



City of Grand Island

Tuesday, December 17, 2002

Council Session

Item G1

Receipt of Official Documents - Tort Claim Submitted by Robert Werth

The City of Grand Island has received a Tort Claim from Robert Werth alleging certain claims in connection with a traffic stop that took place in Grand Island on August 28, 2002. A copy of this claim is attached to comply with the Nebraska Political Subdivision Tort Claims Act. This is not an item for council action other than to simply acknowledge that the claim has been received. It is recommended that Council take no action other than acknowledging receipt of the claim.

Staff Contact: RaNae Edwards

City Clerk
100 East First Street
Grand Island, NE 68801



Robert Werth
5220 S. 40th St. #49C
Lincoln, NE 68516
(402)421-8939

Ms Edwards,

I would like to file a tort claim concerning events that took place in Grand Island on August 28, 2002.

On the afore mentioned date at approximately 1:30 PM I was pulled over by officer James Colgan #422 for no more reason than I was wearing what he believed might be an illegal helmet. I have been told by attorneys that it is illegal for an officer to pull a person over only to inspect their equipment, basically constituting false arrest. Officer Colgan then proceeded to offer to let me off with a warning if I was to make a donation of my helmet to the Grand Island Police department. When I asked the officer if he was trying to blackmail me he became very irate and proceeded to lecture and berate me. This culminating with officer Colgan threatening me with taking me to jail and to impound my bike, because I called him "A thieving son of a bitch" for trying to take my property without reason. Officer Colgan also forced me to stand at the back of the patrol car in the frisking position over the cars exhaust. Officer Colgan confiscated my helmet for evidence in the case. This action, as I have been told by attorneys, is an illegal search and seizure resulting from the illegal stop.

On October 4, 2002 the case, #TR 02 4834, went to trial. During the trial Officer Colgan testified that because my helmet did not have a DOT sticker or liner tag it was an illegal helmet. This is not true, making the officers testimony perjury and denying me my right to a fair trial.

The NHTSA standard only governs the initial point of sale. After the helmet is in private ownership that owner may modify the helmet in any way that he or she sees fit as long as it still meets the state's requirements. Which, in the state of Nebraska are a shell, liner, padding, and a chin strap. All of these requirements were met by my helmet as testified to by the officer. Modified helmets may then be passed from private owner to private owner without having to meet compliancy of the NHTSA standard.

The charges I have leveled in this letter are serious and require a serious investigation by your office. I have been told that Officer Colgan likes to brag about how many helmets like mine he has basically stolen from bikers. If this is true I believe that Officer Colgan and an unknown number of other officers in the

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Police
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GIPD are guilty of profiling bikers for illegal stops and illegally seizing their property. A direct violation of our civil rights.

In summary I would like the GIPD, and especially Officer Colgan investigated and punished for civil rights violations, extortion, illegal search and seizure, false arrest, and giving false and misleading testimony in court. I am including a copy of a letter sent to me by the NHTSA substantiating my claims of perjury against the officer.



11/23/2002

Robert Werth

Albert G. Hayeck, Esq.

75 Bowker Street

Worcester, MA 01604

Dear Mr. Hayeck:

This responds to your letter seeking information about the labeling requirements in Federal Motor Vehicle Safety Standard No. 218, Motorcycle Helmets (49 CFR §571.218). Your letter correctly notes that section S5.6.1 of Standard No. 218 requires that motorcycle helmets be permanently labeled with a "DOT" mark as a certification that the helmet complies with Standard No. 218. Your review of Standard No. 218 indicates that the Standard does not prohibit owners of helmets from removing or obscuring the "DOT" certification mark. You ask if removing or covering the "DOT" certification mark is lawful.

By way of background information, the National Highway Traffic Safety Administration (NHTSA) has the authority under Chapter 301 of Title 49, U.S. Code, to establish Federal motor vehicle safety standards (FMVSSs) applicable to new motor vehicles and new items of motor vehicle equipment, including motorcycle helmets. This statute requires each person manufacturing, selling, or offering for sale any new vehicle, or item of equipment, covered by an FMVSS, to ensure that the new vehicle or equipment item is certified as meeting all applicable FMVSSs.

The "DOT" certification mark and other required labels provide important information regarding the helmet, including the fact that the manufacturer has certified that the helmet meets Standard No. 218. Section S5.6.1 of the Standard requires that each helmet be permanently and legibly labeled with certain warnings, identifying information, size, and the DOT certification mark. Any helmet intended for highway use, must, at the time of sale, be permanently marked as directed by S5.6.1. Our agency requires permanent marking of these items because we believe this information is needed for the life of the helmet.

After the first sale of the helmet to a consumer, Federal law does not impose any obligation on users of the helmet to maintain it in its original state of compliance. Thus, a consumer may remove or obscure the "DOT" marking without violating Federal law. However, removing or obscuring the certification mark or otherwise modifying the helmet to degrade its performance may have an impact on the user under state laws requiring the use of compliant helmets.

Section 30122(b) of Title 49 of the United States Code, 49 U.S.C. §30122(b), provides that manufacturers, distributors, dealers, or repair businesses may not knowingly make inoperative any part of a device or element of design installed in a vehicle or item of equipment under applicable Federal motor vehicle safety standards. In this case, the label on motorcycle helmets is a device or element of design installed on the helmet in

compliance with Standard No. 218. If a manufacturer, distributor, dealer, or repair business removed that label, then those entities would be rendering the label inoperative, in violation of Federal law. While individual owners of motorcycle helmets are not subject to the "make inoperative" requirement, we urge owners of helmets not to degrade the safety of the equipment.

The individual States are free to establish requirements for the use of motorcycle helmets, including a requirement that helmets used on state highways comply with Standard No. 218. States can prohibit an owner from removing or covering the label or impose sanctions for the use of an unlabeled helmet.

I hope this information is helpful. If you have any further questions or need some more information on this subject, please do not hesitate to contact Mr. Otto Matheke of my staff at this address, or by telephone at (202) 366-2992.

Sincerely,

John Womack

Acting Chief Counsel

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cc: NCC-01 Subj/Chron, interp. 218, Redbook (2)

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