

MEMORANDUM OF LAW

DATE: December 13, 1985

TO: Will Sniffin, Deputy Director of Water
Utilities

FROM: City Attorney

SUBJECT: Loss of Waterfowl Hunting Deposit

You recently requested my review and response to the following fact situation. On the evening of November 23, 1985, an interoffice mail envelope was turned over to Jim Brown, Lakes Recreation Program Manager, at San Diego Jack Murphy Stadium. The envelope contained one hundred and seventy dollars (\$170) in cash and other articles and was given to Mr. Brown by Otay Lake Damkeeper Joe Caruso as a convenience to save subsequent transportation costs. The envelope was placed on the seat armrest and was left there upon leaving the stadium. A subsequent search has failed to find the envelope or its contents.

We note initially that San Diego City Charter section 85 requires the daily deposit of money received.

SECTION 85. DAILY DEPOSITS OF MONEY

All moneys received from taxes, licenses, fees, fines, penalties and forfeitures and all moneys which may be collected or received by any officer of the City in his official capacity, or from any Department of the City for the performance of any official duty and all moneys accruing to the City from any source and all moneys directed by law or by this Charter to be paid or deposited in the treasury, shall be paid into the treasury daily.

We have previously opined that the reasonableness of failing to deposit the money is a question of fact. In a highly similar incident, former Assistant City Attorney Robert S. Teaze reviewed

the failure to deposit the receipts from a city auction there, as here, held on a Saturday. (See attached City Attorney Memorandum of Law, dated January 29, 1975.)

As Mr. Teaze concluded, if the employee's actions were reasonable then a valid defense can be asserted by means of

California Government Code section 822 which provides:

SECTION 822. Money stolen from custody

A public employee is not liable for money stolen from his official custody. Nothing in this section exonerates a public employee from liability if the loss was sustained as a result of his own negligent or wrongful act or omission.

By using the term "negligence," the standard of care is that of the ordinary prudent and reasonable man. This standard of conduct is established by the law as that of a hypothetical person who represents a community ideal of reasonable behavior. The standard is an external and objective one. Thus the conduct of the actor, Mr. Brown, is measured against the conduct of this hypothetical ordinary prudent and reasonable man. Prosser, Law of Torts, (2nd ed. 1955).

While certainly a question of fact, it seems that a prudent and reasonable man would certainly take steps to secure an envelope known to contain cash. Placing it in a jacket, in a pant pocket or securing it in a vehicle are all far more prudent than open exposure to theft on an armrest.

Hence we conclude that whether this theft of public funds from Mr. Brown can be excused is a question of fact to be

measured against the standard of reasonable care of the reasonable and prudent person under the circumstances of November 23, 1985 at the time and place of receipt of the envelope.

Placing an envelope containing cash on an armrest cannot be said to be the conduct of a prudent and reasonable person. Hence the loss resulted from negligent conduct for which the employee is responsible.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:513(x043.2)

Attachment

ML-85-94