STATE OF MINNESOTA

IN SUPREME COURT

A20-1083

Court of Appeals

Thissen, J.
Took no part, Gildea, C.J.

Joseph Walsh,

Appellant,

Don Lorge,

Appellant,

vs.

Filed: June 8, 2022
Office of Appellate Courts

State of Minnesota,

Respondent.

Scott G. Knudson, Scott M. Flaherty, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota, for appellant Joseph Walsh.

Douglas A. Kelley, Brett D. Kelley, Stacy L. Bettison, Garrett S. Stadler, Kelley, Wolter & Scott, P.A, Minneapolis, Minnesota; for appellant Don Lorge.

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, Jacob Campion, Stacey Person, Assistant Attorneys General, Saint Paul, Minnesota, for respondent.

Travis J. Smith, Murray County Attorney, Slayton, Minnesota, for Amicus Curiae Minnesota County Attorneys Association.

Nathan R. Sellers, Fabyanske, Westra, Hart & Thomson, Minneapolis, Minnesota, for Amici Curiae Minnesota Sheriff's Association and Association of Minnesota Counties.

S Y L L A B U S

Appellants Mille Lacs County Attorney and Mille Lacs County Sheriff are not entitled to defense and indemnification by the respondent State of Minnesota because they are not employees of the State for purposes of the State Tort Claims Act under Minn. Stat. § 3.736, subd. 9 (2020).

Affirmed.

O P I N I O N

THISSEN Justice.

The Mille Lacs Band of Ojibwe (the Band) sued appellants Mille Lacs County Attorney Joseph Walsh and Mille Lacs County Sheriff Don Lorge[1] in federal court (the Federal Lawsuit). *Mille Lacs Band of Ojibwe*, 508 F. Supp. 3d 486 (D. Minn. 2020). The merits of the Federal Lawsuit are not before us. Walsh and Lorge sought indemnification and defense of the Federal Lawsuit from respondent State of Minnesota under the State Tort Claims Act, Act of April 20, 1976, ch. 331, § 33, 1976 Minn. Laws 1282, 1293–97 (codified as amended at Minn. Stat. §§ 3.736, subds. 1–11 (2020)), specifically Minn. Stat. § 3.736, subd. 9.

The State Tort Claims Act provides that "[t]he state shall defend, save harmless, and indemnify any employee of the state" who is subject to a claim "arising out of an alleged act or omission occurring during the period of employment . . . if the employee was acting

[1] When the Band filed its complaint, Brent Lindgren was the Mille Lacs County sheriff and named in the lawsuit. Don Lorge has since replaced Lindgren as sheriff and was subsequently substituted for Lindgren in the lawsuit.

within the scope of employment." Minn. Stat. § 3.736, subd. 9. The dispute in this case is whether Walsh and Lorge were "employees of the state" when they undertook the conduct that is the subject of the Federal Lawsuit. We hold that Walsh and Lorge were not employees of the State and, accordingly, are not eligible for defense and indemnification under the State Tort Claims Act. We therefore affirm the decision of the court of appeals upholding the dismissal of appellants' claims for defense and indemnification from the State.

FACTS

General Background

In 1855, the United States by treaty established the Mille Lacs Indian Reservation, comprising about 61,000 acres of land (1855 Treaty Lands). Treaty with the Chippewa, art. 2, Feb. 22, 1855, 10 Stat. 1165. The United States currently holds about 3,600 acres of land in trust for the benefit of the Band within the bounds of the original reservation territory (the Trust Lands). In addition, the Band directly owns about 6,000 acres of the reservation; individual band members directly own about 100 additional acres.

The Band and Mille Lacs County (the County) have long disputed the proper boundaries of the reservation. The Band has asserted that the 1855 Treaty remains in place. The County, as well as its county attorney, Walsh, and county sheriff, Lorge, have taken the position that, in the decades following 1855, the Mille Lacs reservation has been diminished or disestablished through subsequent federal treaties, statutes, and

agreements—a position that state officials also held until relatively recently.[2] In November 2015, the U.S. Department of the Interior issued an opinion and legal conclusion on the boundary dispute, finding that the Band's reservation, as it was established by the 1855 Treaty, remains intact. U.S. Dep't of the Interior: Office of the Solicitor General, M-37032 Op. (2015).

Historically, criminal jurisdiction in Indian Country was shared between the federal government and tribal governments with little interference from state governments. In 1953, Congress enacted Public Law 280, which transferred federal law enforcement jurisdiction to the State for certain tribes, including the Band. Act of Aug. 15, 1953, Pub. L. No. 280, ch. 505, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162; 25 U.S.C. §§ 1321–1326; 28 U.S.C. § 1360).

Minnesota Statutes section 626.90 (2020) establishes a statutory framework for cooperation between Mille Lacs County law enforcement and the Band's law enforcement. The statute gives the Band the powers of a law enforcement agency under state law when certain conditions are met. Minn. Stat. § 626.90, subd. 2(a). Section 626.90, subdivision 2(b), directs the Band to enter in to "mutual aid/cooperative agreements with the Mille Lacs

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[2] Walsh and Lorge correctly observe that for decades Minnesota governors and attorneys general held the position that the Mille Lacs reservation was limited to the Trust Lands. Indeed, in 2007, the Attorney General advised a former Mille Lacs County Attorney that this was the position of the Attorney General's Office, and their office was "not aware of any reason why [its] position should be inconsistent with positions of Governors Pawlenty, Ventura, and Carlson or of Attorneys General Hatch and Humphrey." As of 2019, however, the State had changed its position and now contends that the Mille Lacs reservation has not been diminished or disestablished since the 1855 Treaty. At oral argument, counsel for Walsh and Lorge noted that the State's new position only became apparent because of the Federal Lawsuit brought by the Band against Walsh and Lorge.

County sheriff . . . to define and regulate the provision of law enforcement services," including defining the trust property covered by the agreement. *Id.*, subd. 2(b). The parties entered into a cooperative agreement in 2008.

Under section 626.90, once the Band satisfies the conditions for becoming a law enforcement agency and enters into a cooperative agreement with the County, the Band is "authorized to appoint peace officers . . . who have the same powers as peace officers employed by local units of government." *Id.*, subd. 3. Those Band-appointed peace officers have concurrent jurisdictional authority with the Mille Lacs County Sheriff's Department over all persons in the geographical boundaries of the Trust Lands, and over all Minnesota Chippewa tribal members within the boundaries of the 1855 Treaty Lands. *Id.*, subd. 2(c)(1)–(2). In addition, the Band has concurrent jurisdiction over any person who commits or attempts to commit a crime in the presence of a Band peace officer within the boundaries of the 1855 Treaty Lands. *Id.*, subd. 2(c)(3).

In January 2016, the U.S. Department of Justice granted the Band's request that the federal government once again assume concurrent criminal jurisdiction on the Band's reservation under the Tribal Law and Order Act of 2010. This decision meant that the federal government could now prosecute major crimes in federal court such as murder, rape, felony assault, and felony child abuse that occur on reservation lands. The decision did not take away the right of tribal, state, and county officials under Public Law 280 to prosecute those crimes in state court.

On June 21, 2016, approximately 7 months after the federal government issued its opinion regarding the reservation boundary, and nearly 6 months after the federal

government granted federal jurisdiction under the Tribal Law and Order Act, the county commissioners voted to revoke the 2008 cooperative agreement. On July 1, 2016, under Minn. Stat. § 8.07 (2020), Walsh requested that the attorney general issue an opinion on how to proceed with the Band following the revocation of the cooperative agreement. The attorney general declined to issue an opinion to Walsh, claiming that its office "was not authorized to issue an opinion regarding the matter," and directed Walsh to "advise the County as you deem appropriate."

On July 18, 2016, Walsh issued an opinion from his office stating that, among other things, after the termination of the cooperative agreement, the Band's law enforcement authority would now be limited to the Band's members who commit crimes occurring within the boundaries of the Trust Lands. The Band's peace officers would no longer have law enforcement authority over non-Band members within the boundaries of the Trust Lands and *no* law enforcement authority in 1855 Treaty Lands outside the boundaries of the Trust Lands. *See Mille Lacs Band of Ojibwe*, 508 F. Supp. 3d at 493–94.

On July 22, 2016, the cooperative agreement between the Band and the County ended.

Federal Lawsuit

In November 2017, the Band sued Walsh and Lorge in both their individual and official capacities in federal court. *Mille Lacs Band of Ojibwe*, 508 F. Supp. 3d at 486, 492. The Band claimed that the restrictions Walsh and Lorge were attempting to place on the law enforcement authority of the Band's peace officers violated federal law. *Id.* at 502–03. In addition, the Band claimed that Walsh threatened the Band's peace officers with

arrest and prosecution should they exercise law enforcement authority on non-Trust Lands within the reservation or with respect to non-Band members. *Id.* at 497–98. The Band also claimed that Walsh asserted that he would not prosecute criminal cases based on investigations conducted, or evidence gathered, by the Band's officers on non-Trust Lands within the reservation or with respect to non-Band members; and that Lorge and Walsh instructed deputies not to arrest suspects apprehended by the Band's officers exercising their authority. *Id.* at 494–97. Finally, the Band alleged that Walsh and Lorge took such actions "on behalf of the County and are the official custom or policy of the County."

The Band sought a declaratory judgment that its peace officers have the authority to investigate violations of federal, state, and tribal law within all the 1855 Treaty Lands. The Band also requested a declaratory judgment that it has the authority to apprehend suspects that are not Band members. *Id.* at 505. Further, the Band sought an injunction stopping Walsh and Lorge from taking action that interferes with the authority of the Band's peace officers. *Id.* at 510–12. On March 4, 2022, the federal district court partially granted the Band's motion for summary judgement, issuing an order stating that "the Mille Lacs Reservation's boundaries remain as they were under Article 2 of the Treaty of 1855," which comprises approximately 61,000 acres of land. *Mille Lacs Band of Ojibwe v. County of Mille Lacs, Minn.*, ___ F. Supp. 3d ___, ___ No. 17-CV-5155, 2022 WL 675980, at *40 (D. Minn. March 4, 2022). The federal district court "affirm[ed] what the Band has maintained for the better part of two centuries—the Mille Lacs Reservation's boundaries remain as they were under Article 2 of the Treaty of 1855." *Id.*

This Case

On December 12, 2017, the county board agreed to cover the attorney fees incurred by Walsh and Lorge for using outside counsel to defend against the Federal Lawsuit. Walsh and Lorge also sought indemnification from the County under a provision of the Municipal Tort Claims Act. Act of May 22, 1963, ch. 798, § 7, 1963 Minn. Laws 1396, 1399 (codified as amended at Minn. Stat. § 466.07 (2020)). The County paid some of their expenses and attorney fees.

In June 2019, nearly 18 months later, counsel for Walsh and Lorge sent a letter to the Attorney General's Office requesting defense and indemnification under the State Tort Claims Act, Minn. Stat. § 3.736, subd. 9. They claimed that they were "employees of the state" under Minn. Stat. § 3.732, subd. 1(2) (2020), and requested indemnification "for costs and fees already incurred and going forward."

On July 25, 2019, the Attorney General's Office declined Walsh and Lorge's request for indemnification, finding that they were not "employees of the state" within the meaning of the State Tort Claims Act. The Attorney General's Office reasoned that Walsh and Lorge were employees of the County. It further clarified that "[t]he Legislature's exclusion of county employees from indemnification by the State makes sense because those employees are granted explicit indemnification by their county employers in another statute."

This lawsuit followed. Walsh and Lorge seek a declaratory judgment that they are entitled to defense and indemnification under the State Tort Claims Act, Minn. Stat. § 3.736, subd. 9, and payment from the State for all expenses, both past and future, relating

to the Federal Lawsuit. The State moved to dismiss the complaint for failure to state a claim under Minnesota Rule of Civil Procedure 12.02(e). The district court granted the State's motion and dismissed the case with prejudice. The court of appeals affirmed. *Walsh v. State*, 962 N.W.2d 201, 209 (Minn. App. 2021).

ANALYSIS

The question before us is whether, under the State Tort Claims Act, Minn. Stat. § 3.736, subd. 9, Walsh and Lorge are entitled to defense and indemnification by the State for damages, expenses, and attorney fees incurred in the Federal Lawsuit. That question turns on whether Walsh and Lorge were "persons acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation," Minn. Stat. § 3.732 subd. 1(2), when they took the actions at issue in the Federal Lawsuit. This is a question of statutory interpretation, which we review de novo. *Jepsen as Tr. for Dean v. County of Pope*, 966 N.W.2d 472, 482 (Minn. 2021).

A.

When interpreting statutes, we attempt "to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2020). The first step in statutory interpretation is to determine whether the language of the statute is plain. *Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 435 (Minn. 2020). Statutory language is plain when there is only one reasonable interpretation of the text, in which case we apply that interpretation. *Id.* But when the statute's text is subject to more than one reasonable interpretation, we may apply a broader range of statutory construction tools. *Id.*

Under the State Tort Claims Act, the State is responsible for indemnifying any "employee of the state" who is subject to a claim "arising out of an alleged act or omission occurring during the period of employment . . . if the employee was acting within the scope of employment." Minn. Stat. § 3.736, subd 9.[3] Section 3.732, subdivision 1(2), defines "employee of the state" for purposes of the State Tort Claims Act to include "all present or former officers, members, directors, or employees of the state" and "persons acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation." Minn. Stat. § 3.732, subd. 1(2).[4]

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[3] Section 3.736, subdivision 9, provides:

> The state shall defend, save harmless, and indemnify any employee of the state against expenses, attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the employee in connection with any tort, civil, or equitable claim or demand, or expenses, attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the employee in connection with any claim or demand arising from the issuance and sale of securities by the state, whether groundless or otherwise, arising out of an alleged act or omission occurring during the period of employment if the employee provides complete disclosure and cooperation in the defense of the claim or demand and if the employee was acting within the scope of employment.

[4] Section 3.732, subdivision 1(2), reads in full:

> "Employee of the state" means all present or former officers, members, directors, or employees of the state, members of the Minnesota National Guard, members of a bomb disposal unit approved by the commissioner of public safety and employed by a municipality defined in section 466.01 when engaged in the disposal or neutralization of bombs or other similar hazardous explosives, as defined in section 299C.063, outside the jurisdiction of the municipality but within the state, or persons acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation. It does not include either an independent contractor except, for purposes of this section and section 3.736 only, a guardian ad litem acting under court appointment, or members of the

The parties agree that Walsh and Lorge are not officers, members, directors, or employees of the State. Accordingly, the central question is whether Walsh and Lorge are non-State employees who are "persons acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation."

Walsh and Lorge offer a reasonable interpretation of the phrase "persons acting on behalf of the state in an official capacity." They point out that county sheriffs and county attorneys enforce and prosecute state law crimes enacted by the Legislature. In particular, they note that the Legislature defines what constitutes a felony in Minnesota and delegated to county sheriffs the authority to "pursue and apprehend all felons," Minn. Stat. § 387.03 (2020), and to county attorneys the duty to "prosecute felonies," Minn. Stat. § 388.051, subd. 1(3) (2020). Accordingly, Walsh and Lorge argue that county sheriffs and county attorneys are "acting on behalf" of the State when they are exercising authority statutorily delegated to them as county sheriff and county attorney to enforce or prosecute state-enacted criminal statutes.

On the other hand, the State also offers a reasonable interpretation of the phrase "persons acting on behalf of the state in an official capacity." The State argues that Walsh

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> Minnesota National Guard while engaged in training or duty under United States Code, title 10, or title 32, section 316, 502, 503, 504, or 505, as amended through December 31, 1983. Notwithstanding sections 43A.02 and 611.263, for purposes of this section and section 3.736 only, "employee of the state" includes a district public defender or assistant district public defender in the Second or Fourth Judicial District, a member of the Health Technology Advisory Committee, and any officer, agent, or employee of the state of Wisconsin performing work for the State of Minnesota pursuant to a joint state initiative.

and Lorge's reading of the text is incomplete. It points to the statutory definition of "State" as set forth in the State Tort Claims Act:

> "State" includes *each of the departments, boards, agencies, commissions, courts, and officers in the executive, legislative, and judicial branches of the state of Minnesota* and includes but is not limited to the Housing Finance Agency, the Minnesota Office of Higher Education, the Higher Education Facilities Authority, the Health Technology Advisory Committee, the Armory Building Commission, the Zoological Board, the Department of Iron Range Resources and Rehabilitation, the Minnesota Historical Society, the State Agricultural Society, the University of Minnesota, the Minnesota State Colleges and Universities, state hospitals, and state penal institutions. *It does not include a city, town, county, school district, or other local governmental body corporate and politic.*

Minn. Stat. § 3.732, subd. 1(1) (2020) (emphasis added).

Accordingly, the State asserts, county attorneys and county sheriffs generally do not work "on behalf of" the *State* when arresting felons and prosecuting felonies because they are not working on behalf of a department, board, agency, commission, court, or officer in the executive, legislative, and judicial branches of the State of Minnesota. Instead, they are employed by and work on behalf of a county, which, under the statutory definition, is expressly *not* the State.

The State's argument is not without its own textual complications. Walsh and Lorge argue that the State reads the State Tort Claims Act definition of "State" too narrowly. They point out that the State Tort Claims Act's definition of "State" uses the word "includes" in the initial clause defining "State" as "each of the departments, boards, agencies, commissions, courts, and officers in the executive, legislative, and judicial branches of the state of Minnesota." *Id.* They assert that "includes" is being used in a nonrestrictive way such that the listing of certain entities and individuals does not mean

other not-mentioned entities and officers are excluded. *See, e.g., LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 19 (Minn. 2012) ("The word 'includes' is not exhaustive or exclusive."). Accordingly, in the view of Walsh and Lorge, the definition of "State" does not definitively exclude county attorneys and county sheriffs from its scope.

Further, Walsh and Lorge claim that although the definition of "State" expressly carves out specific entities—cities, towns, counties, school districts, and other local governmental bodies—it does not specifically carve out individual municipal officers and employees like county attorneys and county sheriffs. *See* Minn. Stat. § 645.19 (2020) ("Exceptions expressed in a law shall be construed to exclude all others."). Indeed, as Walsh and Lorge point out, we have found county employees to be "employees of the state" for purposes of the State Tort Claims Act, albeit under different circumstances as we discuss in more detail below. *See Andrade v. Ellefson*, 391 N.W.2d 836 (Minn. 1986).[5]

We are not convinced, however, that Walsh and Lorge's parsing of the State Tort Claims Act's definition of "State" is so decisive as to render the State's interpretation of

[5] Walsh and Lorge also argue that because the Legislature passed the criminal statutes directing county sheriffs to enforce those crimes, and county attorneys to prosecute them, they are certainly part of the State. While the argument has superficial appeal, our focus here is not on the ordinary meaning of "State," but rather on the statutory definition. *See U.S. Jaycees v. McClure*, 305 N.W.2d 764, 766 (Minn. 1981) ("The legislature defines a term only because it intends in some measure to depart from the ordinary sense of that term. Thus, there is a presumption that we are not to substitute the literal, ordinary meaning . . . for the definition the legislature has provided."). As we explain below, the critical distinction for determining whether a municipal employee is "acting on behalf of the state" is whether the Legislature assigned the task to a state department, agency, or official, or to a municipal employee. For the same reason, we do not agree with the argument by Walsh and Lorge that Public Law 280 makes this case different from more typical cases.

the phrase "persons acting on behalf of the state in an official capacity" unreasonable. For example, simply because a list is not exhaustive does not mean that *anything* can be included. The definition of "State" specifically names entities like state departments, boards, and agencies. The only *persons* included in the definition of "State" are "officers in the executive, legislative, and judicial branches of the state of Minnesota."[6] The text does not definitively demonstrate that the Legislature intended the definition of State to be so open-ended as to generally include officials and employees of municipal entities expressly carved out of the definition.

Because we conclude that the statute is subject to more than one reasonable interpretation, we may look to a broader set of clues to understand whether the Legislature intended that the State would indemnify county attorneys and county sheriffs under the State Tort Claims Act for conduct undertaken in the scope of their employment as county attorney and county sheriff. *See Vill. Lofts*, 937 N.W.2d at 438.

B.

We start by considering language of other related statutes. *State v. Thonesavanh*, 904 N.W.2d 432, 437–38 (Minn. 2017). Minnesota statutes generally treat county sheriffs

[6] Walsh and Lorge argue in passing that they are quasi-judicial officers. But they do not develop an argument to claim that they fit under the definition of "officers in the executive, legislative, and judicial branches of Minnesota." Even so, the definition requires that they be officers "in" one of the three different branches. As a practical matter, a quasi-judicial officer would not fall squarely within the definition. Moreover, because the State Agricultural Society (which runs the Minnesota State Fair)—is "a quasi-state agency"—and is specifically named in the definition of "State" in the State Tort Claims Act, it suggests that nontraditional agencies or officers would be specifically named if they were to be indemnified under the State Tort Claims Act.

and county attorneys as *county* officials and employees. Minn. Stat. § 382.01 (2020) (identifying county attorneys and county sheriffs as county officers). Most important, county sheriffs and county attorneys are elected by residents of the county to serve the residents of the county. *See, e.g.*, *id*. The primary duties of a county attorney and a county sheriff involve serving the county in which they were elected. *See, e.g.*, Minn. Stat. § 388.051 (2020) (explaining that county attorneys shall appear in all cases where the county is a party and give opinions and advice upon request of the county board and any county officer); Minn. Stat. § 387.03 ("The sheriff shall keep and preserve the peace of the county.").

Further, by statute, county attorneys serve the county from which they were elected (and not the State) in many ways beyond prosecuting crimes within their county (a role that itself includes prosecution of not only state-defined crimes but also violations of municipal ordinances and charter provisions). County attorney duties include appearing in all cases in which the county is a party and giving opinions and advice to the county board or any county officer "upon all matters in which the county is or may be interested, or in relation to the official duties of the board or officer." Minn. Stat. § 388.051, subd. 1(1)–(2). County attorneys have several duties related to grand juries convened in their county. *Id*., subd. 1(3)–(5). Grand juries are generally county-based entities. Minn. Stat. § 628.41, subd. 1 (2020). County attorneys must attend any inquest at the request of the county coroner. Minn. Stat. § 388.051, subd. 1(6). Coroners are county officials, elected by the residents of, or appointed in, each county. Minn. Stat. § 390.005 (2020).

Moreover, as the State observes, the Legislature expressly provided that a county attorney must "appear, *when requested by the attorney general, for the state in any case instituted by the attorney general in the county attorney's county* or before the United States Land Office in case of application to preempt or locate any public lands claimed by the state and assist in the preparation and trial." Minn. Stat. § 388.051, subd. 1(7) (emphasis added); *see also* Minn. Stat. § 8.06 (2020) (stating that "[w]hen requested by the attorney general, it shall be the duty of any county attorney of the state to appear within the county and act as attorney for" state officers and all boards or commissions created by law "in any court of such county"). This provision demonstrates that the Legislature knew how to delegate state department authority to county attorneys when it so desired. The textual inference from this provision is that when a case is not instituted or requested by the attorney general, the county attorney is acting for the county, not the State.

In addition, county attorneys and county sheriffs report to the county board, not to any state agency or department. Their salaries and office budgets are set by the county board (subject to review by the district court in the event of a dispute).[7] Minn. Stat. §§ 387.20, 388.18, .22 (2020).

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[7] Walsh and Lorge argue that the court of appeals "failed to recognize that final authority for these budgets and salaries belongs to the district court, not the county." But it is in fact the county board that sets the salary. District court review is an appeal remedy. *Matter of Year 2019 Salary of Freeborn Cnty. Sheriff*, 955 N.W.2d 917, 920 (Minn. 2021) (recognizing that "[u]nder Minnesota law, a sheriff may appeal a county board's salary determination to the district court" (citing Minn. Stat. § 387.20, subd. 7 (2020)). We do not find compelling that by statute the district court reviews cases for county sheriffs de novo, a less deferential standard than for other county officials. *Id.* at 922. That standard of review difference does not change that it is the county boards that have original

Another relevant statute is a provision of the Municipal Tort Claims Act. The act, which predates the State Tort Claims Act, provides:

> [A] municipality or an instrumentality of a municipality shall defend and indemnify any of its officers and employees, whether elective or appointive, for damages, including punitive damages, claimed or levied against the officer or employee, provided that the officer or employee: (1) was acting in the performance of the duties of the position; and (2) was not guilty of malfeasance in office, willful neglect of duty, or bad faith.

Minn. Stat. § 466.07. All the entities expressly carved out of the State Tort Claims Act—cities, towns, counties, school districts, or other local governmental bodies—are the entities covered by the Municipal Tort Claims Act. Minn. Stat. § 466.01 (2020).

Everyone agrees that Walsh and Lorge may seek indemnification under the Municipal Tort Claims Act. Indeed, Walsh and Lorge, as employees and officers of the County, sought defense and indemnification under the act, and the County approved indemnification and paid for defense under the act. *See id.*, subd. 6 (defining "employee" and "officer" for purposes of Municipal Tort Claims Act).

The fact that the Legislature established separate statutory schemes for defense and indemnification by municipalities for municipal employees and for defense and indemnification by the State for state employees is a strong clue that the Legislature did

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authority to set the salary—a fact that is, in any event, largely tangential to the central discussion before us. In addition, we do not find compelling Lorge's reliance on language in cases like *Vanderhyde v. County of Dodge*, 255 N.W.2d 39 (Minn. 1977), and *Zillgitt v. Goodhue Cnty. Bd. of Comm'rs*, 202 N.W.2d 378 (Minn. 1972), where we have observed that county sheriffs serve as officers of the court. Those cases do not involve interpretation of the State Tort Claims Act. Further, the fact that county attorneys are officers of the court does not mean that attorneys are acting on behalf of the State for the specific purpose of the State Tort Claims Act. *Cf. In re Klotz*, 909 N.W.2d 327, 336 (Minn. 2018) (observing that all lawyers in the state are "officer[s] of the court").

not intend county officials and employees to be generally considered persons "acting on behalf of the state" under the State Tort Claims Act. Of course, the separate existence of the Municipal Tort Claims Act and the State Tort Claims Act does not decisively answer the question of whether a person employed by a county can never be a "person[] acting on behalf of the state in an official capacity." Our only point here is that the existence of one statute covering municipal employee indemnification and another statute covering state employee indemnification strongly suggests that the Legislature did not consider a county attorney or a county sheriff performing their ordinary duties, without something more, to be a person acting on behalf of the State such that they are entitled to indemnification by the State.

That conclusion is supported when one considers the consequences of the alternative broader reading of the State Tort Claims Act urged by Walsh and Lorge. *See* Minn. Stat. § 645.16(6) (providing that courts may consider "the consequences of a particular interpretation"). Walsh and Lorge take the position that they were "acting on behalf of the state in an official capacity" because state statute directs them to enforce and prosecute criminal laws passed by the Legislature. Under their theory, the State would be required to defend and indemnify not only county attorneys and county sheriffs, but also every county (and city, school district, watershed board) employee when those county employees, pursuant to legislative directive, are carrying out laws and obligations enacted by the Legislature. For instance, county social workers are acting on behalf of the State in this general sense when they carry out duties under the Reporting of Maltreatment of Minors Act, Minn. Stat. ch. 260E (2020). We are extremely reluctant to conclude that the

Legislature intended to place such an expansive defense and indemnification obligation on the State, particularly since the State Tort Claims Act has not been applied in such a way in the nearly half century since it was passed.

All these clues point to the conclusion that the Legislature did not intend that county sheriffs enforcing state felony laws and county attorneys prosecuting violations of state felony laws be considered "persons acting on behalf of the state in an official capacity" for purposes of defense and indemnification under the State Tort Claims Act.

C.

Walsh and Lorge argue that our decision in *Andrade v. Ellefson*, 391 N.W.2d 836 (Minn. 1986), requires a different conclusion. We disagree. *Andrade* was not about indemnification but rather about governmental immunity from suit. Nonetheless, as part of the analysis, we addressed the question of who is an "employee of the state" for purposes of the State Tort Claims Act. *Id.* at 840.

In *Andrade*, a group of parents sued Anoka County, claiming that Anoka County was negligent in supervising, inspecting, and recommending licensing of the daycare where their children were injured. *Id.* at 837. In response, Anoka County asserted that it was immune from suit under a provision of the State Tort Claims Act that declared that "the state and its employees are not liable for . . . [a]ny loss based on the failure of any person to meet the standards needed for a license, permit, or other authorization issued by the state or its agents." *Id.* at 840 (quoting Minn. Stat. § 3.736, subd. 3(j) (1984)). To prevail on its immunity argument, Anoka County needed to establish that, when it conducted its daycare licensing activities, it was an employee of the State.

We held that Anoka County was a "person[] acting on behalf of the state" within the meaning of section 3.732, subdivision 1(2) (1984),[8] in the unique circumstances of the case. *Andrade*, 391 N.W.2d at 840 ("In general, the term 'person' includes bodies politic and corporate."). In so deciding, we found it significant that the Legislature assigned responsibility for daycare licensing not directly to the county, but rather to a *state agency*, the Department of Human Services. *Id.* (noting that responsibility for licensing was "assigned to the state"); *see* Minn. Stat. § 245.783 (1984) ("No individual, corporation, partnership, voluntary association, or other organization may operate a day care or residential facility or agency unless licensed to do so by the commissioner."). The Legislature also expressly authorized the Department of Human Services commissioner to "enlist the help of county welfare agencies to investigate day care licensing." *Andrade*, 391 N.W.2d at 840 (citing Minn. Stat. § 245.804, subd. 1 (1984)). The state agency then promulgated rules identifying local county welfare departments as the "duly delegated representative of the commissioner" and charged the county with evaluating license applicants, recommending licensure to the State if minimum requirements were met, and making annual evaluation visits of licensed daycares. *Id.* (citing Minn. R. §§ 9545.0310, subp. 1, .0320, subps. 3, 5, 7 (1985)).

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[8] Minn. Stat. § 3.732, subd. 1(2) (1984), has since been revised; however, the relevant language at issue remains the same. *Compare* Minn. Stat. § 3.732, subd. 1(2) (1984) (stating that "[e]mployee of the state" includes "persons acting on behalf of the state in an official capacity, temporarily or permanently, with or without compensation"), *with* Minn. Stat. § 3.732, subd. 1(2) (2020) (same).

Consequently, in *Andrade* we concluded that a county (through its employees) was "acting on behalf of the state in an official capacity" when the person performs a duty assigned by the Legislature to a state agency or officer and the state agency or officer has then expressly delegated that duty to the county (through its employees) to perform. *Andrade*, 391 N.W.2d at 840. In so doing, we reasoned:

> There is no inconsistency in saying, on the one hand, that the county, as a principal carrying out county functions, does not enjoy the state's immunity, while, on the other hand, saying that when the county acts for the state in performing a responsibility assigned to the state but delegated by it to the county, that the county partakes in the state's immunity.

Id.

This case is fundamentally different. Walsh and Lorge do not claim that the Legislature assigned the duty to enforce and prosecute felonies in Minnesota to a state agency, department, or official; nor do they argue that a state agency, department, or official was authorized by the Legislature to delegate the performance of that duty to each of the state's county attorneys and county sheriffs within their respective counties. Rather, what happened here is that the Legislature made enforcing and prosecuting state felony laws within each county part of the job of county sheriffs and county attorneys; put differently, carrying out such duties is part of performing their role as a county official.[9]

This distinction is consistent with specific examples set forth in the definition of "employees of the state." Minn. Stat. § 3.732, subd. 1(2). For instance, the Legislature

[9] We note that Minn. Stat. § 626.90 authorizes both the County and the Band to negotiate how their respective law enforcement agencies and officers will work together. The terms of that relationship are *not* directly dictated by the State.

specifically included municipal bomb disposal employees as employees of the State when those persons are engaged in the disposal or neutralization of bombs or other similar hazardous explosives outside the jurisdiction of the municipality but within the state. The municipal employees are performing work not for the municipality but rather have been enlisted by the State as part of the bomb disposal unit approved by the commissioner of public safety. *Id.*; *see also* Minn. Stat. § 299C.063 (2020).

Walsh also claims that because charges for violations of state criminal law are brought by county attorneys in their respective counties in the name of the State of Minnesota, by definition, county attorneys are acting on behalf of the State when they prosecute state criminal laws and are therefore entitled to indemnification by the State under the State Tort Claims statute. As a broad principal, it is true that criminal cases alleging violations of state criminal laws are brought in the name of the State of Minnesota and that, in that context, county attorneys are representing the State when they prosecute violations of state law. We disagree with the court of appeals' opinion to the extent it suggests that a county attorney generally is not the lawyer representing the State in criminal prosecutions in a county. That general fact, however, does not mean that the Legislature intended that, *under the State Tort Claims Act*, the State must defend and indemnify county attorneys for claims arising out of their prosecution of violations of state criminal laws. Walsh's reliance on cases like *State v. Lemmer*, 736 N.W.2d 650 (Minn. 2007), and *State, Department of Public Safety v. House*, 192 N.W.2d 93 (Minn. 1971), which do not address the State Tort Claims Act, is inapt.

In *House*, the defendant pleaded guilty to careless driving and disorderly conduct arising out of an incident where the defendant refused a chemical test. 192 N.W.2d at 94. As part of the agreement, the civil sanction of license revocation for test refusal was waived. *Id.* We held that the county attorney acted beyond his authority in attempting to bargain for dismissal of the civil license revocation proceedings and that the waiver of the civil sanction was not binding on the commissioner of public safety. *Id.* at 95. We reasoned that civil proceedings for license revocation and criminal proceedings for illegal driving conduct are distinct—license revocation proceedings are brought in the name of the commissioner of public safety and the county attorney has no authority in such civil proceedings. *Id.* As part of our opinion, we stated generally that a "criminal proceeding is brought by the State of Minnesota against the individual charged. In that proceeding the state is represented by the county attorney, whose duties are made clear by Minn. St. 388.05." *Id.* But we also immediately observed that the statute governing county attorneys states that "the county attorney shall represent the county in all cases in which the county is a party, advise county officers, and handle all criminal matters within the county." *Id.* In other words, in bringing state criminal proceedings in their respective counties, the county attorneys were acting for the State but in their roles as officers of the county. *Id.*; *see also Lemmer*, 736 N.W.2d at 660–63 (holding that collateral estoppel did not apply in a DWI civil license revocation proceeding because the State in the criminal proceeding was not in privity with the commissioner of public safety in the civil proceeding). *House* and *Lemmer* do not compel the conclusion that a county attorney prosecuting the violation of a

state criminal law is a person acting on behalf of the State *for purposes of the State Tort Claims Act.*

D.

In summary, we hold that, for purposes of defense and indemnification under the State Tort Claims Act, county sheriffs generally do not act on behalf of the State when they enforce state criminal laws; similarly, county attorneys generally do not act on behalf of the State when they prosecute state criminal laws.[10] Accordingly, we conclude that Walsh and Lorge are not entitled to defense and indemnification under the State Tort Claims Act. Walsh's and Lorge's alleged conduct that is the subject of the Federal Lawsuit was conduct undertaken in their general roles as county attorney and county sheriff. The conduct was not undertaken in compliance with a duty delegated to Walsh or Lorge by a state agency, department, or officer to whom the Legislature had given authority to perform those functions. Walsh and Lorge were not acting on behalf of the State in an official capacity for purposes of defense and indemnification under the State Tort Claims Act.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

GILDEA, C.J., took no part in the consideration or decision of this case.

[10] Of course, we do not hold that a county sheriff or a county attorney may never be considered to be "acting on behalf of the state." *Cf. Andrade*, 391 N.W.2d at 840.