provide the escort, then you must do so in a safe and prudent manner. The circumstances will dictate what actions must be taken to discharge the duty safely and prudently. The *Anderson* case does not stand for the proposition that a funeral procession requires an officer at each intersection. It is not the number of officers employed for the task, but the manner in which the escort services are conducted and whether adequate personnel have been assigned to the task so that the escort is conducted properly under the circumstances. *See Anderson,* 987 S.W.2d at 107. As a practical matter, circumstances may dictate an officer at every intersection, but not because the *Anderson* case requires it.

Tenn. Code Ann. § 55-8-183, current or amended, does not require that a city provide police officers to escort a funeral procession. In fact, we found no state law requiring a city to provide its police officers as escorts for a funeral procession.

5. What Constitutes "Safe" or "Proper" Discharge of Duty

The proposed amendment would not enact a particular standard of care. The amendment's change would not relieve a city from potential liability arising from its provision of an escort for funeral processions.

6. Rights and Protections of Vehicles in Funeral Procession Following Lead Vehicle

Tenn. Code Ann. § 55-8-183(a)(1) states as follows:

> (a) Funeral processions properly identified by a flashing amber light on the lead vehicle or led by a properly identified escort shall have the right-of-way on any street, highway, or road through which they may pass, subject to the following provisions:
>
> (1) The operator of the leading vehicle in a funeral procession shall comply with stop signs and traffic-control signals, but when the leading vehicle has progressed across

> an intersection in accordance with such signal or after stopping as required by the stop sign, all vehicles of such procession may proceed without stopping regardless of the sign or signal when each of such vehicles has its headlights lighted; . . . .

The proposed amendment does not affect this statutory provision.

7. Police Officer's Compliance With Rules of the Road While Escorting Funeral Procession

As a general rule, all drivers must obey traffic laws. Tenn. Code Ann. § 55-8-103. An exception to this rule does exist, however, for an "authorized emergency vehicle" under certain circumstances. Under Tenn. Code Ann. § 55-8-108, an "authorized emergency vehicle" may depart from the traffic laws as specified in Tenn. Code Ann. § 55-8-108(b), (c) and (d). This exception for authorized emergency vehicles applies only when the driver of such a vehicle is responding to an emergency call or when in the pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm. Tenn. Code Ann. § 55-8-108(a). In addition, to be eligible for the exemption the vehicle must be using the audible and visual signals required by law. Tenn. Code Ann. § 55-8-108(c). The statute does not relieve the driver of the "authorized emergency vehicle" from the duty to drive safely. Tenn. Code Ann. § 55-8-108(b)(2).[2]

A police vehicle may be an authorized emergency vehicle. Tenn. Code Ann. § 55-8-101(2)(A). Circumstances will dictate when a police officer, acting as escort to a funeral procession, may deviate from standard traffic laws in the manner specified in Tenn. Code Ann. § 55-8-108. If the police officer is escorting a funeral procession and is not responding to an emergency or pursuing a violator of the law and is not using the audible and visual signals required by law, the police officer would need to obey the traffic laws, as modified by Tenn. Code Ann. § 55-8-183.

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[2] Tenn. Code Ann. § 55-8-108(b)(2) reads as follows: The provisions of subdivision (b)(1) shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of the driver's own reckless disregard for the safety of others.

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Requested by:

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