STATE OF MICHIGAN

COURT OF APPEALS

STEPHEN W. WARDA, Plaintiff-Appellee/Cross-Appellant,	UNPUBLISHED December 23, 2003
v	No. 241188 Genesee Circuit Court
CITY COUNCIL OF THE CITY OF FLUSHING AND CITY OF FLUSHING, Defendants-Appellants/Cross-Appellees.	LC No. 98-062796-CZ

Before: O'Connell, P.J., and Jansen and Wilder, JJ.

JANSEN, J. (*dissenting*)

I respectfully dissent. I would reverse the trial court's judgment awarding plaintiff reimbursement of his attorney fees[1] by defendants because its finding that plaintiff's salvage vehicle inspection in Roseville, Michigan, resulting in criminal proceedings, was within his course of employment as a police officer for defendant city of Flushing was clearly erroneous.

I.

Statutory interpretation is a question of law that is considered de novo on appeal. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). With regard to the trial court's findings, the standard of review is set forth in *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000), as follows:

> This Court reviews the findings of fact by a trial court sitting without a jury under the clearly erroneous standard. *Gumma v D & T Constr Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999); MCR 2.613(C). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed. *Gumma, supra* at 221. In contrast, we review a trial court's

[1] It is noted that the trial court reduced the amount of attorney fees from what plaintiff requested, and plaintiff cross-appeals this determination on appeal.

> conclusions of law de novo. *Id*. Furthermore, where the trial court's factual findings may have been influenced by an incorrect view of the law, an appellate court's review of those findings is not limited to clear error. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

II.

I am convinced that the trial court erred because plaintiff's service as a salvage vehicle inspector was clearly not in his course of employment as a Flushing police officer and there was no reasonable basis for him to believe he was acting within scope of his authority as a Flushing police officer as he acknowledged that he was "moonlighting" while off duty for "supplementary income." And, reviewing the trial court's findings under an economic reality test, there is a minuscule amount of evidence, if any, to support that plaintiff was within his scope of employment as a Flushing police officer, and I am left with a definite and firm conviction that a mistake has been committed. *Walters, supra*.

The statute at issue is MCL 691.1408(2), which provides:

> When a criminal action is commenced against an officer or employee of a governmental agency based upon the conduct of the officer or employee *in the course of employment*, if the employee or officer had a *reasonable basis* for believing that *he or she was acting within the scope of his or her authority at the time of the alleged conduct*, the governmental agency may pay for, engage, or furnish the services of an attorney to advise the officer or employee as to the action, and to appear for and represent the officer or employee in the action. An officer or employee who has incurred legal expenses after December 31, 1975 for conduct prescribed in this subsection may obtain reimbursement for those expenses under this subsection. [Emphasis added.]

Thus, a governmental agency has the discretionary authority to indemnify a police officer for the expenses he has sustained in the successful defense to criminal charges that arose out of and in the scope and course of his employment for the municipality. See also *Sonnenberg v Farmington Township*, 39 Mich App 446, 449; 197 NW2d 853 (1972).

Plaintiff was licensed as a salvage vehicle inspector, and conducted inspections and prepared reports while off duty for "supplementary income." The statute, in effect during the pertinent time period,[2] regarding salvage vehicle inspections, MCL 257.217c, provides in part:

> (24) . . . . A certificate of title or registration plates shall not be issued for a vehicle for which a salvage certificate of title was issued unless a specially trained officer described in subsection (25) certifies . . . .

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[2] The statute was modified effective December 23, 2002.

(c) . . . . The certification required by this subsection shall be made on a form prescribed and furnished by the secretary of state in conjunction with the department of state police and shall accompany the application that is submitted to the secretary of state for a certificate of title. . . . Through June 30, 1994, a fee of $25.00 shall be received by the police agency for inspection of the vehicle and shall be expended by that police agency as provided in this subsection. Upon satisfactory completion of the inspection as required by the secretary of state and other requirements for application, a certificate of title bearing an indicator of its previous salvage status shall be issued for the vehicle. The salvage vehicle inspection fees collected by a local police agency under this subsection shall be credited to the budget of that police agency for law enforcement purposes that affect stolen vehicles, stolen vehicle parts, and salvage vehicle inspections. A local police agency shall compensate an off-duty and limited enforcement police officer for a salvage vehicle inspection.

(25) An officer specially trained as provided by the secretary of state and authorized by the secretary of state to conduct a salvage vehicle inspection is either of the following:

(a) An on-duty or off-duty police officer.

(b) A previously certified police officer who is appointed by the local police agency as a limited enforcement officer to conduct salvage vehicle inspections. The local police agency shall give this officer access to the agency's law enforcement information network system and the authority to confiscate any stolen vehicle or vehicle parts discovered during an inspection. The local police agency may give the officer the authority to arrest a person suspected of having unlawful possession of a stolen vehicle or vehicle parts.

(26) The secretary of state shall issue a certificate to an officer who is specially trained as provided by the secretary of state to conduct salvage vehicle inspections. Only a person who has a valid certification from the secretary of state may perform salvage inspections. The secretary of state on his or her own initiative or in response to complaints shall make reasonable and necessary public or private investigations within or outside of this state and gather evidence against an officer who was issued a certificate and who violated or is about to violate this act or a rule promulgated under this act. The secretary of state may suspend, revoke, or deny a certificate after an investigation if the secretary of state determines that the officer committed 1 or more of the following:

(a) Violated this act or a rule promulgated under this act.

(b) Was found guilty of a fraudulent act in connection with the inspection, purchase, sale, or transfer of a salvage vehicle.

(c) Was found guilty of the theft, embezzlement, or misappropriation of salvage vehicle inspection fees.

(d) Performed improper, careless, or negligent salvage vehicle inspections.

(e) Ceased to function as a police officer because of suspension, retirement, dismissal, disability, or termination of employment.

(f) Was convicted of a violation or attempted violation of Act No. 119 of the Public Acts of 1986, being sections 257.1351 to 257.1355 of the Michigan Compiled Laws.

(g) Made a false statement of a material fact in his or her certification of a salvage vehicle inspection or any record concerning a salvage vehicle inspection. . . .

(36) The secretary of state shall convene a task force in a timely manner to develop standards for police to use in performing inspections. . . .

At the time of the incident leading to the criminal charges, I do not believe that plaintiff was acting within scope of his of authority as a Flushing police officer, and that a finding otherwise is clearly erroneous. If anything, plaintiff was acting within the scope of authority granted to him by the Secretary of State.[3]

The following is a review of the pertinent evidence presented at trial:

(a) Plaintiff was asked to attend the salvage vehicle inspection course by his then chief of police to gain his salvage vehicle inspection license. The training was conducted at the Michigan State Police Academy in Lansing and sponsored by the Secretary of State.

(b) Plaintiff did not conduct salvage vehicle inspections for a period of ten years following the training because he had another part-time job. Plaintiff was certified for fourteen years, but only conducted inspections for approximately two years.

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[3] This is evidenced throughout MCL 257.217(c), and in particular MCL 257.217c(26), which provides:

> The secretary of state shall issue a certificate to an officer who is specially trained as provided by the secretary of state to conduct salvage vehicle inspections. Only a person who has a valid certification from the secretary of state may perform salvage inspections. The secretary of state on his or her own initiative or in response to complaints shall make reasonable and necessary public or private investigations within or outside of this state and gather evidence against an officer who was issued a certificate and who violated or is about to violate this act or a rule promulgated under this act. The secretary of state may suspend, revoke, or deny a certificate after an investigation if the secretary of state determines. . .

In addition, MCL 257.217c(36) mandates that "The secretary of state shall convene a task force in a timely manner to develop standards for police to use in performing inspections." The above stated sections of the statute appear to clearly indicate that plaintiff's salvage vehicle inspection authority was granted by the Secretary of State and that, if anything, plaintiff was within the scope of this business and was acting within this scope of authority when performing salvage inspections in Roseville. If any governmental agency, under MCL 691.1408(2) was employing or authorizing plaintiff's salvage activities it would be the Secretary of State. This was further evidenced by the testimony of Harry Ward, another Flushing police officer who conducted salvage vehicle inspections while off duty, testified that the job had nothing to do with the city of Flushing, as he was "working for the Secretary of State's Office."

(c) The listing of salvage vehicle inspectors was provided by the Secretary of State in a brochure that listed the specific jurisdiction of the police officers authorized to perform inspections. The brochure listed plaintiff as a Flushing police officer.

(d) Employees of the Flushing Police Department would take and relay messages to plaintiff if a call was received requesting a vehicle inspection. Plaintiff acknowledged the employees taking the messages would not necessarily be aware of the purpose of the message or that it pertained to vehicle inspections. Plaintiff would also have individuals, he dealt with routinely for inspections, contact him directly.

(e) Plaintiff used Law Enforcement Information Network (LEIN) terminals to run vehicle and part identification numbers as an inspector. Plaintiff claims he used the terminal in Flushing, but also used terminals in areas where the inspections were conducted, through the state police, etc. The current chief of police testified that the Flushing Police Department did not own a LEIN machine until after March 2, 1992 (the date when the incident occurred resulting in the criminal charges).

(f) Plaintiff used Flushing's stationary and envelopes when sending correspondence relating to inspections, but used his own postage stamps. Plaintiff acknowledged that he would take the stationary and would not request permission or indicate to a superior his intended use of the stationary. Plaintiff assumed his direct supervisors knew of his use of Flushing materials such as stationary, etc., in conjunction with his work as a salvage vehicle inspector he stated, "[i]t wasn't concealed."

(g) Money for inspections was given to defendants and turned over to plaintiff. The $25 inspection fee was set by statute, MCL 257.217c(7). Defendants processed the payment by withholding state and federal taxes, but turned over the net remainder to plaintiff in his paycheck. Only if an inspection was performed in Flushing did it retain the payment.

(h) Plaintiff was not in uniform when conducting inspections as he wore "plain clothes," and used his own vehicle to travel to and from inspections. Plaintiff kept track of his inspection mileage and claimed it as a deduction on his personal taxes. If the inspection required it, plaintiff would wear a police department jumpsuit identifying him as a police officer. Although the police department purchased the jumpsuit, plaintiff could not verify it was purchased for his use as an inspector.

(i) The Flushing Police Department would periodically receive cards from the Secretary of State to renew plaintiff's certification as an inspector. The chief of police and plaintiff would routinely sign and submit the cards. Witnesses for defendants indicated this was merely a courtesy the Flushing Police Department would extend any officer to permit them outside employment.

Plaintiff did not recall ever being "ordered" to remain certified as a salvage vehicle inspector by a supervisor.

(j) On one occasion, while conducting an inspection in Detroit, plaintiff assisted in the arrest of an individual and completed an assist complaint form, for his department, evidencing the arrest and his role. However, the city of Detroit took custody of the individual and impounded the vehicle.

(k) Of the "hundreds" of inspections performed by plaintiff, only about four or five were conducted in Flushing.

(l) No supervisory staff from the Flushing Police Department ever accompanied plaintiff on inspections.

(m) Plaintiff acknowledged all inspections conducted outside of Flushing were off duty or while "moonlighting." Plaintiff defined "moonlighting" as working for "supplementary income." Plaintiff completed forms required for inspections "when I was off duty at home."

(n) Ward testified that all work as a salvage vehicle inspector was performed "off duty." Ward testified that he is not in uniform when he performs inspections and does not use police department vehicles or materials in conducting or following up on investigations for salvage vehicles. Ward also stated: "[T]he job has nothing to do with the [c]ity of Flushing. . . . I am working for the Secretary of State's Office. I am allowed to do these [inspections], because I am a police officer. It is required to be a police officer to do salvage inspections, but like I say, I am not doing them for the [c]ity of Flushing."

(o) An initial resolution, with regard to plaintiff' request for attorney fees passed by the Flushing City Council, provided, in part, "While the performance of salvage vehicle inspections may have been within the scope of Mr. Warda's employment, the actions of Mr. Warda which led to the criminal prosecution were not." The second resolution, upon recommendation of the city attorney, was more specific in its language stating, in part "a determination by the city council for the [c]ity of Flushing that the actions of Mr. Warda which led to the criminal charges which resulted in the legal fees for which he was seeking reimbursement were actions which, not being for any public purpose of the [c]ity of Flushing, were outside of the scope of his employment with the [c]ity; and . . . . In performing salvage vehicle operations, Mr. Warda was not pursuing a public purpose for the [c]ity of Flushing, and, therefore, said activities were not within the scope of his employment; and/or. . . . If the performance of salvage vehicle inspections may have been within the scope of Mr. Warda's employment, the actions of Mr. Warda which led to the criminal prosecution were not."

Even performing an economic reality test, as both parties acknowledge is used to determine the existence of an employment relationship, plaintiff was not in his course of employment as a Flushing police officer when conducting the salvage vehicle inspection in Roseville that resulted in the criminal charges. See, generally, *Kidder v Miller-Davis Company*,

455 Mich 25, 35; 564 NW2d 872 (1997). In applying the economic reality test, four basic factors are considered: (1) control of a worker's duties, (2) payment of wages, (3) right to hire, fire, and discipline, and (4) performance of the duties as an integral part of the employer's business toward the accomplishment of a common goal. *Mantel v Michigan Public School Employees Retirement System*, 256 Mich App 64, 78; 663 NW2d 486 (2003). No single factor is deemed controlling and the list is considered nonexclusive as other or additional factors can be considered based upon the individual circumstances of each case. *Clark v United Technologies Automotive, Inc*, 459 Mich 681, 689; 594 NW2d 447 (1999). In other words, the test takes into consideration the totality of the circumstances involving the work being performed. *Chilingirian v Fraser*, 194 Mich App 65, 69; 486 NW2d 347 (1992).

With regard to control of plaintiff's duties, plaintiff's supervisor encouraged his attendance at the initial training and the Flushing Police Department paid his related expenses and salary. Defendants did not order plaintiff to perform inspections. The relevant statute, MCL 257.217c, mandates that inspections be conducted by police officers. All referrals for plaintiff's inspections were through contact based on the Secretary of State's brochure. No testimony indicated that plaintiff was ever ordered or requested to perform a vehicle inspection outside of Flushing by defendants. Plaintiff controlled when he conducted inspections during his off duty hours. The only control of defendants was that inspections, except for those for Flushing residents, were to be conducted on plaintiff's own time. This evidences only a control of plaintiff's activities while on duty. In addition, this evidences that the Flushing Police Department did not have control of plaintiff's off duty work as this was when he was allowed to perform his side job for supplementary income. Defendants did not control when plaintiff conducted inspections, the manner or method of inspection, the tools for inspection,[4] or whether plaintiff accepted or rejected any inspections. In addition, Harry Ward testified that the work was off duty and had "nothing to do with the [c]ity of Flushing." Thus, there is little, if any, evidence to support that defendants controlled plaintiff's duties as vehicle salvage inspector when he was conducting inspections outside of Flushing.

With regard to payment of wages, there is no dispute that the fee for salvage vehicle inspections was set by statute and that the statute required payment to be submitted through the local police department. Specifically, MCL 257.217c(24)(c), during the relevant time period stated:

> [A] fee of $25.00 shall be received by the police agency for inspection of the vehicle and shall be expended by that police agency as provided in this subsection. . . . The salvage vehicle inspection fees collected by a local police agency under this subsection shall be credited to the budget of that police agency for law enforcement purposes that affect stolen vehicles, stolen vehicle parts, and

[4] The only tools of inspection controlled by defendants were the LEIN machine and stationary. However, it was acknowledged that plaintiff was not required to exclusively use the Flushing Police Department's LEIN as he routinely used LEIN machines from other jurisdictions. And there was also testimony that the Flushing Police Department did not have a LEIN machine during the pertinent time period.

> salvage vehicle inspections. A local police agency shall compensate an off-duty and limited enforcement police officer for a salvage vehicle inspection.

It is undisputed that plaintiff received all monies from the vehicle inspections on his regular paycheck issued by defendants following deduction for state and federal taxes by the city of Flushing, unless the inspection occurred in the jurisdiction of the Flushing Police Department. Defendants retained the money only if it was for an inspection performed in Flushing, which would be in his course of employment as a Flushing police officer. When plaintiff conducted inspections outside of Flushing, defendants deducted taxes and forwarded the remainder to plaintiff, not retaining any. Moreover, it was not defendants who paid his wages for inspections, but rather defendants only forwarded the money, received pursuant to statutory mandate, to plaintiff.

With regard to the right to hire, fire, and discipline, plaintiff contends the involvement of the Flushing Police Department in his certification demonstrates its ability to hire and fire him, as the failure to certify him as a police officer would preclude his conducting inspections. Defendants contend they could only hire, fire or discipline plaintiff based upon his performance as a police officer[5] and not as a salvage vehicle inspector. MCL 257.217c(26), during the relevant time period provided:

> The secretary of state shall issue a certificate to an officer who is specially trained as provided by the secretary of state to conduct salvage vehicle inspections. Only a person who has a valid certification from the secretary of state may perform salvage inspections. The secretary of state on his or her own initiative or in response to complaints shall make reasonable and necessary public or private investigation within or outside this state and gather evidence against an officer who was issued a certificate and who violated or is about to violate this act or a rule promulgated under this act. The secretary of state may suspend, revoke, or deny a certificate after an investigation.

The language of the statute evidences the control of the Secretary of State to hire, fire or discipline a salvage vehicle inspector and not defendants. Clearly, with regard to plaintiff's vehicle salvage inspections it was the Secretary of State that sent him the jobs and licensed him, and also had the power to fire or discipline him for his conduct pursuant to these inspection, as provided in MCL 257.217c. As such, I would find that there was no evidence that defendants had control over plaintiff's hiring, firing, or discipline with regard to his salvage vehicle inspections outside of Flushing.

With regard to the performance of the duties as an integral part of the employer's business toward the accomplishment of a common goal, plaintiff asserts that, as a police officer, it is inherent, on or off duty, that he acts to further the public interest in deterring automobile theft and the use of illicit or stolen automobile parts. This is clearly a function of any police

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[5] Plaintiff was fired by defendants for lying and violating rules and regulations of the Flushing Police Department and not for perjury or false certification of a salvage vehicle inspection form.

department, including that of defendants. But because the work was in Roseville it is not an integral part of defendants' business. Defendants argue plaintiff, in his role as a police officer for Flushing, furthered the public good but that his performance of vehicle inspections in other jurisdictions only vaguely or tangentially served the general purpose or good of its citizens. The trial court provided its view that plaintiff's function as an inspector furthered the common good of all citizens of Michigan and, thus, also served the general purpose and interest of the citizens of Flushing. Nevertheless, I do not believe that plaintiff's performing a salvage vehicle inspection in Roseville was integral to the business of the Flushing Police Department and its goals. Broadly there is a common general goal, but such an analogy could be extended endlessly and I believe this provides little support that the Roseville salvage inspection existed within the terms of plaintiff's employment relationship with the Flushing Police Department.[6]

I believe that the trial court's finding of the existence of an employment relationship between plaintiff and the Flushing Police Department that included salvage vehicle inspections in Roseville, pursuant to an economic reality test, is clearly erroneous. Even broadly examining the specific language of MCL 691.1408(2), I find no evidence or at best a minuscule amount of evidence that salvage vehicle inspections outside of Flushing came within plaintiff's "course of employment" as a Flushing police officer. Course of employment "embraces the circumstances of the work environment created by an employment relationship, including the temporal and spatial boundaries established, and the notion that the act in question was taken in furtherance of the employer's purpose." *Backus v Kauffman (On Rehearing)*, 238 Mich App 402, 406; 605 NW2d 690 (1999). Scope of authority has been defined as "the reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business and is considered in light of the particular circumstances of the employment." *Id.* at 409. As noted, with regard to the furtherance of the defendants' purpose, broadly there is a common general purpose, but such an analogy could be extended endlessly and I believe this provides little support that the Roseville salvage inspection existed within the terms of plaintiff's employment relationship with the Flushing Police Department. It is certainly not reasonable to believe that the Flushing Police Department can delegate authority to one of its police officers to conduct police business in another jurisdiction. Thus, it should not be considered reasonable or foreseeable that the Flushing Police Department would delegate authority to plaintiff, which would include authority to perform police work in Roseville.

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[6] In *Meyerson v City of Bayonne*, 185 NJ Super 437, 441-442; 449 A2d 542 (1982), the New Jersey appellate court found that an officer who was "moonlighting as a part-time security guard," when the criminal charges arose from this security guard position, should not be reimbursed by the city of Bayonne because the incident, occurring while the plaintiff was working as a security guard, did not arise from and was not incidental to the performance of his duties as a Bayonne police officer. I find the situation analogous at least to plaintiff's argument that there was a common general goal to be served and, thus, it was a part of defendants' business. Although we are not bound by decisions from other state courts, our courts often consider decisions from other states in cases as persuasive. *Continental Cablevision of Michigan, Inc v City of Roseville*, 430 Mich 727, 741 n 16; 425 NW2d 53 (1988).

There is a minuscule amount of evidence, if any, supporting that plaintiff was in his course of employment and acted within the scope of his employment and authority as a Flushing police officer when he inspected damaged vehicles in cities other than Flushing and prepared reports pursuant to authority granted by the Secretary of State. Plaintiff did not reasonably believe he was acting within the scope of his authority as a Flushing police officer at the time of the incident occurred, as he acknowledged he was "moonlighting." It is not foreseeable or reasonable that defendants would delegate authority to plaintiff to carry out business in another jurisdiction. Furthermore, the testimony of Harry Ward expands on plaintiff's moonlighting statement, and explains that the salvage inspection job had nothing to do with Flushing as they ware working for the Secretary of State. The only reason that the Flushing Police Department is involved is that the Secretary of State requires that a police officer do salvage inspections. See MCL 257.217c.

The majority first reasons that the salvage vehicle inspection "represented a mutually beneficial program involving incentives and obligations for plaintiff, the city, and its police department, and the Secretary of State's Office." I do not find a mutually beneficial program, here, and the evidence indicates that it was allowed as a courtesy rather than within the scope of plaintiff's employment. The fact that the money goes directly to the local police department does not support that this work was within plaintiff's employment as the money passed through local police department, Flushing, based on statutory mandate. The taxes were removed and then plaintiff was paid the remainder, which supports that this was not work within his scope of employment as a Flushing police officer. If this had been within the scope, the city of Flushing would have likely retained part of the funds, in the event it was liable for some reason, and then transfer the remainder. The fact that Flushing sent the money through to plaintiff and did not retain a portion supports that this work was independent of plaintiff's work as a Flushing police officer. Additionally, the fact that someone from the Flushing Police Department may have encouraged plaintiff, similarly has very little evidentiary value regarding whether he was acting within the scope of his employment and authority when he inspected damaged vehicles in cities other than Flushing. Plaintiff may very well have been encouraged, but it was likely for the work he could do for Flushing and not for other jurisdictions. It would be absurd to say that a police department that encourages an officer to get extra training, also authorizes, within the scope of employment, work outside that department's jurisdiction.

The majority also indicates, for supporting evidence, that "plaintiff would occasionally wear a jump suit with his department insignia on it, and plaintiff regularly used the department's equipment to run lien checks." This does not evidence that salvage vehicle inspections were in the course of plaintiff's employment as a Flushing police officer. Harry Ward also conducted salvage inspections and did not wear a Flushing uniform, and did not use Flushing Police Department vehicles or materials. The evidence supports that plaintiff used equipment not only at the Flushing Police Department, but also at local police stations where he was working.[7]

[7] In addition, I believe this could raise a factual question as to whether plaintiff was authorized to use Flushing equipment and stationary for his salvage vehicle inspection work. As far as using the Flushing Police Department LEIN equipment and stationary, a New Jersey appellate court, in (continued…)

Plaintiff acknowledged that he was "moonlighting," as the salvage job was a job for extra money. The statute in question, MCL 691.1408(2), intends to reimburse public officials who defend against misconduct occurring in connection with the good faith performance of their official duties, while serving the public interest, and who ultimately prevail in the underlying suit. Plaintiff did prevail, in that he was found not guilty of the underlying criminal charges, but he was not in the performance of his official duties as a Flushing police officer. Plaintiff was not in the course of his employment as a Flushing police officer and could not have a reasonable basis for believing he was acting within the scope of his authority as a Flushing police officer.

III.

Based upon the above analysis, I would reverse the trial court's judgment in favor of plaintiff.

/s/ Kathleen Jansen

(…continued)

a case involving reimbursement of attorney fees and whether charges arose out of employment with a police department, determined that it must be determined factually whether an officer was using a computer "for that *lawful* purpose or for his *own* purpose." *Gordon v Borough of Middlesex*, 268 NJ Super 177; 632 A2D 1276 (1993) (emphasis in original). Even if plaintiff was using Flushing equipment and stationary he was not using them while in the course of his employment with Flushing or within the scope of his authority. See MCL 691.1408(2). Moreover, even if plaintiff received calls while on duty as a Flushing police officer regarding his salvage inspection work and a few times he performed vehicle inspections for Flushing, there is no basis for finding that the Roseville inspection was within the scope of his Flushing employment. In *Querques v Jersey City*, 198 NJ Super 566, 568-569; 487 A2d 1285 (1985) a New Jersey appellate court found that charges against a police officer related to his union activities did not trigger application of a reimbursement statute since the charges did not arise out of his police duties, even though his union contract provided that he could perform union work while on police time. In addition, the court noted that "the fact that only a police officer could be [the union] president does not justify" a conclusion that the charges would have never been brought but for the fact that he was a police officer. *Id*. at 569. This relates because, although the defendants were aware of plaintiff's vehicle inspection job, and may have encouraged him to get the training, this should not trigger a reimbursement of attorney fees unless the conduct arose out of his Flushing police officer duties. As noted, although this Court is not bound by decisions from other state courts, our courts often consider decisions from other states in cases as persuasive. *Continental Cablevision of Michigan, Inc, supra* at 741 n 16.