

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



IN REPLY REFER TO:

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February 3, 1983

OPINION OF THE CORPORATION COUNSEL

SUBJECT: Application of the Compulsory/
No-Fault Motor Vehicle Insurance
Act to Vehicles Owned by Diplomats,
the District of Columbia, WMATA,
and the United States.

Thomas M. Downs, Director
Department of Transportation
District of Columbia Government
415 12th Street, Northwest
Washington, D. C.

Dear Mr. Downs:

This is in reply to your request dated November 2, 1982, for an opinion of this Office as to whether the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982, D.C. Law 4-155, effective September 18, 1982, requires that the prescribed form of insurance or a certificate of self-insurance be obtained for vehicles owned by diplomats, by the District of Columbia, by the Washington Metropolitan Area Transit Authority (WMATA), and by the United States.

In my opinion, the Director of the Department of Transportation may require a certificate of insurance as a prerequisite to registering each of these classes of vehicles. However, the Director should not require more of WMATA or the United States than the statement that they are self-insured for the payment of claims made under all applicable laws.

Section 4(a) of D.C. Law 4-155 requires each owner of a motor vehicle required to be registered in the District 1/ to maintain compulsory no-fault insurance as prescribed by the act. Section 14(c)(7) authorizes the Mayor to issue certificates of self-insurance, which provide for payment of benefits in accordance with the act. 2/ Sections 9(c)(3) and 9(e) require self-insurers to join insurance writers in contributing to meeting the cost of the assigned claims plan and the administration fund established by the act, in accordance with rules laid down by the Superintendent of Insurance. Section 4(d)(1) requires that every person applying to register a motor vehicle in the District certify to the Director of the Department of Transportation that the insurance required by the act is in effect with respect to that motor vehicle. Sections 3(21) and 3(23) define "owner" and "person" to include any natural person, firm, association, government agency, or instrumentality.

Under the statute as enacted, the Director of the Department of Transportation would appear to have the authority to require an appropriate compulsory/no-fault insurance certificate as a prerequisite to registering cars owned by diplomats, by the District of Columbia, by WMATA and by the United States. The act includes only one exception, for taxicabs, sec. 12(e), and there is no indication in the legislative history that the Council intended any other exception. See Proceedings of the Council of the District of Columbia, Council Period 4, 2d session, (cited hereafter as Proceedings) May 11, 1982, pp. 128-130; June 22, 1982, pp. 133, 200-202, 229.

1/ 50 Stat. 680, ch. 690, Title IV, sec. 2, August 17, 1937, as amended, D.C. Code, sec. 40-102 (1981), provides that no motor vehicle may be operated on the streets of the District (with limited exceptions for non-residents and others which are not relevant here) unless the owner registers the vehicle with the District Government; the District Government must provide certificates of registration and identification tags without charge for motor vehicles owned for official use by any duly accredited representative of a foreign government or owned by the District or by the United States.

2/ Nowhere does the act give legal effect to the Mayor's issuance or refusal to issue a certificate of self-insurance. However, a person who has been involved in a motor vehicle accident in the District may use such a certificate in lieu of the deposit of security otherwise required by the Motor Vehicle Safety Responsibility Act, 68 Stat. 120 (1954), D.C. Code, secs. 40-401 et seq. (1981). The United States and the District of Columbia are exempted from this requirement to deposit security. D.C. Code, sec. 40-413(8).

Section 6 of the Diplomatic Relations Act, Pub. L. 95-393, 92 Stat. 809 (1978), 22 U.S.C. sec. 254e, directs each foreign mission, members of the mission and their families to comply with regulations establishing liability insurance requirements, to be promulgated under the Act. Those regulations require missions and persons to maintain liability insurance with respect to their motor vehicles, which insurance shall meet the legal requirements of the jurisdiction where the vehicle is principally garaged, including compulsory insurance, uninsured motorist coverage, and first party no-fault coverage. 22 C.F.R. sec. 151.3 and 151.4 (1982).

The Council clearly has the authority to define the liability of the government of the District of Columbia. See, e.g., District of Columbia Unjust Imprisonment Act of 1980, D.C. Law 3-143, effective March 5, 1981, D.C. Code, secs. 1-941 et seq. In the absence of any expressed exception for District-owned vehicles the no-fault scheme enacted by the Council would be applicable to District-owned vehicles as well as to privately-owned vehicles.

Vehicles owned by WMATA are governed in the first instance by the Washington Metropolitan Area Transit Authority Compact, D.C. Code, sec. 1-2431. "[T]he compact governs the relations of the parties with respect to the subject matter of the agreement and is superior to both prior and subsequent law. . . . [O]ne party may not impose burdens upon the compact absent the concurrence of the other signatories." Hellmuth v. WMATA, 414 F.Supp. 408 (D.Md. 1976). Article 77 of the compact exempts WMATA transit service from all laws of the signatories except those relating to safety, inspection and testing. See, e.g., Gay Activists Alliance v. WMATA, Civil No. 78-2217, D.D.C., July 5, 1979; 4 Op.C.C. 203 (1979). However, Art. 80 provides that WMATA shall be liable for its contracts and the torts of its agents committed in the conduct of any proprietary function "in accordance with the law of the applicable signatory." It has been held that parallel language in the Federal Tort Claims Act, 28 U.S.C. sec. 1346 (b), applies New York's No-Fault Insurance Act to claims against the United States. Liberty Mutual Insurance Co. v. United States, 490 F. Supp. 328 (E.D. N.Y. 1980). Claims by the United States under the Federal Medical Care Recovery Act, 76 Stat. 593 (1962), 42 U.S.C. secs. 2651 et. seq., have similarly been held to be subject to Pennsylvania's no-fault motor vehicle insurance act, even in the absence of such language. Hohman v. United States, 470 F.Supp. 769 (E.D. Pa. 1979). See generally, "Note: The Federal Medical Care Recovery Act in No-Fault Automobile Insurance Jurisdictions" 21 B.C.L. Rev. 623 (1980). The reasoning of these precedents would appear to compel the conclusion that Art. 80 of the WMATA compact subjects WMATA to the District's Compulsory/No-Fault Insurance Act.

The same precedents similarly would appear to compel the conclusion that the United States is subject to the D.C. Compulsory/No-Fault Insurance Act. 3/

3/ 41 C.F.R Subpart 101-38.2 (1981) follows the D.C. Code in requiring that all Federal government motor vehicles "regularly based or housed in the District " be registered (agencies must submit documentation attesting ownership) and inspected by the District annually.

This conclusion is supported by the language of the Federal Tort Claims Act, 28 U.S.C. sec. 1346(b) supra, which provides that U.S. District Courts shall hear claims against the United States "if a private person would be liable to the claimant in accordance with the law of the place;" another section of the Act provides that the United States shall be liable "in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. sec. 2674.

Notwithstanding the applicability to diplomats, the District, WMATA and the United States of the Compulsory/No-Fault Insurance Act, there are statutory restrictions on what the Director of the Department of Transportation may require certain owners to certify regarding the existence of insurance before registering their vehicles under section 4(d). There appear to be no such restrictions on the Director's authority over vehicles owned by the District or by diplomats. Indeed, 22 C.F.R. sections 151.3 and 151.4 affirmatively sanction imposing the same insurance requirements on diplomatic owners of vehicles as on private owners. However, the Director may encounter substantial legal difficulties if he attempts to require any certification from WMATA or the United States beyond the simple statement that they are self insurers.

First, it appears to have been the intent of the Council that compliance with the self-insurance requirements by the federal government and by WMATA would be simple and pro forma. When the Council specifically considered WMATA and government vehicles, no-fault features had not yet been added to the bill, which had been reported out of committee as a simple compulsory insurance bill; the assumption of Councilmembers Rolark and Wilson in debate on the bill was that WMATA and the government could continue to do what they were already doing. Proceedings, May 11, 1982, pp. 128-130. Remarks made by Councilmember Wilson after no-fault provisions were added to the bill are consistent with this assumption. Proceedings, June 22, 1982, p. 133. But see remarks of Councilmember Moore, ibid.; pp. 184-188, 229.

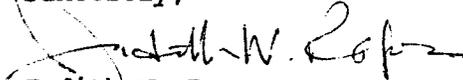
Second, the District has no legal authority to enforce against WMATA or the United States the financial contribution requirements which secs. 9(c)(3) and 9(e) of the act place on self-insurers. Cf. Proceedings, June 22, 1982, pp. 184-188. The District may not unilaterally amend the WMATA Compact. Hellmuth v. WMATA, supra. Article 78 of the Compact exempts WMATA from all federal, state, District of Columbia, municipal and local taxes and assessments including, without limitation, all motor vehicle license fees. Section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, 87 Stat. 813, D.C. Code, sec. 1-233, denies the Council authority to impose any tax on the property of the United States or to amend any Act of Congress which concerns the property of the United States. If the Director were to enforce contribution requirements against the United States, such an action could be construed as effectively amending 50 Stat. 680, ch. 690, Title IV, sec. 2, supra, D.C. Code, sec. 40-102, requiring the District to register vehicles owned by the

United States "without charge." Such language precludes payment from the United States in any way directly or indirectly. See In re Opinion of the Justices, 300 Mass. 591, 14 N.E. 2d 392 (1938).

Third, the District may not enforce against the United States the requirement of sec. 14(c)(7) that self-insurance provide for the payment of benefits to the extent required by the act. For example, the Federal Employees Compensation Act, 5 U.S.C. secs. 8101 et. seq., provides an exclusive remedy for federal employees injured by automobile accidents within the scope of their employment; under the Supremacy Clause, U.S. Constitution Art. VI. cl.2, a State no-fault law may not require the United States to pay different or additional benefits. Demetriadis v. United States Postal Service, 465 F.Supp. 597 (E.D. N.Y. 1979). The Tort Claims Section, Civil Division, United States Department of Justice, also reports that present federal government accounting procedures do not permit it to make continuing payments of claims within 30 days of loss, as required by sec. 11(c)(1).

In conclusion, the Director of the Department of Transportation may require a certificate of insurance as a prerequisite to registering cars owned by diplomats, by the District of Columbia, by WMATA, and by the United States. However, the Director should not require more of WMATA or the United States than the statement that they are self-insured for the payment of claims made under all applicable laws.

Sincerely,



Judith W. Rogers
Corporation Counsel