

August 21, 2000
OPINION 00-240

Opinion # 00-240

Louisiana Revised Statutes, Title 9 Section
2800.71(B)

Diaz v. Allstate 433 So2d 699 (La 1983)

22 DISTRICT AND PROSECUTING

ATTORNEYS – Louisiana Drug Dealer Liability Act

It is the opinion of the Attorney General that a District Attorney, his investigator, or any assistant district attorney who participates in a reverse sting operation wherein drugs are sold or attempted to be sold in furtherance of an official investigation is exempt from liability under the Louisiana Drug Dealer Liability Act in accord with R.S. 9:2800.71(B).

Honorable Joseph L. Waitz, Jr.
Thirty-Second Judicial District Attorney
7856 Main Street, Suite 220
Houma, Louisiana 70360

Dear Mr. Waitz:

Please be advised that the office of the Attorney General is in receipt of your opinion request regarding the Louisiana Drug Dealer Liability Act. You specifically ask the following question:

Can a District Attorney, his investigator, and/or an assistant district attorney be held civilly liable under any section of R.S. 9: 2800.62 et seq. if any of the above individuals participate in a reverse-sting operation wherein drugs are sold to and/or attempted to be sold to a defendant.

The applicable law controlling the above question is R.S. 9:2800.71 which provides in pertinent part:

(B.) A law enforcement officer or agency, the state, or any person acting at the direction of a law enforcement officer or agency or the state is not liable for participating in the marketing of an illegal controlled substance, if the participation is in furtherance of an official investigation.

Subsection B above provides exclusion from liability under the Drug Dealer Liability Act to a) law enforcement, b) the state, and c) any person acting at the direction of law enforcement, when their participation is in furtherance of an official investigation. This portion of the statute can apply to the District Attorney in two ways.

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OPINION 00-240

Page 2

First, the Louisiana Supreme Court in *Diaz v. Allstate Insurance Company*, 433 So2d 699, 701 (La 1983) while elaborating on the power of the district attorney stated the following:

The district attorney is a constitutional officer who serves in the judicial branch of the state and exercises a portion of the sovereign power of the state within the district of his office.

Here the court clarifies that the district attorney is an officer of the state. Being an officer of the state, the district attorney is exempted from liability by the specific language in R.S. 9: 2800.71(B) which exempts "the state."

Secondly, the statute provides an exemption for "any person acting at the direction of law enforcement." A District Attorney or his representative who participates in such an investigation would also fall into this exemption within the meaning of the statute.

Therefore it is the opinion of the Attorney General that a District Attorney, his investigator, or any assistant district attorney who participates in a reverse sting operation wherein drugs are sold or attempted to be sold in furtherance of an official investigation is exempt from liability under the Louisiana Drug Dealer Liability Act in accord with R.S. 9:2800.71(B).

Please note that this opinion does not address any issues of constitutionality as pertaining to the statutes cited above.

I hope this opinion adequately addresses your question. If I may be of further assistance, please do not hesitate to contact my office. With warmest regards, I remain

Very Truly Yours,

RICHARD P. IEYOUNG
Attorney General

BY: _____
TOBY J. AGUILLARD
Assistant Attorney General

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Honorable Joseph L. Waitz, Jr.
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Date Received:

Date Released: August 21, 2000

TOBY J. AGUILLARD
ASSISTANT ATTORNEY GENERAL