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The Impact of *Williams v. Pasquotank County* on Local Government Liability

Part I: Public Parks and Government Office Buildings

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Introduction

Public and private employers commonly face litigation over injuries allegedly caused directly by them or inflicted through the on-the-job carelessness or deliberate misconduct of their personnel. Unlike private employers, however, municipalities, counties, and other units of local government in North Carolina enjoy the protection from liability afforded by the doctrine of governmental immunity. The general rule is that governmental immunity may shield a unit from negligence, assault, or other tort claims arising from its performance of *governmental* functions but not from its execution of *proprietary* functions.

North Carolina's courts have found it difficult in many instances to classify the specific undertaking at issue in a case as governmental or proprietary. In *Estate of Williams v. Pasquotank County*,[1] the North Carolina Supreme Court reformulated the standards that judges must use to evaluate whether a local government activity is a governmental or a proprietary function. Although *Williams* is a fairly recent decision, its standards have already been invoked in several appellate cases.

This bulletin is the first in a two-part series examining the impact so far of *Williams* on local government liability. Part I focuses on how the *Williams* standards have been used to analyze whether governmental immunity bars tort claims arising from unsafe conditions at public parks or local government office buildings. It concludes that, perhaps contrary to the supreme court's intent, *Williams* will probably have little influence on how judges determine whether governmental immunity bars tort claims premised on the negligent upkeep of public parks. On the other hand, this bulletin also concludes that, as applied, *Williams* may have significantly

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1. 366 N.C. 195 (2012).

narrowed the circumstances in which local governments may face liability for injuries allegedly caused by unsafe building conditions.

Part II in this series will consider the impact of *Williams* on the availability of governmental immunity to protect local governments from contract-related claims. It will also look at whether *Williams* has made it harder for local governments to have claims dismissed during the preliminary stages of litigation.

Governmental and Proprietary Functions and Governmental Immunity

Roles of the Governmental/Proprietary Distinction

The terms "governmental function" and "proprietary function" figure most prominently in cases involving a local government's assertion that governmental immunity bars tort claims against it. The law applies one or both of the terms in at least two other contexts, however:

- The courts distinguish between governmental and proprietary functions when they have to decide whether a statute of limitation or repose prevents the state or a local government from pursuing a claim of its own in a lawsuit.[2] If a civil claim brought by the state or a local government arises from the performance of a governmental function, a statute of limitation or repose will not bar the claim, unless the statute expressly includes the state.[3] If the claim concerns a proprietary function, the statute of limitation or repose applies to the state or local government just as it does to a private party.
- The North Carolina Constitution prohibits the expenditure of public funds on anything other than a public purpose.[4] Court decisions sometimes refer to activities that satisfy this public purpose requirement as governmental functions.[5] Likewise, the term "governmental function" has occasionally made its way into statutes when the General Assembly has wished to register its opinion that an undertaking is one on which public funds may be spent.[6]

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2. Statutes of limitation and repose restrict the time a party has to pursue certain kinds of civil claims. *See, e.g.*, N.C. Gen. Stat. (hereinafter G.S.) § 52-1(19) (creating a three-year statute of limitation for a claim of assault, battery, or false imprisonment).

3. *See, e.g.*, City of Greensboro v. Morse, 197 N.C. App. 624, 627 (2009) (holding that a one-year statute of limitation did not bar the city from suing the defendant for unpaid parking tickets, in part because "the collection of fines and fees to enforce [a city's] parking regulations . . . is a governmental function").

4. "The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away." N.C. Const. art. V, § 2(1). The courts have interpreted this provision to mandate that all local government funds be spent for public purposes, "regardless of the source of the moneys being spent." David M. Lawrence, Local Gov't Finance in North Carolina § 101, at 2–3 (2d ed. 1990).

5. *E.g.*, Maready v. Winston-Salem, 342 N.C. 708, 723 (1996) (upholding constitutionality of statute authorizing expenditure of public funds on economic development programs because "[e]conomic development has long been recognized as a proper governmental function").

6. *See, e.g.*, Rhodes v. City of Asheville, 230 N.C. 134, 140 (1949) (concluding that "it was the intent of the Legislature [in enacting G.S. 63-50] to declare that the acquisition, construction, operation, and maintenance of an airport by a municipality was a governmental function in the sense that it was a public purpose").

An endeavor may be governmental for one purpose but proprietary for another. The operation of a municipal airport, for example, is a governmental function in that public funds may be spent on the activity without violating the state constitution's public purpose requirement.[7] Insofar as governmental immunity is concerned, though, the operation of a municipal airport counts as a proprietary function.[8] Thus, the reason for which an activity has been deemed governmental or proprietary must be understood if the designation's impact on an immunity determination is to be gauged accurately.

The Governmental/Proprietary Distinction in Governmental Immunity Cases

The North Carolina Supreme Court first held more than 125 years ago that municipalities may be immune to tort claims arising from governmental functions but not to those stemming from proprietary functions.[9] It subsequently incorporated the governmental/proprietary distinction into immunity decisions involving other units of local government, most prominently counties and public school districts.[10]

The governmental/proprietary distinction separates the governmental immunity of local governments from the sovereign immunity of the state.[11] Unlike local governments, the state is immune to all tort claims, regardless of whether the activity that resulted in injury was

7. Greensboro-High Point Airport Auth. v. Johnson, 226 N.C. 1, 7 (1946) ("The establishment and maintenance of an airport is a public purpose within the objects of municipal expenditure.").

8. Piedmont Aviation, Inc., v. Raleigh-Durham Airport Auth., 288 N.C. 98, 102 (1975) ("A municipality operating an airport acts in a proprietary capacity.").

9. Moffit v. City of Asheville, 103 N.C. 237, 254–55 (1889). The terms "governmental function" and "proprietary function" do not appear in *Moffit*. Instead, the opinion distinguishes between a municipality's "governmental duties" and those actions undertaken by a municipality in its "ministerial or corporate character in the management of property for [its] own benefit, or in the exercise of powers, assumed voluntarily for [its] own advantage." *Id.* at 254. The present nomenclature of governmental immunity developed over succeeding decades.

10. *E.g.*, *Rhodes*, 230 N.C. at 141 ("But when it undertakes, with legislative sanction, to perform an activity which is proprietary or corporate in character, such a county may be liable in tort to the same extent as a city or town would be if engaged in the same activity."); Benton v. Bd. of Educ. of Cumberland Cnty., 201 N.C. 653, 657 (1931) ("In performing this statutory duty [to transport students], the county board of education is exercising a governmental function . . . . No action can therefore be maintained against [it] to recover damages for a tort alleged to have been committed by the board in the transportation of pupils to and from the school . . . ").

11. Governmental immunity is probably best understood as the limited portion of the state's sovereign immunity that extends to local governments. The basic idea behind both forms of immunity is that, as the ultimate source of authority for civil claims, the government itself should be immune to them. W. Page Keeton et al., Prosser and Keeton on The Law of Torts § 131, at 1033 (5th ed. 1984). This concept was anciently expressed in the maxim, "The King can do no wrong." *Id.* The North Carolina Supreme Court has repeatedly called the rationale for sovereign immunity into question. *E.g.*, Steelman v. City of New Bern, 279 N.C. 589, 595 (1971) ("It may well be that the logic of the doctrine of sovereign immunity is unsound and that the reasons which led to its adoption are not as forceful today as they were when it was adopted."). Nonetheless, it has also taken the position that the doctrine will remain in force unless and until the General Assembly choses to repeal it. *Id.* ("[W]e feel that any further modification or the repeal of the doctrine of sovereign immunity should come from the General Assembly, not this Court.").

governmental or proprietary.[12] The state may waive sovereign immunity by statute, as it has done to a limited degree in the Tort Claims Act.[13] Local governments may waive their more limited immunity against tort claims by purchasing liability insurance,[14] but such a waiver is effective only to the extent of coverage.[15]

By introducing the governmental/proprietary distinction into immunity decisions involving local governments, the supreme court created the need for standards to distinguish between governmental and proprietary functions in such cases. The standards the court came up with were notably imprecise. In one oft-cited formulation, the court described governmental functions as undertakings that are "discretionary, political, legislative, or public in nature and performed for the public good in behalf of the State"; it characterized proprietary functions as activities that are "commercial or chiefly for the private advantage of the compact community."[16] In practice, as the court later acknowledged, it tended to regard as governmental functions those activities traditionally performed by local governments and ordinarily not engaged in by private corporations.[17] Undertakings classified by the court as proprietary functions usually involved some kind of monetary charge that generated revenue—though not necessarily a profit—for

12. "At common law, the doctrine of sovereign immunity protected the state from liability for negligence or tortious conduct on the part of the state or its agents." Charles E. Daye & Mark W. Morris, North Carolina Law of Torts § 19.40[2], at 435 (3d ed. 2012) (citing Moody v. State Prison, 128 N.C. 12 (1901)).

13. The Tort Claims Act permits recovery of damages for injuries caused by the negligence of state officers, employees, or agents acting within the scope of their duties under circumstances that would subject the state to liability if it were a private individual. G.S. 143-291(a). The act does not waive the state's immunity from tort claims arising from the intentional misconduct of state employees. Moreover, it places a limit of $1,000,000 on the amount the state may be required to pay for harm to an individual resulting from a single incident. G.S. 143-299.2.

14. G.S. 115C-42 (waiver by local boards of education); G.S. 122C-152 (waiver by area authorities); G.S. 153A-435 (waiver by counties); G.S. 160A-485 (waiver by municipalities). In general, a local government's participation in a governmental risk pool waives governmental immunity to the same degree as its purchase of liability insurance. Thanks to the peculiar wording of G.S. 115C-42, public school districts may participate in governmental risk pools without waiving governmental immunity. Ripellino v. N.C. Sch. Bds. Ass'n, 158 N.C. App. 423, 428–29 (2003) (holding that, pursuant to G.S. 115C-42, a public school district does not waive its immunity in tort unless it purchases liability insurance).

15. If a county's insurance policy, for instance, covers a particular type of negligence claim arising from a governmental function but only up to $50,000, the most a plaintiff who prevails on such a claim may recover is $50,000. Likewise, if a public school district's insurance policy expressly excludes injuries arising from athletic events, a student who slips and breaks his arm on a wet gym floor during basketball practice has no negligence claim against the district.

16. Millar v. Town of Wilson, 222 N.C. 340, 341 (1942).

17. Sides v. Cabarrus Mem'l Hosp., 287 N.C. 14, 23 (1975). The court identified the following examples of undertakings traditionally performed by local governments but not by private corporations: erecting and maintaining a county jail, installing and maintaining traffic signals, operating a police car, erecting and maintaining a police and fire alarm system, and supplying water for extinguishing fires. *Id.*

local governments.[18] The court did not invariably classify fee-based activities as proprietary functions, however.[19]

It was sometimes easy for the judiciary to identify the specific activity under consideration as governmental or proprietary. The state's appellate courts, for example, had no trouble classifying a county's operation of a 911 call center as a governmental function and a city's maintenance of a golf course as a proprietary function.[20] Yet in other instances the courts found it quite difficult to categorize particular undertakings as governmental or proprietary activities.[21] Indeed, as the supreme court itself admitted, this difficulty "resulted in irreconcilable splits of authority" and created a "tradition of confusion" as to "what functions are governmental and what functions are proprietary."[22] The confused state of the case law set the stage for the court's attempt in *Williams* to formulate a more systematic method for making governmental/proprietary determinations.

The *Williams* Inquiry

In *Williams* the estate of Erik Williams filed suit against Pasquotank County alleging that the county's negligence had led to Mr. Williams's drowning in the Swimming Hole, an area rented to private parties in Fun Junktion, a county park open to the public.[23] The county argued in response that governmental immunity barred the estate's claims because Section 160A-351 of the North Carolina General Statutes (hereinafter G.S.) "asserts that the operation of public

18. *Sides*, 287 N.C. at 22–23. The court noted that it had previously ruled that municipalities act in a proprietary capacity when they impose charges for the use of a landfill, admission to a public park, the supply of drinking water, or the distribution of electricity. *Id.*

19. *See, e.g.*, James v. City of Charlotte, 183 N.C. 630, 632–33 (1922) (holding that the city acted in a governmental and not a proprietary capacity by removing garbage for its inhabitants for a fee that merely covered its actual expenses).

20. Lowe v. City of Gastonia, 211 N.C. 564, 566 (1937) ("Defendant's contention . . . . that it is not liable to the plaintiff . . . . because it owned and maintained the golf course in the exercise of a governmental function, cannot be sustained."); Wright v. Gaston Cnty., 205 N.C. App. 600, 606 (2010) ("The 911 call center was established to provide for the health and welfare of [the county's] citizens and is a governmental function regardless of the fee charged in order to defray operating costs" (internal quotation marks omitted).).

21. *See Millar*, 222 N.C. at 342 ("The line between municipal operations that are proprietary and, therefore, a proper subject of suits in tort and those that are governmental and, therefore, immune from suits is sometimes difficult to draw.").

22. Koontz v. City of Winston-Salem, 280 N.C. 513, 528 (1972). The court conceded that it had contributed to the confusion by adopting "apparently divergent views" on whether an otherwise governmental function becomes proprietary when a local government uses it to generate income. *Id.*

23. Estate of Williams v. Pasquotank Cnty., 366 N.C. 195, 196–97 (2012).

parks is a proper governmental function."[24] Both the trial court and the North Carolina Court of Appeals ruled that governmental immunity did not protect the county.[25]

The supreme court set forth a three-step inquiry that should guide a judge's efforts to classify an activity as governmental or proprietary for immunity purposes:

1. Whether, and to what degree, the legislature has designated the specific activity that caused the plaintiff's injury as governmental or proprietary
2. Whether the activity in question is one that only a governmental entity could undertake
3. Additional factors, including whether the activity is one traditionally undertaken by local governments, whether the defendant local government charged a substantial fee as part of the activity, and whether any such fee generated a profit

The court explained that when the legislature has designated a particular activity as governmental or proprietary, the judiciary will usually defer to its determination, making consideration of the other steps of the *Williams* inquiry unnecessary.[26] Similarly, according to the court, when an activity is one that only the government can undertake, it is ipso facto a governmental function, and step three of the inquiry will not be in play.

It seems unlikely that the first two steps of the *Williams* inquiry will resolve very many cases in which governmental immunity is at issue. With regard to the inquiry's first step, it bears remarking that the terms "governmental function" and "proprietary function" rarely appear

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24. *Id.* at 201. The statute reads:

> The lack of adequate recreational programs and facilities is a menace to the morals, happiness, and welfare of the people of this State. Making available recreational opportunities for citizens of all ages is a subject of general interest and concern, and a function requiring appropriate action by both State and local government. The General Assembly therefore declares that the public good and the general welfare of the citizens of this State require adequate recreation programs, that *the creation, establishment, and operation of parks and recreation programs is a proper governmental function*, and that it is the policy of North Carolina to forever encourage, foster, and provide these facilities and programs for all its citizens.

G.S. 160A-351 (emphasis added).

25. In its opinion, the court of appeals held that the most important factor to be considered when determining whether an activity constitutes a governmental function or proprietary function is whether the activity is one that only a governmental entity could perform. Estate of Williams v. Pasquotank County Parks and Recreation Dep't, 211 N.C. App. 627, 632, *vacated and remanded*, 366 N.C. 195 (2012). The supreme court rejected that view in its *Williams* opinion. *Williams*, 366 N.C. at 203–04.

26. It should be understood, though, that this deference is not absolute. The supreme court has held that the judiciary, not the legislature, has the last word on whether an activity is governmental or proprietary. Rhodes v. City of Asheville, 230 N.C. 759, 759 (1949) ("Unquestionably the Legislature intended to declare [by statute] that the operation of the Asheville-Hendersonville Airport should be deemed and held to be in furtherance of a governmental function. But the mere legislative declaration to that effect did not make it so, for that is a judicial and not a legislative question."). *But see* Bynum v. Wilson Cnty., 367 N.C. 355, 360 (2014) ("According to the analysis set forth in *Estate of Williams*, the fact that the legislature has designated [the maintenance of county buildings that serve governmental functions] as governmental is dispositive.").

For a discussion of the supreme court's treatment of legislative classifications of activities as governmental functions, see Trey Allen, *Governmental Immunity for Activities Designated by Statute as Governmental Functions?*, Coates' Canons: NC Local Government Law Blog (UNC School of Government, Dec. 2, 2014), http://canons.sog.unc.edu/?p=7920.

in statute. Moreover, the *Williams* opinion suggests that, even when a statute employs one of these terms, it may not be viewed as dispositive if the breadth of the statutory text leaves a court unsure about whether the legislature intended to capture the kind of activity that allegedly led to a plaintiff's injury.

The treatment of G.S. 160A-351 in *Williams* is instructive on this last point. While describing G.S. 160A-351 as "clearly relevant" to the question of whether the activity that led to Erik Williams's death was governmental or proprietary, the supreme court declined to decide whether the statute ultimately resolved the matter. Instead, it remanded the case with instructions for the trial court to consider the effect, if any, of G.S. 160A-351 on the county's immunity defense.[27] The supreme court noted that, although G.S. 160A-351 generally describes park operations as a governmental function, the statute does not cover every "nuanced action" that could take place in a public park or recreational facility.[28] The precise issue for the trial court was whether, taking the statute into account, "the specific operation of the Swimming Hole component of Fun Junktion, in this case and under these circumstances, [was] a governmental function."[29] Thus, the supreme court left open the possibility that the broad wording of G.S. 160A-351 would prevent the statute from controlling the outcome of the trial court's immunity ruling.

The supreme court itself pointed out the limited usefulness of the *Williams* inquiry's second step in a changing world where the private sector now performs so many services once thought to belong exclusively to the public sector. As the court explained, "it is increasingly difficult to identify services that can only be rendered by a governmental entity."[30]

Given the limitations of the first two steps in the *Williams* inquiry, it seems probable that judges will ordinarily need to resort to step three when categorizing activities as governmental or proprietary. The additional factors that make up the third step focus primarily on revenue, indicating that an activity which generates substantial income for a local government runs a high risk of being deemed a proprietary function. Yet *Williams* cautions against overreliance on step three's additional factors. Why? According to the supreme court, "distinctions between proprietary and governmental functions are fluid and courts must be advertent to changes in practice."[31] In other words, changing circumstances could make factors other than those listed in *Williams* relevant to future governmental/proprietary determinations.

Without question, *Williams* provides lower courts with a more methodical way of analyzing whether a local government undertaking qualifies as a governmental or a proprietary function. It may turn out, though, that *Williams* will not make governmental/proprietary determinations appreciably easier for the lower courts. The opinion isolates key factors that a court should take into account when classifying an activity as governmental or proprietary but then warns against being too quick to rely on any of them. Only time will tell if *Williams* represents a decisive break from the "tradition of confusion" that has marked governmental immunity decisions in North Carolina.

27. The lawsuit was settled on remand.
28. *Williams*, 366 N.C. at 202.
29. *Id*. at 201.
30. *Id.* at 202.
31. *Id.* at 203.

Premises Liability: A Few Basics

The remainder of this bulletin will examine the application of *Williams* to lawsuits in which the plaintiff, like the one in *Williams*, asserts a negligence claim against a local government over injuries allegedly caused by unsafe conditions on municipal or county property. While a detailed discussion of premises liability lies well beyond the scope of this bulletin, a review of a few basic principles may supply helpful background information.

North Carolina law requires landowners—in this context the term includes all lawful possessors of real property—to exercise reasonable care to keep their premises safe for lawful visitors and to warn lawful visitors of hidden dangers on their property.[32] This reasonable care standard obliges a landowner to make a reasonable inspection of the premises for hidden defects and perils.[33] It extends to all parts of the property a visitor may be expected to use, including parking lots, for example.[34] The precise measures that a landowner must take to satisfy the reasonable care standard can vary based on many factors, such as the use to which the property is being put or the mental capacity of a lawful visitor, if the landowner knows or should know that the visitor might be incapable of taking precautions for his or her own safety.[35]

To sustain a claim for negligence based on unsafe premises, a lawful visitor must show an actionable breach of the reasonable care standard. The visitor may establish such a breach by proving that the landowner negligently created the condition that led to his or her injury or negligently failed to correct that condition despite having actual or constructive notice of its existence.[36]

The duty of care to lawful visitors applies to local governments as well as to private landowners. Of course, unlike a private landowner, a local government has the option of invoking governmental immunity in the hope of avoiding liability for injuries allegedly caused by its negligence.

Williams and Governmental Immunity for Public Parks

Liability for Park-Related Torts Pre-*Williams*

The *Williams* decision is the latest in a line of supreme court opinions addressing the liability of municipalities and counties for injuries alleged to have resulted from unsafe conditions in public parks. The supreme court issued its first opinion on the relevance of governmental immunity to tort claims arising from the operation of public parks in *White v. City of Charlotte*, a wrongful death case.[37] The plaintiff alleged that a minor was fatally injured when she fell—or was thrown—from a defective swing in a city park. The city disputed liability, partly contending that its operation of the park amounted to a governmental function. Rejecting the city's argument, the supreme court reasoned that, even if the city's operation of the park constituted a

32. Rolan v. N.C. Dep't of Agric. and Consumer Servs., ____ N.C. App. ____, ____, 756 S.E.2d 788, 796 (2014). In general, landowners do not owe a duty of care to trespassers and may not be held liable for injuries to them. G.S. 38B-2. *But see* G.S. 8-B-3 (setting forth the conditions under which a landowner may be liable for a trespasser's injuries).

33. Daye & Morris, *supra* note 12, § 17.30[2], at 311.

34. *Id.* § 17.30[2], at 315.

35. *Id.* § 17.30[2], at 312–13.

36. *Rolan*, ____ N.C. App. at ____, 756 S.E.2d at 795.

37. 211 N.C. 186 (1937).

governmental function, the city might still be held liable if the minor's death resulted from the breach of a legal duty to maintain the park in a reasonably safe condition.[38] The city charged fees for the use of certain facilities at the park, but the court did not highlight that fact in its opinion.

While describing the operation of public parks as a governmental function, the *White* decision left open the possibility that governmental immunity might never apply to tort claims arising from a local government's upkeep of a public park. Such an outcome would have been unusual but not unprecedented. The court had previously held that the governmental nature of street maintenance will not protect a municipality from tort claims stemming from its failure to keep its streets in a reasonably safe condition.[39]

Roughly eight years after *White*, the General Assembly enacted G.S. 160-156, declaring therein that the establishment and operation of a "recreation system" is a "governmental function and a necessary expense as defined by . . . . the Constitution of North Carolina."[40] It is tempting to assume that G.S. 160-156 represented a legislative response to *White*, but there are reasons to question this assumption. In the first place, the proximity of the terms "governmental function" and "necessary expense" in G.S. 160-156 suggests that the legislature had in mind not tort liability but constitutional challenges to the expenditure of public funds on local recreation programs.[41] Additionally, the statute's description of a recreation system as a "governmental function" did nothing to undermine the holding of *White*. The supreme court in *White* had conceded that the operation of a public park is a governmental function; the problem for municipalities and counties was that the court had then implied that they could still face tort liability for injuries resulting from unsafe park conditions. Presumably, if the General Assembly had wished to abrogate *White*, it would have added language to G.S. 160-156 unambiguously shielding local governments from park-related tort claims.[42] Finally, although G.S. 160-156 referred to a "recreation system," public parks were not specifically mentioned in the statute. It might be expected that a legislature dissatisfied with *White* would have inserted an express reference to public parks into G.S. 160-156.

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38. The court speculated but did not rule outright that such a duty existed. *Id.* at 188–89. Furthermore, it went on to hold that the trial judge's dismissal of the lawsuit was proper because the plaintiff could not produce any evidence that negligence by the city had led to the minor's death. *Id.* at 189.

39. Speas v. City of Greensboro, 204 N.C. 239, 241 (1933) ("The exercise of due care to keep its streets in a reasonably safe and suitable condition is one of the positive obligations imposed upon a municipal corporation. The discharge of this obligation cannot be evaded on the theory that in the . . . . maintenance of its streets the municipality acts in a governmental capacity."). *See also* Rhodes v. City of Asheville, 230 N.C. 134, 138 (1949) ("The construction and maintenance of streets . . . . is a governmental and not a proprietary function, but . . . . it has been uniformly held in this jurisdiction that municipalities may be held liable in tort for failure to maintain their streets in a reasonably safe condition . . . ").

40. 1945 N.C. Sess. Laws 1379–80.

41. For a case that discusses G.S. 160-156 in the funding context, see *Purser v. Ledbetter*, 227 N.C. 1 (1946).

42. Although the judiciary has the last word on whether an activity is governmental or proprietary, the legislature may effectively override its designation of an activity as a proprietary function by expressly exempting local governments from liability for injuries arising from the performance of that activity. *Rhodes*, 230 N.C. at 141 (remarking that, while the operation of a municipal airport is a proprietary function for immunity purposes, the legislature may expressly exempt municipalities from tort liability in connection with that activity).

The supreme court had a chance to consider the impact of G.S. 160-156 on park-related tort claims in *Glenn v. City of Raleigh*.[43] While picnicking in a city park, the plaintiff was struck in the head by a rock ejected from a lawnmower operated by a city employee.[44] According to evidence produced at trial, the park had generated $18,531.14 in revenue for the fiscal year in which the plaintiff was injured.[45] During that same year, the city had spent a total of $43,995.96 on activities and maintenance at the park.[46]

The city argued that governmental immunity barred the plaintiff's negligence claims. The supreme court agreed that, if the operation of the park constituted a governmental activity, the plaintiff's negligence claims would be subject to governmental immunity. The court nonetheless concluded that the city's operation of the park did not qualify as a governmental function because (1) the park had produced more than "incidental income" and (2) the "pecuniary benefit" to the city was large enough to transform the park into a proprietary undertaking.[47] Although the court noted the existence of G.S. 160-156, the statute played no discernible role in its analysis.[48]

The *Glenn* decision deviated from *White* in two important respects. First, the supreme court acknowledged in *Glenn* that governmental immunity could bar tort claims premised on unsafe park conditions. As previously noted, the court had suggested in *White* that immunity might not be available for park operations, even those regarded as governmental functions. Second, *Glenn* made the applicability of governmental immunity to park-related tort claims contingent on the revenue generated by the park. By contrast, in *White* the court had shown no interest in the fees charged by the city for certain park facilities.

In 1971 the General Assembly recodified G.S. 160-156 as G.S. 160A-351, altering the statutory text in the process.[49] In contrast to its predecessor, G.S. 160A-351 expressly designates the establishment and operation of "public parks"—not just recreation programs—as a governmental function. Moreover, the "necessary expense" reference in G.S. 160-156 is omitted in G.S. 160A-351. It is unclear what prompted these changes. Perhaps the legislature intended to signal that, notwithstanding *Glenn*, park operations should be deemed governmental functions for immunity purposes, regardless of the income they generate. If that was indeed its intent, the legislature could have achieved its objective more effectively by incorporating a straightforward declaration into G.S. 160A-351 exempting municipalities and counties from liability for injuries allegedly caused by unsafe park conditions.

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43. 246 N.C. 469 (1957).

44. The mower was missing its front guard at the time of the incident, and the park superintendent testified that he had seen mowers throw rocks in the park on many prior occasions. *Id.* at 471.

45. Members of the public could take advantage of the picnic area for free. *Id.* at 472. The park did charge for the use of a train, merry-go-round, and swimming pool located in its amusement section. *Id.*

46. Adjusted for inflation, the income generated by the park comes to about $154,792.39 in 2015 dollars, while the amount spent on maintenance and activities at the park totals approximately $367,502.48. *See* Bureau of Labor Statistics, United States Department of Labor, CPI Inflation Calculator, www.bls.gov/data/inflation_calculator.htm.

47. *Glenn*, 246 N.C. at 477.

48. Here is the court's only comment about G.S. 160-156 in *Glenn*: "We are advertent to G.S. 160-156, which is a declaration of State Public Policy as to adequate recreational programs and facilities . . . ." 246 N.C. at 477.

49. 1971 N.C. Sess. Laws 777, 802 (c. 698, §§ 1–2).

The supreme court issued an opinion in another park case not long after the enactment of G.S. 160A-351. The complaint in *Rich v. City of Goldsboro*[50] alleged that the minor plaintiff had been injured in a fall from a seesaw in a city park and that her fall had resulted from the city's negligent failure to install handholds or other stabilizing devices. The only income the city had derived from the park during the fiscal year of the plaintiff's injury was a $1,200 donation from the local Kiwanis Club, which operated a Kiddie Train in the park.[51] For that same year, the recreation program's total cost to the city was $167,912.66.[52] The supreme court reasoned that, unlike the revenue generated in *Glenn*, the Kiwanis donation plainly qualified as incidental income and, consequently, "was insufficient to constitute a waiver of [the city's] governmental immunity against suit."[53] The court did not discuss the potential relevance of G.S. 160-156 or the newly enacted G.S. 160A-351 to the city's immunity defense.

Prior to *Williams*, then, the operation of a public park could qualify as a governmental function for immunity purposes, unless the park produced more than incidental income for the city or county. Aside from the specific dollar amounts at issue in *Glenn* and *Rich*, the case law did not offer local governments much guidance on the dividing line between incidental and substantial park revenue. Yet, as *Glenn* demonstrated, a park could operate at a financial loss and still be a proprietary function. Furthermore, though the General Assembly had twice enacted statutes describing recreation programs as a governmental function, the judiciary seemed indifferent to its pronouncements.

The Approach to Park-Related Tort Claims in *Williams*

On the surface, at least, *Williams* represents a major departure from *Glenn* and *Rich*. Whereas the earlier cases summarily discounted or ignored the legislature's description of park operations as a governmental function, *Williams* requires a court to begin by considering the potential impact of G.S. 160A-351 when a county or city asserts that governmental immunity bars a tort claim arising from an activity at a public park. Of course, *Williams* also holds that G.S. 160A-351 will not always control the outcome of governmental/proprietary determinations in such cases because not everything that goes on at a public park is covered by the statute.

The *Williams* opinion does not identify the criteria a court should use to determine whether the specific activity that led to the plaintiff's injury in a particular case falls within the scope of G.S. 160A-351. The supreme court could have provided some guidance on this score just by deciding whether the statute encompassed Pasquotank County's operation of the Swimming Hole at Fun Junktion, but it declined to rule on the matter. Alternatively, the court could have listed a few examples of the kinds of activities the statute likely encompasses. The lack of guidance as to what park activities are covered by G.S. 160A-351 handicapped the court of appeals when it confronted its first park case following *Williams*.

50. 282 N.C. 383 (1972).

51. The Kiddie Train was the only park activity for which there was a charge. *Id.* at 384.

52. In today's dollars, the donation amounts to about $6,738.43, and expenses for the city's recreation program equal roughly $942,889.84. *See* Bureau of Labor Statistics, United States Department of Labor, CPI Inflation Calculator, www.bls.gov/data/inflation_calculator.htm.

53. *Rich,* 282 N.C. at 387.

The Court of Appeals Applies *Williams* in a Park Case

In *Horne v. Town of Blowing Rock* [54] the complaint alleged that the minor plaintiff was injured at a municipal park when he stepped into a drain hole that had been completely obscured by overgrown grass and grass clippings. The complaint further alleged that the defendant town had caused the plaintiff's injuries by negligently failing to maintain the grass around the drain hole.[55] In response, the town argued that governmental immunity foreclosed the plaintiff's negligence claims because (1) G.S. 160A-351 classifies the operation of public parks as a governmental function and (2) the complaint did not contain any allegations regarding income derived from the park.[56]

The North Carolina Court of Appeals recognized that, under *Williams*, it first had to consider whether, and to what degree, the legislature had classified the specific activity that led to the plaintiff's injury as governmental or proprietary. It ruled that G.S. 160A-351 did not resolve the issue because, as observed in *Williams*, the statute does not cover "'every nuanced action that could occur in a park.'"[57] The court then turned to the other steps of the *Williams* inquiry, devoting special attention to the revenue factors found in step three. It viewed these factors and the ones relied upon in *Glenn* and *Rich* as essentially identical and concluded that it should evaluate the town's immunity defense in light of the two earlier cases. According to the court of appeals, *Glenn* and *Rich* establish that

- a local government's operation of a free public park for the recreation of its citizens is a governmental function for which ordinarily governmental immunity will apply, and
- governmental immunity for park operations will be lost if a local government derives more than incidental revenue from either the operation of the park or the conduct of activities within the park.

Applying these principles, the court of appeals held that no governmental immunity determination could be made in *Horne* without evidence showing the revenue the town had received from the park's operation. Such evidence, the court pointed out, could be obtained through the discovery process and presented to the trial court, enabling it to make an evidence-based assessment of the town's immunity defense.

The Treatment of G.S. 160A-351 in *Horne*

The rationale for the outcome in *Horne* is not wholly persuasive. For one thing, the opinion's treatment of G.S. 160A-351 is problematic. The court of appeals held that G.S. 160A-351 did not bar the negligence claims against the town, largely because *Williams* holds that the statue does not cover every "nuanced action" that could happen in a public park. Of course, the mere fact

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54. ____ N.C. App. ____, 732 S.E.2d 614 (2012).

55. The plaintiff further alleged that the town had negligently failed to inspect the premises and to warn visitors of hidden perils or unsafe conditions. *Id.* at ____, 732 S.E.2d at 615.

56. The town also argued that the public policy of North Carolina favored a ruling that its operation of the park was a governmental function entitled to the protection of governmental immunity. *Id.* at ____, 732 S.E.2d at 618. The court of appeals did not address the merits of this contention, but the argument is not without foundation. The best statutory support for it can be found in G.S. 160A-351, which states that it is "*the policy of North Carolina to forever encourage, foster, and provide*" public parks and recreation programs for the state's citizens. G.S. 160A-351 (emphasis added).

57. *Id.* at ____, 732 S.E.2d at 619 (quoting Estate of Williams v. Pasquotank Cnty., 366 N.C. 195, 202 (2012)).

that G.S. 160A-351 will not always control the classification of a park activity does not mean that it will never do so. Like *Williams*, though, *Horne* says little about how a court should go about analyzing whether G.S. 160A-351 covers the specific park activity alleged to have harmed the plaintiff in a given lawsuit.

Interestingly, the *Horne* opinion offers a good reason for thinking that, contrary to the holding of *Horne*, G.S. 160A-351 encompasses a local government's upkeep of park lawns:

> [The] attempt to distinguish the particular activity of lawn maintenance from the general undertaking of operating the public park . . . . is meaningless, as lawn maintenance of a public park is an indispensable aspect of establishing and operating such park.[58]

It stands to reason that if lawn maintenance is an indispensable aspect of operating a public park, it must be covered by G.S. 160A-351, or the statute is effectively meaningless. Put differently, if the broad language of the statute does not encompass the very activities necessary to operate a public park, the only reasonable conclusion appears to be that it does not cover park operations at all for purposes of governmental immunity. This conclusion seems at odds with the emphasis placed in *Williams* on the statute's relevance to immunity decisions in public park cases.

Additionally, the *Horne* opinion's reliance on *Glenn* and *Rich* might not be justified. In neither of those cases did the supreme court consider in any substantive way the General Assembly's classification of park activities as a governmental function. The *Williams* decision does not expressly overrule *Glenn* or *Rich*—it actually cites *Glenn* approvingly—but it is not obvious that the outcome in *Glenn* would have been the same under the three-step inquiry mandated by *Williams*. At a minimum, even if it ultimately would have held that governmental immunity did not bar the plaintiff's claims, the supreme court in *Glenn* would have had to explain in more detail than the court of appeals did in *Horne* why the legislature's designation of park operations as a governmental function did not apply to the city's maintenance of a public park.

Governmental Immunity and Park Cases: The Rules after *Williams* and *Horne*

Following *Williams* and *Horne*, the state of the law seems to be that when a plaintiff alleges injury due to a local government's negligent maintenance of a public park, the court will deem the operation of the park a governmental function if the park is completely free to the public, and governmental immunity will shield the defendant municipality or county from the plaintiff's claims.[59] If the local government receives income from the park—usually in the form of facilities or activity fees—the court will have to analyze whether the income qualifies as incidental or substantial, with the amounts at issue in *Glenn* and *Rich*, adjusted for inflation, serving as examples of incidental and substantial revenue, respectively. Incidental income will not transform the operation of the park into a proprietary function, and thus will not deprive the municipality or county of governmental immunity. If the park generates substantial income, the court will categorize its operation as a proprietary function, leaving the municipality or county exposed to liability for the plaintiff's injuries on the same basis as a private party.

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58. *Id.* at ____, 732 S.E.2d at 620.

59. That is, of course, unless the municipality or county has waived immunity through the purchase of liability insurance or participation in a government risk pool.

When it comes to non-maintenance activities in public parks, it is unclear when, if ever, a court will be constrained by G.S. 160A-351 to designate the specific undertaking that led to a plaintiff's injury as a governmental function. Consequently, the practical effect of *Horne* may be to return the law of governmental immunity and public parks to its pre-*Williams* state, when the availability of governmental immunity was determined pursuant to the incidental income standard articulated in *Glenn* and *Rich*.

Impact of *Williams* on Unsafe Building Claims

Governmental Immunity and Premises Liability Historically

Many lawsuits filed against cities, counties, or other units of local government allege injuries sustained in falls or similar mishaps in or around local government buildings. Such lawsuits commonly assert that the defendant municipality or county caused the injuries by negligently failing to maintain its premises in a safe condition or to warn of hidden dangers. Local governments frequently raise governmental immunity as a defense to negligence claims of this sort.

The judiciary could have taken one of several approaches to the applicability of governmental immunity to negligence claims based on unsafe building conditions. It could have ruled, for instance, that the maintenance of a local government building is always a governmental function. That approach would have dramatically narrowed the exposure of local governments to liability for unsafe premises. It also would have conflicted with the supreme court's avowed preference for restricting rather than expanding the scope of governmental immunity.[60]

The case law reveals that North Carolina's appellate courts have instead tended to tie the availability of governmental immunity as a defense in a negligent maintenance lawsuit to the purpose served by a local government building. When a building has been used for a governmental function, the courts have classified maintenance of the building as a governmental function, and governmental immunity has barred unsafe premises claims. In one case, for example, the plaintiff alleged that she was injured when a crack in the steps at the public library caused her to fall.[61] The supreme court ruled that governmental immunity barred the lawsuit because the operation of a public library is a governmental function akin to "the operation of a fire department, the operation of a fogging machine to eradicate insects, the maintenance of a police force, or the operation of public schools."[62] In another case, the court of appeals evaluated a claim that the defendant county's negligent removal of a barrier had led to the decedent's fatal fall down a stairway in the office of the register of deeds.[63] The court held that "the operation

60. Koontz v. City of Winston-Salem, 280 N.C. 513, 529–30 (1972) ("[W]e recognize merit in the modern tendency to restrict rather than to extend the application of governmental immunity. This trend is based, inter alia, on the large expansion of municipal activities, the availability of liability insurance, and the plain injustice of denying relief to an individual injured by the wrongdoing of a municipality. A corollary to the tendency of modern authorities to restrict rather than to extend the application of governmental immunity is the rule that in cases of doubtful liability application of the rule should be resolved against the municipality.")

61. Seibold v. Kinston-Lenoir Cnty. Pub. Library, 264 N.C. 360, 360 (1965) (per curiam).

62. *Id.* at 361.

63. Robinson v. Nash Cnty., 43 N.C. App. 33, 33–34 (1979).

and maintenance of a register of deeds office in a county courthouse is clearly a governmental function for which the county enjoys immunity from suit in negligence."[64]

On the other hand, when a building has been reserved for a proprietary function, the judiciary has deemed its upkeep a proprietary function and has ruled that the local government may be liable for injuries resulting from its failure to keep the premises reasonably safe. The plaintiff in one case alleged that a group of boys playing in a corridor at the city coliseum had fractured her ankle by knocking a hockey puck into it as she headed for the restroom during a hockey game.[65] She further alleged that the city had prior notice of such play by young people inside the coliseum and had not taken reasonable steps to stop it. Evidence produced at trial showed that the city had leased part of the coliseum for hockey games, though it had retained control of the corridors and other spaces used for concessions, and that the lease agreement guaranteed the city a share of box office receipts. The supreme court concluded that the operation of a municipal coliseum or arena to generate revenue from sporting events is a proprietary function and, consequently, "the liability of the city . . . . to the plaintiff for injury, due to an unsafe condition of the premises, [was] the same as that of a private person or corporation."[66]

How does *Williams* fit into this framework? In short, *Williams* provides the test a judge must now employ to evaluate whether a local government building is being used for a governmental or a proprietary undertaking. Once this initial determination has been made, the judiciary's traditional approach to unsafe premises claims against local governments will dictate whether governmental immunity bars the plaintiff's lawsuit. None of this should be understood to mean that *Williams* has not had or will not have a big impact on the exposure of local governments to liability for unsafe building conditions. In its first post-*Williams* case involving a local government building, the supreme court applied *Williams* to reach a holding that could significantly limit local government liability for injuries allegedly caused by the failure to keep buildings reasonably safe. The case posed a question the court had not yet answered: When both governmental and proprietary endeavors take place in a building, does the maintenance of that building qualify as a governmental function or a proprietary function?

Bynum v. Wilson County

In *Bynum v. Wilson County*,[67] the plaintiff, James Bynum, visited a county office building in April 2008 to pay his water bill. After leaving the water department, he fell down the building's front steps and suffered serious injuries, including paralysis in his legs and right arm. Mr. Bynum filed suit against the county, alleging that the county had negligently failed to inspect, maintain, and repair the steps.[68] He later died, allegedly due to his injuries, but the administratrix of his estate continued the lawsuit.

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64. *Id.* at 36. *See also* Irvin v. Harris, 189 N.C. 469, 471 (1925) (holding that governmental immunity barred the plaintiff's lawsuit because the city's operation of the incinerator that allegedly injured the plaintiff constituted a governmental function); Willett v. Chatham Cnty. Bd. of Educ., 176 N.C. App. 268 (2006) (holding that governmental immunity precluded the plaintiff's lawsuit over injuries sustained in a fall at a basketball game in a school gym because a public school district's administration of athletic programs for students qualifies as a governmental function).

65. Aaser v. City of Charlotte, 265 N.C. 494, 495 (1965).

66. *Id.* at 497.

67. 367 N.C. 355 (2014).

68. The lawsuit likewise alleged that the county had failed to install a required handrail and to meet the requirements of the North Carolina Building Code. *Id.* at 357.

The county asserted that governmental immunity barred the claims against it. In addition to housing the water department, the building contained the planning department, the finance department, the human resources department, the county manager's office, and the board of commissioners' meeting room. The court of appeals rejected the county's immunity argument, holding that the lawsuit was not subject to governmental immunity inasmuch as (1) the supreme court had previously ruled that a water department's sale of water for private consumption is a proprietary activity and (2) Mr. Bynum had gone to the county office building on the date of his fall to pay his water bill.[69]

All seven justices of the North Carolina Supreme Court voted to reverse the court of appeals, but for reasons explained in a concurring opinion, three of the justices did not join the majority opinion. According to the majority, the court of appeals' approach in *Bynum* would erroneously base the availability of governmental immunity on a plaintiff's reason for visiting a municipal or county facility. That standard, the majority explained, is contrary to *Williams*, "which mandates that the analysis should center upon the governmental act or service that was allegedly done in a negligent manner."[70] In *Bynum* it was not the county's operation of the water department that allegedly had inflicted injury; it was the failure to keep the building's steps in good repair. The critical question, then, was whether the county's maintenance of the building constituted a governmental or a proprietary function.

Taking the *Williams* inquiry's first two steps in reverse order, the majority reasoned that the upkeep of the building was a governmental function inasmuch as the building was used for discretionary, legislative, and public functions only the county could perform.[71] The majority also held that the General Assembly has designated as a governmental function the locating, supervising, and maintaining of county buildings that serve discretionary, legislative, or public functions. In support of this conclusion, the court cited G.S. 153A-169,[72] which directs the board of commissioners to supervise the maintenance, repair, and use of all county property.[73] Having

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69. Bynum v. Wilson Cnty., ____ N.C. App. ____, ____, 746 S.E.2d 296, 304–05 (2013). Curiously, although the court of appeals cited to *Williams* in its discussion of governmental immunity, it did not attempt to apply the case's three-step inquiry in *Bynum*.

70. *Bynum*, 367 N.C. at 359.

71. Aside from the water department, all of the operations listed in *Bynum* as housed in the office building—the planning and inspection departments, for instance—constituted governmental functions. *See, e.g.*, City of Raleigh v. Fisher, 232 N.C. 629 (1950) ("In enacting and enforcing zoning regulations, a municipality acts as a governmental agency . . . .").

72. G.S. 153A-169 provides:

> The board of commissioners shall supervise the maintenance, repair, and use of all county property. The board may issue orders and adopt by ordinance or resolution regulations concerning the use of county property, may designate and redesignate the location of any county department, office, or agency, and may designate and redesignate the site for any county building, including the courthouse. Before it may redesignate the site of the courthouse, the board of commissioners shall cause notice of its intention to do so to be published once at least four weeks before the meeting at which the redesignation is made.

The majority opinion also cites G.S. 153A-351 and G.S. 153A-352, which collectively address the authority of counties to establish inspection departments and enforce state and local laws dealing with building construction.

73. The majority opinion's use of G.S. 153A-169 warrants close attention for a couple of reasons. First, the term "governmental function" is not found in the statute. The *Bynum* majority treated G.S. 153A-169

found that the county's maintenance of the building qualified as a governmental function under the first two steps of the *Williams* inquiry, the majority did not proceed to the third step.

The *Bynum* Concurrence

The three concurring justices agreed with the result reached by the majority but felt compelled to highlight perceived problems with the majority's reasoning. Their chief worry was that the majority opinion would be interpreted to create "a categorical rule barring *any* premises liability claims against counties or municipalities for harms that occur on government property."[74] Such a rule, they argued, would be at odds with the court's many precedents demonstrating that a case-by-case inquiry is necessary to decide whether tort claims arising from unsafe property conditions are barred by governmental immunity.

Notwithstanding the concerns expressed in the concurring opinion, the *Bynum* majority pretty clearly did not intend to prohibit all premises liability claims against counties or municipalities. In the first place, the majority opinion nowhere states that the upkeep of local government property is always a governmental function. It holds that counties—and presumably other units of local government—perform a governmental function when they locate, supervise, or maintain "buildings that provide [discretionary, legislative, and public] functions."[75] A local government building devoted entirely to a proprietary function would not fall into this category. If the office building in *Bynum* had been occupied solely by the water department, there can be little doubt that the court would have classified its upkeep as a proprietary activity.

Similarly, the use of precedent in the majority opinion demonstrates that the majority did not mean to cloak all property maintenance by local governments in governmental immunity. The majority opinion approvingly cites a prior decision holding that governmental immunity protected a county from a negligence claim based on the unsafe condition of the steps at the public library.[76] In that case, as the *Bynum* majority observed, the outcome turned not merely on the county's ownership of the property but on the property's service as a public library. The majority also cited *Williams* extensively without so much as hinting that the park's status as county property automatically entitled the county in that case to governmental immunity.

Premises Liability after *Williams* and *Bynum*

Consistent with precedent, *Bynum* recognizes that when a local government building serves a governmental function, the maintenance of the building becomes a governmental function and governmental immunity may bar personal injury claims arising from an alleged failure to

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as a legislative declaration of a governmental function because of its mandatory character. The statute does not tell counties they may do something, it tells them they must do something. This interpretive approach opens the door for other statutes that lack the term "governmental function" to play a role in step one of future *Williams* inquiries.

Second, the majority's reading of the statute is noticeably restrictive. As construed by the majority, G.S. 153A-169 classifies the upkeep of county buildings devoted to legislative, discretionary, or public functions as a governmental function. On its face, however, the statute applies to all county buildings. The majority appears to have interpreted the statute narrowly in *Bynum* to avoid the conclusion that a county undertakes a governmental function whenever it maintains or repairs a county building, including one dedicated exclusively to proprietary functions.

74. *Bynum*, 367 N.C. at 361 (Martin, J., concurring) (emphasis in original).

75. *Id.* at 360.

76. *Id.* at 360 (citing Seibold v. Kinston-Lenoir Cnty. Pub. Library, 264 N.C. 360, 361 (1965)).

maintain the premises in a reasonably safe condition. The *Bynum* decision extends this precedent by clarifying that henceforth a court must employ the *Williams* inquiry to determine whether an activity undertaken in a local government building is governmental or proprietary. It also establishes that when a building houses both governmental and proprietary functions, the upkeep of the building will generally be deemed a governmental function, regardless of why a plaintiff was there.

An important question left unanswered in *Bynum* is whether the outcome would have been different if most of the activities in the building had been proprietary rather than governmental in nature. To use an extreme example, could a municipality transform the maintenance of a building occupied solely by its water department into a governmental function simply by giving one of its housing inspectors an office in the back of the building? Probably not. The *Bynum* majority went to the trouble of listing the many departments housed in the county's office building, all but one of which typically perform governmental functions. The implication seems to be that the court might have reached a different result had the building been used overwhelmingly for proprietary undertakings.

Conclusion

As applied by the North Carolina Court of Appeals, *Estate of Williams v. Pasquotank County* probably will not alter in any material way the potential liability of municipalities and counties for injuries allegedly caused by unsafe conditions at public parks. The income generated by a park, not the legislature's classification of park operations as a governmental function, will continue to play the biggest role in determinations about the availability of governmental immunity as a defense in park cases. That being said, the North Carolina Supreme Court's application of the *Williams* inquiry has made governmental immunity a viable defense against negligent maintenance claims involving local government buildings used for both governmental and proprietary functions. Any local government that houses governmental and proprietary undertakings in the same building is a potential beneficiary of that ruling.

The second bulletin in this series will examine how *Williams* has affected the liability of local governments for contract-related claims. Drawing in part on some of the cases discussed here, it will also consider the impact of *Williams* on the ability of local governments to obtain dismissals during the early stages of litigation.