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## THE DEPUTY SHERIFF—PUBLIC OFFICER OR PUBLIC EMPLOYEE? CONSEQUENCES IN LIGHT OF MODERN DAY WORKMEN'S COMPENSATION AND TORT LAW

The relationship between Louisiana sheriffs and their deputies is one that has perplexed the courts and the legislature in assigning responsibility for the torts of the deputy committed in the course and scope of his employment. The problem of determining the relationship is exacerbated by the legislature's classification of the deputy sheriff as an appointed state official, thereby implying a relationship to the state as well. This "public officer" classification has also had a profound effect on whether or not the deputy should be afforded workman's compensation coverage for injuries occurring while he is on duty since officials of the state or a political subdivision thereof are generally excepted from coverage under the provisions of Louisiana Revised Statutes 23:1034.<sup>1</sup>

After the defense of sovereign immunity was abolished by article XII, section 10 of the Louisiana Constitution of 1974, another significant question arose: Which governmental entity, if any, is responsible for injury to person or property inflicted by a deputy sheriff?<sup>2</sup> This question must be examined in light of the relationship between the deputy and the sheriff in the employment context, as well as the deputy's relationship to the state as an officer.

The nature of the relationship of the sheriff to his deputies, the extent and nature of his liability for their tortious conduct, and the responsibility he is to bear for deputies who are injured will be examined briefly in a historical context. An analysis of the problems occurring in light of the recent changes in the law since the 1974 constitution will follow. Lastly, a discussion of whether the law as it stands today has satisfactorily solved these problems will conclude this note.

### *Torts Committed By Deputies*

#### *Background—Early Cases and Legislation*

Early Louisiana cases reveal that the scope of a sheriff's liability for the improper acts of his deputies was greater than it has been in more recent years. In the 1888 case of *Grabenheimer v. Budd*,<sup>3</sup> the Louisiana Supreme Court stated as "an undeniable proposition that the sheriff is responsible in damages to the party injured through the malfeasance, misconduct, or delinquency of the deputy."<sup>4</sup> The court added that it "is part of a sheriff's duty to have his deputies under proper control, and to see that they honestly and impartially perform their official duties."<sup>5</sup>

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1. (Supp. 1984); see *infra* text accompanying notes 57-65.

2. Murchison, *The Work of the Louisiana Appellate Courts for the 1977-1978 Term—Local Government Law*, 39 LA. L. REV. 843 (1979).

3. 40 La. Ann. 107, 3 So. 724 (1888).

4. 40 La. Ann. at 108, 3 So. at 725.

5. 40 La. Ann. at 108, 3 So. at 725.

Thus, the sheriff was civilly liable for injuries caused by the improper acts of his deputies. The court based its decision in part on article 764 of the old Code of Practice, which stated in part that the sheriff may "name as many deputies as he thinks fit, but he remains responsible for them, and they must, before entering on their duties, take an oath . . . to perform faithfully the duties required by law from the sheriffs by whom they are named." In *State v. Titus*,<sup>6</sup> this responsibility of the sheriff was reiterated. The supreme court said that the deputy was under the general direction of the sheriff. The *Titus* court also pointed out, however, that because the deputy's office was one created by the legislature, he was also an officer of the state to which he would be criminally responsible for any derelictions in office.<sup>7</sup>

After article 764 of the Code of Practice was repealed by the legislature in 1934,<sup>8</sup> the supreme court in *Gray v. Debretton*<sup>9</sup> established a judicial standard of liability. This suit for recovery of damages was brought against a sheriff and the surety on his official bond for the alleged negligence of a deputy in driving the sheriff's automobile off the road while transporting a prisoner to the parish jail, striking the plaintiff and his two sons. The following principle was stated by the court:

In discussing this point it must be borne in mind that no liability attaches to the defendant sheriff under the doctrine of respondeat superior, or under the doctrines of master and servant and principal and agent. The relation between a sheriff and his deputy is an official and not a private relation. The deputy is not a representative of the sheriff in his individual capacity, but he is a public officer whose authority and duty are regulated by law. . . . So far as the responsibilities of the office are concerned, the sheriff is liable for the acts and omissions both of himself and his deputy.<sup>10</sup>

The court further noted that in order to impose liability on the sheriff, a petition should set forth facts showing that the alleged wrongful act of the deputy was committed while he was performing an official duty and resulted from the wrongful manner in which such duty was performed. Since under the *Gray* facts the deputy had no official relationship to the plaintiff, the duty violated was not an official duty but was an individual or private duty owed to all pedestrians on the highway. The court held that the sheriff was not liable because the unlawful or negligent act did

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6. 152 La. 1011, 95 So. 106 (1922).

7. 152 La. at 1014-15, 95 So. at 107-08; LA. R.S. § 3542 (1870); LA CODE OF PRACTICE art. 764 (1870).

8. 1934 La. Acts, 3d Extra. Sess., No. 27, § 2. Act 27 of the Third Extraordinary Session of 1934 also amended LA. R.S. § 3342 (1870). See *supra* note 7 and accompanying text.

9. 192 La. 628, 188 So. 722 (1939).

10. 192 La. at 634-35, 188 So. at 724.

not involve the improper and unfaithful discharge of an official duty.<sup>11</sup> This rule, borrowed from the common law notion that a sheriff was civilly liable for the official neglect or misconduct of his deputy when acting officially or under color of office,<sup>12</sup> was applied in the absence of a legislative standard resulting from the repeal of article 764 of the Code of Practice.<sup>13</sup>

After *Gray*, several pertinent changes in legislation occurred which unfortunately did little to enunciate a clear standard of responsibility to guide the courts. Soon after *Gray*, Act 8 of the Extra Session of 1940 again made a sheriff "responsible for his deputies."<sup>14</sup> Subsequently, Act 426 of 1950 limited the liability of the sheriff and his sureties to five thousand dollars, the amount of the bond furnished by the deputy.<sup>15</sup>

11. 192 La. at 635, 188 So. at 727.

12. See 1 W. ANDERSON, A TREATISE ON THE LAW OF SHERIFFS, CORONERS, AND CONSTABLES WITH FORMS §§ 61-62 (1941). The determination in *Gray* that the act of driving an automobile negligently was not the performance of an official duty was criticized by Anderson, a leading authority on sheriffs. He states that "[a]ccording to the great weight of authority a sheriff and his bondsmen are liable for negligent operation of an automobile by a sheriff's deputy while *acting officially*." 1 W. ANDERSON, *supra*, § 47, at 41 (emphasis added). See also *Rhodes v. Jordon*, 157 So. 811 (La. App. 2d Cir. 1934) (a deputy sheriff who was driving an automobile back to town after a search for an illicit still held to be engaged in performing an official act so that his negligence in operating the automobile was chargeable to the sheriff and his liability insurer). *But see Waters v. McCleary*, 344 F.2d 75 (6th Cir. 1965) (holding that a deputy sheriff was *not* acting by virtue of office or color of office when he negligently drove while on routine patrol a county owned automobile across the center line of the highway, injuring a third party).

13. Other jurisdictions have also experienced problems in setting forth the standard of liability to be borne by sheriffs for their deputies' misconduct. "Generally the sheriff is liable for any wrongful act committed by a deputy sheriff within the course of the deputy sheriff's official duty." W. ANDERSON, *supra* note 12, § 61, at 56. Decisions are not in harmony as to the exact scope of the liability of a sheriff for the acts of his deputy, and the problem is complicated by distinctions between acts done by virtue of office and under color of office. *Poole v. Brunt*, 338 So. 2d 991 (Miss. 1976). See generally Annot., 15 A.L.R.3d 1189 (1967). At common law, sheriffs have been held *not* responsible for the act of a deputy done "under color of office" which "involves a pretense or claim of a right to do an act unrelated to the duties of the office" or where the deputy has usurped his power. *Mendez v. Blackburn*, 226 So. 2d 340, 343 (Fla. 1969). In some states, a sheriff's liability was restricted to acts done by "virtue of the office," that is, when the deputy is exercising a power which is an incident of the office itself. The sheriff is liable if the power is abusively or negligently executed. *Id.* Some states have done away entirely with the distinction, imposing liability on a sheriff for acts done either by virtue of or under color of office. See *Dogarín v. Conner*, 6 Ariz. App. 473, 477, 433 P.2d 653, 657 (1967).

14. Act 8 of the Extra Session of 1940 amended LA. R.S. § 3542. See *supra* notes 7-8. Section 3542 provides in part: "The Sheriff of each parish . . . may appoint as many deputies as he may deem necessary, or as may be authorized by law, but he remains responsible for them, and they must, before entering on their duties, take the oath of office."

15. 1950 La. Acts, No. 426, § 1, *amending* LA. R.S. 33:1433. Act 426 of 1950 provides in part:

That no sheriff of any parish of this State, nor his sureties, shall be liable for any act or tort committed by one of his deputies, or by any person commissioned

However, this latter amendment deleted the affirmation of responsibility found in Act 8 of the Extra Session of 1940. In the absence of a clear statutory standard, the official act requirement imposed in *Gray* was subsequently applied in *Nielson v. Jefferson Parish Sheriff's Office*.<sup>16</sup> Suit was brought due to an intersectional collision between a vehicle owned by the sheriff and driven by his deputy and a vehicle driven by the plaintiff. The plaintiff failed to allege that the deputy was acting within the scope of his official duties; rather, he alleged only vicarious liability of the sheriff by virtue of the negligence of his deputy, and an exception of no cause of action was sustained. The official act standard of liability imposed in *Gray* has since been consistently applied by both the Louisiana courts and federal courts up until the recent decision in *Jenkins v. Jefferson Parish Sheriff's Office*.<sup>17</sup>

Compounding the problems that exist in allocating responsibility for deputies' torts is the confusing nature of the relationship between certain public officials and their superiors. One question is whether an officer can be classified as an employee. The proposition that an office could also be an employment was succinctly stated in an early federal case by Judge John Marshall, later appointed Chief Justice of the United States Supreme Court.<sup>18</sup> In several early Louisiana cases the courts encountered much difficulty in distinguishing an office from a simple employment, but recognized that an officer could also be an employee under some circumstances.<sup>19</sup> In *Myers v. Fidelity & Casualty Co.*,<sup>20</sup> the third circuit stated that a city policeman could be recognized as both an officer and an employee. The result of the recognition of an employment relationship between a city policeman and the municipality employing him has been an imposition of liability on the employer, under the doctrine of

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as deputy sheriff by him, beyond the amount of the bond furnished by said deputy sheriff, unless said deputy sheriff, in the commission of the said act or tort, acts in compliance with a direct order of, and in the personal presence of, the said sheriff, at the time the act or tort is committed.

Act 45 of 1968 amended this paragraph of LA. R.S. 33:1433(A) by adding five words. The amended phrase read: "beyond the amount of the bond *or limits of liability insurance* furnished by said deputy sheriff . . ." (Emphasis added). For further amendments to LA. R.S. 33:1433(A), see *infra* notes 33-36 and accompanying text. See also Murchison, *supra* note 2, at 872.

16. 242 So. 2d 91 (La. App. 4th Cir. 1970).

17. 402 So. 2d 669 (La. 1981). See *Williams v. United States*, 353 F. Supp. 1226, 1233 (E.D. La. 1973) ("Louisiana law makes a sheriff liable for all the acts and omissions of his deputies which result from the wrongful execution of the deputies' official duties."); see also *Foster v. Hampton*, 352 So. 2d 197 (La. 1977); *Nielson v. Jefferson Parish Sheriff's Office*, 242 So. 2d 91 (La. App. 4th Cir. 1970).

18. *United States v. Maurice*, 26 F. Cas. 1211 (D. Va. 1823) (No. 15,747), quoted in *Hall v. City of Shreveport*, 157 La. 589, 591, 102 So. 680, 681 (1925).

19. *State v. Dark*, 195 La. 139, 196 So. 47 (1940); *Hall v. City of Shreveport*, 157 La. 589, 102 So. 680 (1925).

20. 152 So. 2d 96 (La. App. 3d Cir. 1963).

*respondeat superior*, for wrongful injury inflicted by the officer while performing his official duties.<sup>21</sup>

Early Louisiana decisions and legislation concerning deputy sheriffs gave little guidance for determining the nature of the relationship between the sheriff and his deputies.<sup>22</sup> The Louisiana courts have, however, followed the rationale in *Gray* that liability does not attach to the sheriff under the doctrines of *respondeat superior* and master and servant for the wrongful acts of deputies not committed in the discharge of an official duty or as a result of the performance of an official act.<sup>23</sup> However, a federal court in *Kyles v. Calcasieu Parish Sheriff's Department*,<sup>24</sup> in an attempt to apply relevant Louisiana law in an employment discrimination case, extended the reasoning in *Gray* and held that a deputy sheriff was not an employee of the sheriff's office but was only an appointee of the sheriff.<sup>25</sup> This holding has not been applied by any Louisiana state court since that decision, and the reasoning was criticized recently by the United States Fifth Circuit Court of Appeals in *Adams v. McDougal*,<sup>26</sup> in which it was stated that the *Kyles* reasoning was overly strict in interpreting Louisiana law regarding the status of a deputy.

Two points can be established concerning the nature of the sheriff's relationship to his deputies and the extent of his liability for their wrongful acts: (1) the jurisprudence in Louisiana had not specifically recognized an employer-employee relationship between a sheriff and his deputies as of the early 1970's, and (2) under *Gray* and subsequent decisions, a sheriff was liable to third parties injured by a deputy only if the sheriff personally directed the act or if the deputy improperly performed "an official act or duty."

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21. See LA. CIV. CODE art. 2320; *Jones v. Anderson*, 277 So. 2d 697 (La. App. 2d Cir. 1973).

22. Courts in other jurisdictions have also wrestled with different theories in attempting to determine the status of the relationship between the sheriff and his deputy. Some have acknowledged the existence of a principal-agent relationship. See, e.g., *Reynolds v. Lerman*, 138 Cal. App. 2d 586, 292 P.2d 559 (1956). Others have asserted that the doctrine of *respondeat superior* applies, thus making the liability of a sheriff for the acts of his deputy that of a master for the acts of his servant. See, e.g., *Huth v. Woodard*, 108 Ohio App. 2d 135, 161 N.E.2d 230 (1958). Still others have held that the deputy is the sheriff's representative for whose acts the sheriff is liable as if they had been done by the sheriff. See, e.g., *Styers v. Forsyth County*, 212 N.C. 558, 561, 194 S.E. 305, 307-08 (1937); *Rich v. Graybar*, 84 S.W.2d 708 (Tex. Civ. App. 1935).

23. *Nielson v. Jefferson Parish Sheriff's Office*, 242 So. 2d 91 (La. App. 4th Cir. 1970); *Gates v. Hanover Ins. Co.*, 218 So. 2d 648 (La. App. 4th Cir. 1969); *Polizzi v. Trist*, 154 So. 2d 84 (La. App. 4th 1961); *Jackson v. Steen*, 92 So. 2d 280 (La. App. 2d Cir. 1957).

24. 395 F. Supp. 1307 (W.D. La. 1975).

25. The court in *Kyles* stated that no employer-employee relationship existed. *Id.* at 1310.

26. 695 F.2d 104 (5th Cir. 1983). The court also acknowledged the existence of an employment relationship.

*Recent Developments*

A modern analysis should begin with a discussion of *Foster v. Hampton*,<sup>27</sup> a 1977 Louisiana Supreme Court decision. This opinion had a profound impact on the state of the law as it had existed prior to adoption of the Louisiana Constitution of 1974. Because of the abolition of sovereign immunity by article XII, section 10(A) of that constitution, Louisiana courts were forced to reexamine and interpret the existing laws in order to determine who was to bear responsibility for the negligent acts of deputy sheriffs.<sup>28</sup> In *Foster*, a deputy sheriff, while on duty (acting in his official capacity) and driving a sheriff's department vehicle, made an illegal left turn and struck a motorcycle operated by Foster, the plaintiff. The deputy was not acting in compliance with a direct order by the sheriff, and under *Gray* he was not engaged in the improper performance of an official duty. The duty owed to the injured cyclist was not an official one; rather, it was the same general duty the deputy would have owed if he were driving his own car. Since it was not alleged that the deputy was acting in compliance with a direct order of the sheriff, the sheriff was held not liable under the terms of Louisiana Revised Statutes 33:1433.<sup>29</sup> Although the state of Louisiana was not a party to the lawsuit, the supreme court stated in *dicta* that "it is well settled that the deputy sheriff is an officer of the state. The state, then, may be considered the deputy sheriff's 'employer.'"<sup>30</sup> Foster alleged that section 1433 was unconstitutional because it granted a governmental immunity to the sheriff which had been abolished by article XII, section 10(A). The court discounted this argument because section 1433 only limited the sheriff's liability. A due process challenge under article I, section 22 of the Louisiana Constitution was also denied based on Foster's ability to seek recovery from the state as employer of the deputy.<sup>31</sup> A commentator on local government law, in analyzing the *Foster* opinion, has stated: "The supreme court recognized that its decision appeared to deny Foster a responsible governmental defendant but suggested that the plaintiff himself had created this appearance by failing to sue the appropriate governmental defendant—the state."<sup>32</sup>

After *Foster*, in an attempt to clarify the jurisprudence, the legislature enacted Act 318 of 1978 which amended section 1433, deleting a paragraph which formerly limited the sheriff's liability to the amount of bond or

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27. 352 So. 2d 197 (La. 1977).

28. Murchison, *supra* note 2, at 871.

29. LA. R.S. 33:1433 (as it appeared prior to its amendment by 1978 La. Acts, No. 318, § 1); see *supra* note 15; *Gray v. DeBretton*, 192 La. 628, 188 So. 722 (1939).

30. 352 So. 2d at 201. The court remarked further that the doctrine of *respondet superior* might be available to hold the state vicariously liable for the negligent acts of its employees in the course and scope of their employment.

31. *Id.*

32. Murchison, *supra* note 2, at 875.

liability insurance furnished by the deputy,<sup>33</sup> and added Louisiana Revised Statutes 42:1441 which immunized the state from liability for damages caused by a sheriff or his employees.<sup>34</sup> Act 318 of 1978, which apparently overruled *Foster* legislatively, was criticized for two reasons. First, it was deficient in failing to expressly impose liability on a sheriff for acts not classified as official, such as the negligent operation of a motor vehicle, thereby failing to fill the gap left by *Gray*. Secondly, it possibly violated the 1974 constitution's abolition of sovereign immunity by failing to provide a governmental entity to assume liability for the deputy's conduct.<sup>35</sup> It has been noted that if the "official duty" doctrine remained, there would still be a barrier to imposing liability on a sheriff for some of the torts of his deputy. Consequently, a plaintiff could be denied a governmental entity that is responsible for the torts of the deputy in contravention of article XII, section 10.<sup>36</sup>

The proposition in *Foster* that the state should be recognized as a deputy's employer was nevertheless held valid by the first circuit in *Michaelman v. Amiss*.<sup>37</sup> The fourth circuit in *Carmouche v. Oubre*<sup>38</sup> also held that a deputy sheriff was an employee of the state and that the state was vicariously liable under Civil Code article 2320 for damages occasioned by the deputy in the course and scope of his employment. A contrary result was reached by the third circuit in *Martinez v. Reynolds*,<sup>39</sup> in which the court interpreted the enactment of Louisiana Revised Statutes 42:1441 as legislatively overruling *Foster* by compelling victims of torts committed by deputy sheriffs to seek relief from the deputies and the sheriffs who hire, control, and supervise them, rather than from the state, which has no control over their activities. This result seems logical in light

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33. The 1978 amendment deleted the paragraph reproduced *supra* note 15.

34. LA. R.S. 42:1441 (Supp. 1984). LA. R.S. 42:1441(A) reads:

The state of Louisiana shall not be liable for any damage caused by a district attorney, coroner, assessor, sheriff, clerk of court, or public officer of a political subdivision within the course and scope of his official duties, or damages caused by an employee of a district attorney, coroner, assessor, sheriff, clerk of court, or public officer of a political subdivision.

35. Murchison, *supra* note 2, at 878. As of the time of *Foster*, the sheriff had not been recognized as a governmental entity. See *Liberty Mut. Ins. Co. v. Grant Parish Sheriff's Dep't*, 350 So. 2d 236 (La. App. 3d Cir. 1977).

36. *Student Symposium, The Work of the Louisiana Legislature for the 1978 Regular Session—Administrative Law and Procedure*, 39 LA. L. REV. 189, 194 (1978).

37. 385 So. 2d 404 (La. App. 1st Cir. 1980). *Michaelman* was rendered after the *Foster* opinion had been reviewed again by the supreme court in 1980 on the issue of prescription. On its review of *Foster*, the court reaffirmed its earlier statement that an employment relationship existed between the state and a deputy sheriff. See *Foster v. Hampton*, 381 So. 2d 789 (1980).

38. 394 So. 2d 805 (La. App. 1st Cir. 1981). The holding, however, was based on the premise that LA. R.S. 42:1441 does not apply to a sheriff's deputy since he is not an employee of the sheriff.

39. 398 So. 2d 156 (La. App. 3d Cir. 1981).



of present day tort law. The court in *Martinez* concluded that section 1441 destroyed any cause of action against the state and also upheld section 1441 as not violating article XII, section 10(A) of the Louisiana Constitution. The court reasoned that the legislature had provided the plaintiff with an adequate remedy by removing the limitation on the liability of the sheriff and inferred that the sheriff is the governmental entity responsible for the torts of the deputy.<sup>40</sup> Interestingly, the reasoning used by the court in *Martinez* to uphold the constitutional challenges to section 1441 under article XII, section 10, and article I, section 22 is nearly identical to that offered in *Foster* for upholding a constitutional attack on Louisiana Revised Statutes 33:1433 under article I, sections 3 and 22.<sup>41</sup>

*Jenkins v. Jefferson Parish Sheriff's Office*,<sup>42</sup> a Louisiana Supreme Court decision rendered just two months after *Martinez*, provided an opportunity for the court to clarify the relationship of the sheriff with his deputies and to establish the consequent scope of liability imposed on the sheriff. In *Jenkins*, the plaintiff brought suit against the deputy, the sheriff, the sheriff's office, and the sheriff's office liability insurer, seeking recovery for injuries caused by the alleged negligence of a deputy in the operation of an official vehicle while on duty. The court, after noting the questionable constitutionality of Louisiana Revised Statutes 42:1441, attempted to clarify the legislative intent behind Act 318 of 1978 by "assessing the realities of the employment situation in light of present day tort law."<sup>43</sup> The court concluded that an employment relationship does exist between a sheriff and his deputies because the sheriff, and not the state, "hires and fires deputies, exercises direct and indirect supervision and control over them, fixes their time and place of work, and generally allocates their responsibility and assigns their duties."<sup>44</sup> The majority concluded that the sheriff was the appropriate governmental entity on which to place responsibility for the torts of a deputy sheriff<sup>45</sup> and held that the sheriff was liable "in his official capacity as employer of his deputy (but not in a personal capacity), for the deputy's torts in the

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40. The court stated: "The obvious purpose of Act 318 of 1978 was to shift responsibility for the tortious conduct of deputy sheriffs and other government employees from the state to the various local governmental entities that actually hire them and control and supervise their work." *Id.* at 161. See Murchison, *Developments in the Law, 1981-1982—Local Government Law*, 43 LA. L. REV. 461, 482-83 (1982).

41. In *Foster*, the state was substituted as the responsible governmental entity in the absence of a right of action against the sheriff. In *Martinez*, the sheriff was substituted for the state as the responsible entity so as *not* to create an immunity nor deny *Martinez* an adequate remedy.

42. 402 So. 2d 669 (La. 1981).

43. *Id.* at 671.

44. *Id.*

45. For an excellent discussion of the effect *Jenkins* has had on the identification of the governmental entity responsible for the torts of a deputy, see Murchison, *supra* note 40, at 479-83.

course and scope of employment."<sup>46</sup> *Respondeat superior* liability was thus imposed on the sheriff. The court noted the need for clarifying the intent of Act 318 of 1978 and acknowledged a commentator's suggestion that an overall legislative plan of action was needed to resolve the problem of which governmental entity is responsible so that the appropriate entity might purchase liability insurance to cover that responsibility.<sup>47</sup>

Dissenting Justices Marcus and Watson argued that the ruling was contrary to the standard in *Gray*, which imposed liability on the sheriff only for the deputy's improper performance of an official act and made it clear that the deputy was not an employee and that the doctrine of *respondeat superior* did not apply.<sup>48</sup> Justice Watson additionally recognized the deficiencies of Act 318 of 1978 to the extent that it amended Louisiana Revised Statutes 33:1433, citing earlier doctrinal authority<sup>49</sup> to the effect that "nothing in the title or body of the Act provides that sheriffs are the employers of their deputies or that they are responsible for their torts."<sup>50</sup> It may also be argued that article 331 of the Code of Civil Procedure, which states that "the sheriff is responsible for the performance or non-performance of their *official duties* by his deputies and other employees,"<sup>51</sup> provides some statutory authority for the *Gray* rule. Furthermore, it is significant that the majority's holding that the sheriff's office is a governmental entity overrules an earlier decision, *Liberty Mutual Insurance Co. v. Grant Parish Sheriff's Dept.*,<sup>52</sup> which held that it was not. The *Jenkins* rule thus seemingly sustains the constitutionality of Louisiana Revised Statutes 42:1441 by merely substituting the sheriff's office as the entity responsible for the torts of the deputy, rather than eliminating all governmental liability.<sup>53</sup> Justice Blanche in his concurring and dissenting opinion in *Jenkins* concisely criticized the *Gray* rule:

It is obvious that the distinctions among situations in which a sheriff is liable for the negligent acts of his deputies under this "official act" doctrine are illogical and unjust. This doctrine should certainly be discarded . . . and the doctrine of respondeat

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46. 402 So. 2d at 669.

47. See Murchison, *supra* note 2, at 878-79; Murchison, *Developments in the Law, 1980-1981—Local Government Law*, 42 LA. L. REV. 564, 587 (1982); Murchison, *supra* note 40, at 483.

48. 402 So. 2d at 673 (Marcus, J., dissenting); *id.* (Watson, J., dissenting).

49. Murchison, *supra* note 2, at 878-79.

50. 402 So. 2d at 675 (Watson, J., dissenting). Justice Marcus added that "such an intent cannot be inferred. Removal of the statutory limitation was not accompanied by a reinstatement of the prior language making the sheriff responsible for the acts of his deputies. The amendment or partial repeal of a law does not revive former law." *Id.*

51. Emphasis added.

52. 350 So. 2d 236, 238 (La. App. 3d Cir. 1977) (stating that the law of the state affords "no legal status to the 'Parish Sheriff's Department' wherein said department can sue or be sued, such status being reserved for the sheriff, individually.').

53. Murchison, *supra* note 40, at 482.

superior should be applied to hold the employer of a deputy liable for the torts of the deputy.<sup>54</sup>

The *Jenkins* holding provides for a fair result and has been followed by the third circuit in *Sullivan v. Quick*.<sup>55</sup> However, in order to establish certainty in the law, to enable those responsible for deputy sheriffs to procure adequate liability insurance, and to assure the victim of an adequate remedy, the suggestions made by the *Jenkins* court and legal scholars should be adopted by the legislature. A legislative enactment is needed expressly imposing liability on the sheriff in his official capacity or on the sheriff's office for the torts committed by a deputy or other employee in the course and scope of employment.<sup>56</sup>

### *The Workmen's Compensation Dilemma—Damages Incurred by Deputies* *Background*

While the courts have said little about an employment relationship between the sheriff and his deputies prior to the last decade, the deputy sheriff's status as "state official" or "state officer" has long been recognized in the jurisprudence.<sup>57</sup> This status has been most often discussed in light of the Louisiana Worker's Compensation Law, which specifically excludes public officials from coverage.<sup>58</sup> Deputies in Louisiana have consistently been treated as "public officers" rather than "public employees" and, therefore, traditionally were not entitled to compensation,<sup>59</sup> although the first circuit recently held that a deputy sheriff's remedy for personal injuries is limited to one in workmen's compensation.<sup>60</sup> Similarly, early cases involving workmen's compensation claims denied coverage to city policemen,<sup>61</sup> night watchmen,<sup>62</sup> and juvenile officers<sup>63</sup> based on their status

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54. 402 So. 2d at 672.

55. 406 So. 2d 284 (La. App. 3d Cir. 1981). See also *Pellegal v. Dureau*, 427 So. 2d 55 (La. App. 4th Cir. 1983).

56. Murchison, *supra* note 2, at 878.

57. *Gray v. De Bretton*, 192 La. 628, 188 So. 722 (1939); *Williams v. Guerre*, 182 La. 745, 162 So. 609 (1935); *State v. Titus*, 152 La. 1011, 95 So. 106 (1922); *Mitchell v. James*, 182 So. 2d 144 (La. App. 3d Cir. 1966).

58. LA. R.S. 23:1034 (Supp. 1984).

59. W. MALONE & A. JOHNSON, *LOUISIANA WORKERS' COMPENSATION LAW AND PRACTICE* § 98 in 13 *LOUISIANA CIVIL LAW TREATISE* 221 (2d ed. 1980); see *Richardson v. Heyd*, 278 So. 2d 167 (La. App. 4th Cir. 1973); *Johnson v. Northern Assurance Co. of America*, 193 So. 2d 920 (La. App. 3d Cir. 1967); *Mitchell v. James*, 182 So. 2d 144 (La. App. 3d Cir. 1966).

60. See *Phillips v. State*, 400 So. 2d 1091 (La. App. 1st Cir. 1981); accord *Rodrigue v. Breaux*, 388 So. 2d 60 (La. App. 1st Cir. 1980).

61. *Hall v. City of Shreveport*, 157 La. 589, 102 So. 680 (1925).

62. *Coleman v. Maryland Casualty Co.*, 176 So. 143 (La. App. 1st Cir. 1937); cf. *Courville v. Globe Indem. Co.*, 63 So. 2d 446 (La. App. 1st Cir. 1953) (holding that because of several factors a night watchman was not an officer and that no one factor should determine official status).

63. *Wagner v. Hartford Accident & Indem. Co.*, 81 So. 2d 580 (La. App. 1st Cir. 1955).

as "officers" or "public officials." While Act 412 of 1950 had the effect of affording coverage to law enforcement officers employed by a municipality such as city policemen and night watchmen,<sup>64</sup> sheriff's deputies continued to be excluded based on their status as appointed public officials.<sup>65</sup>

### *Recent Developments*

The holding in *Foster* that deputy sheriffs are employees of the State of Louisiana, subsequently followed in *Michaelman v. Amiss*,<sup>66</sup> was extended to workmen's compensation claims in two cases heard by Louisiana's First Circuit Court of Appeal. In *Rodrigue v. Breaux*,<sup>67</sup> the first circuit referred to a statement in *Michaelman* that "the Supreme Court intends that a deputy sheriff be recognized as an employee of the state regardless of the factual situation"<sup>68</sup> as support for holding that the deputy should no longer be considered as a public officer under Louisiana Revised Statutes 23:1034. The jurisprudential recognition of the deputy sheriff as an employee, and the implied acknowledgement of an "employment relationship," was a novel approach, for the courts earlier had consistently held that deputies were state officers who were excluded from workmen's compensation coverage.<sup>69</sup> In *Phillips v. State*,<sup>70</sup> the first circuit felt that the legislature did not necessarily intend to exclude deputy sheriffs as public officials just because the parish of Orleans' criminal deputies were specifically *included* under the terms of section 1034. The first circuit believed that the legislature was misled by the classification of deputies as such in prior jurisprudence and repudiated that status. It reasoned that a deputy sheriff is an employee of the state, and that if workmen's compensation is founded on an employer-employee relationship, then societal interests justify allowing compensation benefits, absent a clear statutory exclusion.<sup>71</sup>

Nevertheless, the *Phillips* opinion was to have little effect on subsequent decisions. First, the supreme court in *Jenkins* held that deputies were employees of the sheriff and not the state.<sup>72</sup> Second, there was an

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64. LA. R.S. 23:1034 (Supp 1984).

65. See cases cited *supra* note 59. See generally W. MALONE & A. JOHNSON, *supra* note 59, § 98, at 221.

66. 385 So. 2d 404 (La. App. 1st Cir. 1980); see *supra* note 37 and accompanying text.

67. 388 So. 2d 60 (La. App. 1st Cir. 1980).

68. 385 So. 2d at 405, quoted in *Rodrigue*, 388 So. 2d at 61.

69. See cases cited *supra* note 59.

70. 400 So. 2d 1091 (La. App. 1st Cir. 1981).

71. *Id.* at 1094; see Johnson, *Developments in the Law 1980-1981—Workers' Compensation*, 42 LA. L. REV. 620, 645-46 (1982) (approves as a sound judgment or approach the decision in *Phillips* that the public official category was improper from the beginning and that the deputy falls within the basic category of employee).

72. See *supra* text accompanying notes 42-46.

immediate legislative response to the *Phillips* decision in Act 25 of the Extraordinary Session of 1981, which added subsections B and C to Louisiana Revised Statutes 23:1034, thereby expressly providing that the deputy sheriff is an exempted public official.<sup>73</sup> A decision then pending before Louisiana's Third Circuit Court of Appeal, *Brodnax v. Cappel*,<sup>74</sup> was subsequently affected by the retroactive application of the 1981 amendment of section 1034. In *Brodnax*, a deputy sheriff injured his back at work when he fell on a catwalk at the Rapides Parish Detention Center. He filed suit against the sheriff and the state for workmen's compensation benefits, or in the alternative, damages for personal injuries caused by negligence. Although the plaintiff was injured in November 1980, the court held that Act 25 of the Extraordinary Session of 1981 was to be given retroactive effect since the title to that Act expressly stated its purpose was "to interpret and clarify by definition the 'officials' excepted"<sup>75</sup> from the coverage of the Louisiana Worker's Compensation Law. Thus, it was held that the deputy sheriff was an official of the state or political subdivision thereof and had no cause of action against the state for workmen's compensation benefits.<sup>76</sup>

*Kahl v. Baudoin*,<sup>77</sup> decided by Louisiana's First Circuit Court of Appeal, is indicative of the harsh result that can be obtained by applying amended section 1034. Kahl, a deputy sheriff, was fatally shot in the line of duty on June 4, 1980. His wife, individually and as tutrix for her two minor children, brought a suit in workmen's compensation against Bau-

73. Subsections B and C read:

B. Except as expressly and specifically provided to the contrary in Subsection A hereof, the officials excepted from coverage under the provisions of this Chapter, in Subsection A of this Section, include all public officers as defined by R.S. 42:1. In this regard, sheriffs' deputies are, under R.S. 42:1, 33:1433, and 33:9001 et seq., appointed public officers and officials of their respective political subdivisions, the parish law enforcement districts.

C. Notwithstanding the provisions of Subsection A hereof, any political subdivision may, in its own discretion and by using its own funds available for same, provide [worker's] compensation coverage for its officials, in addition to having to provide such coverage for its employees.

The bracketed word was so changed by section 6 of Act 1 of the First Extraordinary Session of 1983. This legislation was in line with earlier jurisprudence characterizing the deputy as a state official.

74. 425 So. 2d 232 (La. App. 3d Cir. 1982).

75. 1981 La. Acts, Extra. Sess. No. 25, § 1. A Louisiana supreme court case decided subsequent to this writing has stated in a footnote that *Brodnax* "erroneously held that Act 25 of 1981 was retroactive in its effect and is overruled." *Kahl v. Baudoin*, No. 83-C-2120, slip. op. at 3 (La. App. 2, 1984).

76. *Id.* It was also held that *Brodnax* had not stated a cause of action against the state in tort because he had not alleged that he was an employee of the state or that the state was responsible for his working conditions. *Brodnax* was allowed to maintain a cause of action in tort against the sheriff, and the case was remanded to determine if the sheriff was responsible for workmen's compensation benefits.

77. 436 So. 2d 1271 (La. App. 1st Cir. 1983).

doin, the sheriff, and subsequently named the State of Louisiana as a defendant, seeking to obtain death benefits.<sup>78</sup> The 1981 amendment of section 1034, passed after the decedent's death, was applied retroactively for the same reasons cited in *Brodnax*. The trial court's ruling that the deputy was an employee and that the state was his employer was reversed, thereby denying the plaintiff workmen's compensation benefits.<sup>79</sup>

Today, the extent of workmen's compensation coverage for a deputy sheriff injured in the line of duty is very limited, and often there is no coverage at all. While an employment relationship seemingly exists between the sheriff and his deputy after *Jenkins*, Act 25 of the Extraordinary Session of 1981 indicates that a deputy sheriff is an official of the state or a political subdivision thereof and is therefore expressly excepted from workmen's compensation coverage. The dilemma created by the public official status remains. Since section 1034(C) allows a political subdivision in its own discretion to provide coverage for its officials, an inference may be drawn that workmen's compensation *may* be provided for deputy sheriffs, but yet their status as officials denies them the *right* to receive benefits since they are not entitled to the benefits by law. Therefore, a deputy injured or killed in the line of duty can be denied a cause of action in workmen's compensation against his employer if the sheriff's office in its discretion has not procured coverage. If denied coverage, he would have to make out a cause of action in tort against his employer, thereby incurring personal expense and not being assured that he will be able to sustain his burden of proof.

It is difficult to understand why the "public official" status imposed on the deputy should preclude a deputy from the benefits of workmen's compensation coverage. Furthermore, it is difficult to perceive why coverage should be "exclusive, compulsory, and obligatory"<sup>80</sup> for all other

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78. *Id.* The trial court ruled that Kahl was an employee rather than an official for the purposes of workmen's compensation under the terms of section 1034, and that the state, not Sheriff Baudoin, was Kahl's employer, thus entitling him to receive benefits.

79. The concurring opinion by two of the three judges arrived at the same result but disagreed that the 1981 amendment was interpretive legislation, noting that the legislation conflicted with two decisions of the first circuit, *Rodrigue v. Breaux*, 388 So. 2d 60 (La. App. 1st Cir. 1980), and *Phillips v. State*, 400 So. 2d 1091 (La. App. 1st Cir. 1981), as well as with the supreme court decision in *Foster*, 436 So. 2d at 1274 (Shortess, Watkins, JJ., concurring). It was further stated that vested rights in an action for workmen's compensation cannot be divested by retroactive application of state statutes, and were it not for the fact that prescription had run, Mrs. Kahl would have been entitled to death benefits from the state. *Id.* at 1274-75. See also LA. Crv. CODE art. 8 ("A law can prescribe only for the future; it can have no retrospective operation, nor can it impair the obligation of contracts."). However, subsequent to this writing, the Louisiana Supreme Court reversed the first circuit, holding Act 25 of 1981 to be substantive in its effect and therefore not to be applied retroactively to a preexisting cause of action. The state of Louisiana and the sheriff were further held to be liable jointly and in solido for providing compensation benefits to Mrs. Kahl. *Kahl v. Baudoin*, No. 83-C-2120 (La. Apr. 2, 1984).

80. LA. R.S. 23:1034(A) (Supp. 1984).

public employees, while it is optionally provided in the case of certain officials, such as deputies.

The public official status has merely clouded the true issue of whether an employment relationship exists, and whether, given its broad purpose, the Louisiana Worker's Compensation Law should be the exclusive remedy. The official status of deputy sheriffs should pose no serious obstacle to providing mandatory workmen's compensation coverage. Many states specifically include in workmen's compensation coverage sheriffs and their deputies.<sup>81</sup> The reason most often stated in Louisiana jurisprudence for classifying the deputy as a state officer is that his office is created by the legislature and thus provided for by statute.<sup>82</sup> The legislature in the 1981 amendment of section 1034 specifically referred to Louisiana Revised Statutes 42:1<sup>83</sup> and 33:1433<sup>84</sup> as statutory authority for making deputy sheriffs "state officials." Section 1034(B) states in part that "sheriff's deputies are, under R.S. 42:1 [and] 33:1433, . . . appointed public officers and officials of their respective political subdivisions, the parish law enforcement districts."

Doctrinal authorities on the law of workmen's compensation have stated that the reason for expressly excluding officials is not clear, noting that the public importance of the duties performed by officials is not an adequate reason to deny them compensation.<sup>85</sup> Professors Wex Malone and H. Alston Johnson write:

One distinguishing characteristic of the true public official is the fact that he is often vested with important policy-declaring functions. Those who are entrusted with the making of public policy usually receive salaries which are fairly commensurate with the responsibility of their positions and hence they may be regarded as outside the protective scope of the compensation acts.<sup>86</sup>

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81. A. LARSON, *THE LAW OF WORKMAN'S COMPENSATION* § 56.31, at 9-259 (1980).

82. *State v. Mayeux*, 228 La. 6, 81 So. 2d 426 (1955); *Williams v. Guerre*, 182 La. 745, 162 So. 609 (1935); *State v. Titus*, 152 La. 1011, 95 So. 106 (1922).

83. LA. R.S. 42:1 (1965) provides:

As used in this title, the term public office "means any state, district, parish or municipal office, elective or appointive, or any position as member on a board or commission, elective or appointive, when the office or position is established by the constitution or laws of this state."

"Public officer" is any person holding a public office in this State.

84. LA. R.S. 33:1433(A) (Supp. 1984) provides in part:

A. The sheriff of each parish and the civil and criminal sheriffs of the parish of Orleans may appoint as many deputies as necessary, but not more than authorized by law.

In all parishes except the parish of Orleans, the deputies shall, before entering in their duties, take the oath of office.

85. W. MALONE & A. JOHNSON, *supra* note 59, § 98, at 219.

86. *Id.*

In contrast, non-policy making positions regarded as official and subject to an official oath because of the importance of the position can be distinguished as involving routine duties and a salary level commensurate with the demands of these duties.<sup>87</sup> It has been suggested that to exclude these persons from compensation would defeat the broad purpose of the act.<sup>88</sup> Policemen and deputy sheriffs are examples of this second category of officials. Municipal policemen as well as criminal deputy sheriffs in the parish of Orleans are now *expressly* entitled to workmen's compensation benefits under the terms of section 1034,<sup>89</sup> as are state police officers under Louisiana Revised Statutes 40:1374.<sup>90</sup> Although municipal policemen have been classified as officers by earlier jurisprudence,<sup>91</sup> this status has not precluded them from coverage, seemingly because of the existence of an employment relationship. By analogy, deputy sheriffs should not be precluded on the basis of their status as officers. Deputy sheriffs and others similarly situated are more appropriately classified as officials because of the importance of their office and the requirement of taking the state oath rather than because of their salary and ability to bear their own accident cost.<sup>92</sup> Therefore, they should be entitled to the same treatment that has been extended to others performing similar duties (such as policemen). In addition, clerical workers employed by the sheriff's office are often deputized, but they perform job tasks similar to those of other public employees not classified as officials. It is hard to imagine why these workers should be denied compensation benefits based on a technical classification as officers. Regardless of whether the deputy is called an officer or an employee, his bargaining power and his salary level are such that he cannot efficiently provide for his own accident costs. Policy dictates that he should be covered under workmen's compensation regardless of his status as an "official."

The deputy's situation can be analogized to that of certain independent contractors who spend a substantial amount of work time engaged in manual labor. In 1948, the legislature expressly provided that these contractors be covered under workmen's compensation *despite* their

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87. *Id.* at 219-20.

88. *Id.* at 220

89. Section 1034(A) states in part:

[M]embers of the police department, or municipal employees performing police services for any municipality who are not elected officials shall be covered by this Chapter and shall be eligible for compensation; and provided further that criminal deputy sheriffs for the parish of Orleans shall be covered by this Chapter and shall be eligible for compensation as provided herein.

90. LA. R.S. 40:1374 (Supp. 1984) provides: "Every employee of the division of state police, except the head thereof, shall be considered an employee of the state within the meaning of the worker's compensation law of this state and entitled to the benefits of all the provisions of that law applicable to state employees."

91. *Hall v. City of Shreveport*, 157 La. 589, 102 So. 680 (1925).

92. W. MALONE & A. JOHNSON, *supra* note 59, § 98, at 221-22.



technical status as "independent contractors" who would customarily be excluded from coverage.<sup>93</sup> Coverage was provided so that all manual workers, whether independent contractors or not, would be treated the same whether they were regarded "technically" as contractors or employees.<sup>94</sup> This was simply a recognition of the lack of expertise and economic leverage which if present would have permitted such persons to bear their own accident costs. The precise classification yielded to the policy interest in question. Likewise, deputy sheriffs, regardless of their characterization as officials, should be afforded coverage.

The implications of Louisiana Revised Statutes 23:1034 must also be considered in terms of certain provisions in the Louisiana Constitution of 1974. Under article XII, section 10, neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or tort for injury to person or property. An injury to a public employee vests that person with a cause of action in workmen's compensation. Our supreme court in *Foster and Jenkins* recognized the deputy sheriff as a public employee. However, because of his designation as an official, the deputy sheriff may be denied the right of action in workmen's compensation against the governmental entity by whom he is employed (the sheriff's office of a parish law enforcement district). The unfortunate result is that the deputy may not be entitled to any recovery at all unless he can prove negligence on the part of his employer in a tort suit. Without workmen's compensation benefits, there might be no practically available remedy against the sheriff's office, given the absence of negligence on the part of the sheriff. This might be construed as a granting of immunity to the political subdivision employing the deputy in violation of article XII, section 10. The denial of a cause of action in workmen's compensation to this group of individuals is unfair and may foster irresponsibility in those who control and supervise their activities. It was for these reasons that sovereign immunity of the state was originally abrogated by the 1974 constitution and by earlier jurisprudence in 1973.<sup>95</sup> The specific denial of coverage to deputies appears to be an unnecessary exception to the policy of the state in providing exclusive coverage to all public employees.<sup>96</sup>

Moreover, article I, section 22 of the Louisiana Constitution provides: "All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputa-

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93. 1948 La. Acts, No. 179, § 1, adding LA. R.S. 23:1021(6), as amended by 1983 La. Acts, 1st Extra. Sess., No. 1, § 1.

94. Malone, *The Work of the Louisiana Appellate Courts for the 1962-1963 Term—Workmen's Compensation*, 24 LA. L. REV. 244, 246-47 (1964).

95. Board of Comm'rs of the Port of New Orleans v. Splendour Shipping & Enters. Co., 273 So. 2d 19, 25 (La. 1973); see also Comment, *Governmental Immunity: The End of "King's X"*, 34 LA. L. REV. 69 (1973).

96. See *Gilmore v. State*, 79 So. 2d 192 (La. App. 1st Cir. 1955).

tion, or other rights." Since an injury occurring in the course and scope of employment in a normal public employment relationship would vest in the party a cause of action in workmen's compensation which is protected by the due process guarantee, a deputy who has lost this remedy might argue that he has been denied his cause of action through partiality in the treatment of deputies as "officials." While the legislature may regulate or even abolish causes of action in order to attain permissible legislative objectives,<sup>97</sup> few, if any, legislative objectives are furthered by denying a deputy sheriff the right to workmen's compensation coverage.

Perhaps an even stronger argument can be set out for providing deputy sheriffs the benefits of compensation coverage under article I, section 3 of the Louisiana Constitution, since its guarantee of equal protection "essentially requires that state laws affect alike all persons and interests similarly situated."<sup>98</sup> The supreme court in *Foster* stated that "so long as the law applies to all persons in the same circumstances and conditions in a like fashion, the requirements of equal protection are met."<sup>99</sup> Deputies perform duties similar to those performed by municipal and state policemen who are also public officers charged with upholding and enforcing the law. Unlike these officers, sheriff's deputies are excepted from workmen's compensation benefits.

In order to sustain an equal protection challenge, it must be shown that there is a rational basis for any differential treatment that is reasonably related to a legitimate governmental purpose.<sup>100</sup> This equal protection analysis, similar to that used by the United States Supreme Court, forbids classifications defined as unreasonable in that they "do not have the support of a rational basis or, in some cases, a compelling state interest."<sup>101</sup> The law of workmen's compensation does not appear to apply equally to others similarly situated, such as municipal and state policemen. Criminal deputy sheriffs in the parish of Orleans are specifically included under the terms of Louisiana Revised Statutes 23:1034(A). Moreover, under section 1034(C), deputies in different parish law enforcement districts may or may not receive workmen's compensation benefits based on the sheriff's discretion in procuring coverage. Therefore, in one parish deputies may receive benefits while in a neighboring parish they may not. Since the statute obviously allows and even provides for differential treatment, there must be some appropriate governmental interest that is furthered in order

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97. *Burmaster v. Gravity Drainage Dist. No. 2*, 366 So. 2d 1381, 1387 (La. 1978).

98. *Succession of Robins*, 349 So. 2d 276, 278 (La. 1977).

99. 352 So. 2d at 202. *See also State ex rel. Francis v. Resweber*, 329 U.S. 459, 465 (1947).

100. *Everett v. Goldman*, 359 So. 2d 1256, 1266 (La. 1978); *Succession of Robins*, 349 So. 2d 276, 278 (La. 1977); *see also McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961).

101. Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 35 LA. L. REV. 1, 7 (1974).

for the statute to withstand constitutional scrutiny.<sup>102</sup> There appears to be no legitimate governmental purpose that justifies this discriminatory treatment of deputy sheriffs, especially when any such arguable purpose is balanced against the consequences of not providing coverage for this group of public servants.

A possible solution to the present dilemma might be to amend Louisiana Revised Statutes 23:1034 by deleting subsections B and C and adding a provision specifically making deputy sheriffs and other officers similarly situated eligible for workmen's compensation benefits. Otherwise, uncertainty may remain in this area of the law, and the courts may be forced to decide whether section 1034 as amended in 1981 can withstand constitutional scrutiny. Certainty is needed in this area of the law so that the employer or responsible entity of the deputy sheriff can adequately bear future liability by providing funds for workmen's compensation coverage and so that an injured plaintiff can obtain an adequate remedy in light of the goals of present day workmen's compensation law.

*Frederick Douglas Gatz, Jr.*

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102. See *Everett v. Goldman*, 359 So. 2d 1256, 1266 (La. 1978).