

**KOSRAE STATE COURT  
TRIAL DIVISION  
Cite as Seymour v. Kosrae,  
3 FSM Intrm. 537 (Kos. S. Ct. Tr. 1988)**

[3 FSM Intrm. 537]

***ALOKOA SEYMOUR,***  
***Plaintiff,***

**v.**

***KOSRAE STATE,***  
***Defendant.***

**KSC CIVIL ACTION NO. 2-84**

**OPINION**

Before Harry H. Skilling  
Chief Justice  
Kosrae State Court  
March 15, 1988

**APPEARANCES:**

For the Plaintiff:

Delson Ehmes  
Directing Attorney  
Micronesia Legal Services Corporation  
Lelu, Kosrae 96944

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For the Defendant:

Richard Kaminski  
Assistant Attorney General  
Office of the Attorney General  
Lelu, Kosrae 96944

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**HEADNOTES**

**Custom and Tradition**

Pursuant to the Kosrae State Code, the Court cannot consider tradition unless satisfactory evidence of it is introduced. Kosrae Code 6.303. Seymour v. Kosrae, 3 FSM Intrm. 537, 540 (Kos. S. Ct. Tr. 1988)

**Constitutional Law - Interpretation**

If language of a provision of the Kosrae State Constitution is susceptible to more than one meaning, the Court should look to the legislative history, including the constitutional convention

committee notes and journals, all other provisions of the Constitution, and cases from jurisdictions with similar constitutional provisions, to clarify the definitions of the ambiguous term. *Seymour v. Kosrae*, 3 FSM Intrm. 537, 540 (Kos. S. Ct. Tr. 1988).

### **Sovereign Immunity; Constitutional Law**

The phrase "may assume liability is incurred by the chartered State Government," Kos. Const. art. XVI, § 7, ambiguous because there are no guidelines for when the state is supposed to consent to being sued and when it is not. *Seymour v. Kosrae*, 3 FSM Intrm. 537, 541 (Kos. S. Ct. Tr. 1988).

### **Constitutional Law - Transition**

The primary interest protected by article XVI, section 4 of the Kosrae State Constitution is continuity in statutory law, not case law. All prior Trust Territory statutes were carried over to the extent that they were consistent with that constitution, but the Trust Territory Court decisions were not intended to control Kosrae State Court decisions. *Seymour v. Kosrae*, 3 FSM Intrm. 537, 541 (Kos. S. Ct. Tr. 1988).

### **Sovereign Immunity; Constitutional Law; Common Law**

Article VI, section 4 of the Kosrae State Constitution provides no basis for assuming that sovereign immunity is inherent in the Kosrae State Constitution, because sovereign immunity was a creation of Trust Territory common law. *Seymour v. Kosrae*, 3 FSM Intrm. 537, 541 (Kos. S. Ct. 1988).

### **Constitutional Law - Transition; Sovereign Immunity**

Determinations as to whether claims of citizens against the previous Kosrae state chartered government may now be upheld against the constitutional state government are to be made by the judiciary on the basis of: (1) when the cause of action arose; (2) the identity of the officer or person whose action created the liability; and (3) the place where the original action creating the liability occurred. *Seymour v. Kosrae*, 3 FSM Intrm. 537, 542-43

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(Kos. S. Ct. Tr. 1988).

### **Constitutional Law - Transition; Sovereign Immunity**

The Kosrae constitutional state government may be held liable for actions taken by police officers under the previous chartered state government, approximately one month before ratification and four months before implementation of the Kosrae Constitution, in falsely arresting and abusing a citizen in Kosrae. *Seymour v. Kosrae*, 3 FSM Intrm. 537, 543 (Kos. S. Ct. Tr. 1988).

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## **COURT'S OPINION**

HARRY H. SKILLING, Chief Justice:

This matter came before the Court on March 15, 1988, for a hearing on a 12(b)(6) motion brought by the State and a motion to strike the defense of sovereign immunity brought by the plaintiff. Delson Ehmes represented the plaintiff, Alokoa Seymour, and Richard Kaminski represented the defendant, the State of Kosrae. The summary judgment motion is denied for the following reasons.

## **PROCEDURAL HISTORY**

On September 17, 1983, the plaintiff, Alokoa Seymour, was allegedly unlawfully arrested and detained in jail for an hour and a half. During this time, he was allegedly beaten, causing damage to his thumb and breaking his watch.

On January 11, 1984, the Kosrae Constitution went into effect. The transition clauses of Article XVI provide that the State does not assume liability for all causes of action that arose during the previous governments.

On April 11, 1984, the plaintiff brought a complaint (amended March 15, 1988) against the State alleging false imprisonment, violation of due process, and negligence, among other allegations. The State responded in a timely manner, claiming sovereign immunity as a defense.

During the next two years, the case was transferred from the Trust Territory Court to the State Court and appropriate briefs and reply briefs were filed.

### ISSUE

The issue is whether the Kosrae Constitution, article XVI, section 7, which provides that the "The constitutional State Government ... may assume obligations and liabilities incurred by the chartered State Government," prevents the State from being brought into court in this case. The focus of this opinion is upon the intent of the drafters of the Constitution when they used the word "may."

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It should be pointed out that this is a relatively narrow issue. The court is only looking at article XVI, section 7 as it relates to the constitutional state government. We are not deciding whether the Constitution provides for absolute sovereign immunity or whether the transition clauses of article XVI have any applicability to non-transition related problems.

### ANALYSIS

Constitutional analysis obviously always starts with the Constitution. If the language of a provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee Notes and the Journals, if available, to clarify the definition of the ambiguous term. Of course, the court should also consider all provisions of the Constitution because other sections may touch on the same subject area, thus giving the questionable provision added meaning. In addition, where the Kosrae Constitution contains similar terms to constitutions in other jurisdictions such as the Federated States of Micronesia (FSM) Constitution or the United States Constitution, the court can look to the cases in those jurisdictions. Finally, the court must consider whether custom and tradition offer any guidance.

In this case, I have not been able to locate nor have the counsel suggested, another constitution which has a provision similar to article XVI, section 7. In addition, counsel have not introduced evidence of tradition and, pursuant to the Kosrae Code, the court cannot consider tradition unless satisfactory evidence of it is introduced. KC 6.303. I am, therefore, limiting my analysis to the Constitution and its legislative history.

I find the phrase "may assume liabilities" in article XVI, section 7 ambiguous because there are no guidelines for when the State is supposed to consent to being sued and when it is not. In addition, the Constitutional Committee Notes (Notes) are very confusing because, if considered in absolute terms, they are contradictory. In this situation, it is

reasonable to consider all the relevant constitutional provisions and their legislative histories together in order to determine what interests the drafters of the Constitution (drafters) intended to protect.

I find that the relevant provisions of the Constitution are article XVI, sections 4, 6 and 7.

#### **Article XVI, Section 4**

In its entirety, this section provides:

Section 4. All laws in effect in this State on the effective date of this Constitution continue in effect, except to the extent they are inconsistent with this Constitution, until amended, repealed, or they expire by their own limitation.

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According to the Notes, the principle idea behind this section was to make as few changes as possible and the only intended changes were those necessary to effectuate the Constitution's terms. SCREP No. 1-83-19 Kos. Con. Con. 3. The primary interest protected by the section is continuity. The drafters did not want the new Constitution to disrupt people's lives. All prior Trust Territory statutes were carried over to the extent that they were consistent with the Constitution. *Id.*

In contrast to the carrying over of Trust Territory statutes, however, the drafters specifically did not continue the common law of the Trust Territory or the United States. "This section [Article VI, § 9] means the State Court, or any other court, should look at the circumstances and laws of the State to guide its decisions. Trust Territory and United States court decisions would not direct the State Court." SCREP 1-83-12 Kos. Con. Con. 8; SCREP 1-83-19 Kos. Con. Con. 3. It is interesting to note that sovereign immunity was created by decisional law for the Trust Territory. *Urrimech v. Trust Territory*, 1 TTR 534 (Pal. 1958). Article VI, section 4 means, therefore, that there is no basis for assuming that sovereign immunity is inherent in the Kosrae Constitution or this form of government.

#### **Article XVI, Section 6**

This section provides:

Section 6. Except as otherwise provided by this Constitution, all rights, titles, actions, suits, contracts, liabilities, writs, proceedings, prosecutions, judgments, sentences, orders, decrees, appeals, causes of action, defenses, claims, and demands continue unaffected.

The intent behind this section is continuity, the same as in Section 4, (the Constitution should bring no greater changes than are necessary to effectuate its terms). The Notes then go on to say: "This section does not mean the new state government is assuming obligations and liabilities. It only states that what exists will not be terminated by the Constitution. The precise impact of the Constitution on particular private and public rights can only be resolved by the court." SCREP 1-83-19 Kos. Con. Con. 4. From these sentences, I find that the drafters intended for a person's claim to continue after the

Constitution was enacted, even though the State could subsequently be held immune from the lawsuit. In addition, the judiciary decides whether the State will accept the liabilities of the chartered state government.

### Article XVI, Section 7

This section provides:

Section 7. The Constitution State Government succeeds to all rights acquired by the chartered State Government, and may assume obligations and liabilities incurred by the chartered State Government.

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The Notes to this section are the most instructive for determining when the state should be held accountable for liabilities arising before the Constitution took effect. Although the Notes continue to be very ambiguous, I find that the following paragraph summarizes the drafters' intent when they used the word "may."

This section is not meant to escape any obligation or liability of governments prior to the effective date of the Constitution. It is only meant to protect the new state government from being unfairly burdened without its consent. SCREP 1-83-19 Kos. Con. Con. 4.

There are two interests represented in this paragraph: First, there is continuity, meaning that the drafters felt it would be unfair to the people if they lost the ability to go forward with a lawsuit against the State solely because the new Constitution took effect. Second, the drafters wanted to protect the new government from being "unfairly" burdened without its consent.

The difficult issue is determining when it is unfair to allow the State to be held accountable. The drafters do not explain directly what they meant by unfairness. However, in three paragraphs, (besides the one mentioned above), they raise three issues from which we can deduce what was meant by unfairness.

First, the Notes mention that the purpose of section 7 was to protect the new government from becoming legal successor to liabilities of the previous governments.

Following this declaration is a statement that the chartered government had been sued for events which occurred before Kosrae was a district, a chartered district or even a state under the FSM. *Id.* It is reasonable to infer that the drafters did not want the state to accept all the liabilities of the chartered government because some of those liabilities could have been inherited from previous administrations.

Second, the Notes mention that when the Charter for Kosrae District was written, the Trust Territory rewrote it, insisting that the Governor be personally responsible to the High Commissioner and unilaterally strengthening Trust Territory control over the District. *Id.* Conceivably, this factor was mentioned to point out that even after Kosrae became a chartered district, the Trust Territory could still have had a significant influence over the island and that the drafters did not want the new government to be liable for Trust Territory decisions.

Finally, the Notes discuss the fact that Article XV, § 2 of the FSM Constitution assumes the liabilities of the Trust Territory and that only the national government was subsequently excused from this responsibility. I find that the drafters did not want the State to be responsible for the obligations created by the FSM Constitution.

By using the word "may," the drafters did not intend that the constitutional government had to accept those liabilities. I find that the

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constitutional government would accept responsibility for some causes of action incurred by the chartered government. In addition, it is equally clear that the drafters were reluctant to set an absolute test for when the drafters did not accept all liabilities of the chartered government because, prior to the Constitutional government, Kosraeans did not have complete autonomy over matters affecting the island and the drafters did not want the new government to be responsible for decisions made primarily by the Trust Territory or any other previous foreign government.

The Court is equally reluctant to establish an absolute test. Instead, if this issue arises again, we will consider the following factors when deciding whether the state may be brought into court. First, when the cause of action or claim arose. The closer the cause of action to the effective date of the Constitution, the more likely it is that the State will have to answer. Second, who made the decision which created the problem and when was it made. It is more likely to be unfair to hold the State accountable if the decision did not involve Kosraeans or people close to the Kosraean culture. Third, where the decision was made. There is a greater possibility of unfairness to the State if the decision was made off-island.

### **APPLICATION TO THIS CASE**

In this case, on September 17, 1983, (approximately a month before the Constitution was ratified and four months before the Constitution took effect), two Kosraean police officers allegedly falsely arrested and abused the plaintiff. It appears that the decision to arrest the plaintiff was made locally by the police officers at the time of the incident. The Court finds that this is the kind of case where the State should be held accountable and therefore finds that article XVI, section 7 does not prevent the state from being brought into Court.