N.C. Journal
ISSUES, EVENTS, AND DEVELOPMENTS OF CURRENT INTEREST TO STATE AND LOCAL GOVERNMENT

Counties Not Liable for Injuries Sustained in Criminal Attacks in Courthouses

Recently the North Carolina Supreme Court decided Wood v. Guilford County, 355 N.C. 161, 558 S.E. 2d 490 (2002), which addresses a county's liability when a person is injured at a courthouse by the criminal act of another person. The *Wood* decision elaborates on the responsibilities of the state and local governments in providing security for courthouses and related judicial facilities. These responsibilities were described in an article published in the Summer 1999 issue of *Popular Government*.

In *Wood* an employee of the clerk of superior court was assaulted in a courthouse restroom. The assailant was captured, tried, and convicted for the assault. The employee sued the county and the private security firm with which the county had contracted to provide security for the courthouse, for negligence in failing to protect her adequately from the assault.

Guilford County denied that it was liable for the employee's injury, giving several possible legal defenses. The trial court refused to dismiss the case at the pretrial stage and ruled that the case should proceed to trial to determine the facts in the case. The county appealed the decision. Ultimately the North Carolina Supreme Court decided the case in favor of the county.

The supreme court held that the public duty doctrine applied to this situation. Therefore the county was not liable to the injured employee for its alleged failure to protect her from the assailant. The public duty doctrine is complicated and applies in different ways to state governments and local governments, so a complete discussion of it is beyond the scope of this update. For local governments it provides that counties offering police protection have a general duty to protect the public but do not have a special duty (for which they may be held liable if they fail to perform the duty) to protect each person from the criminal behavior of others. The doctrine "acknowledges the limited resources of law enforcement and refuses to impose, by judicial means, an overwhelming burden on local governments for failure to prevent every criminal act" (*Wood*, 355 N.C. at 166, 558 S.E. 2d at 495).

Wood establishes two important principles in determining a county's liability for this kind of injury in a courthouse. It makes clear that providing court security services is part of the county's police protection function. That clarification is important because the public duty doctrine shields a local government from liability for negligence when it is providing police services. When the North Carolina Court of Appeals heard the *Wood* case, it held that, in providing security services for courts, a local government is not providing a police function but is acting as the owner and operator of a building and may be liable if it provides inadequate security. The court of appeals reiterated that principle in Doe v. Jenkins, 144 N.C. App. 131, 547 S.E.2d 124 (2001). The supreme court in *Wood* reversed the court of appeals, so *Doe*, which is inconsistent with the supreme court's opinion in *Wood*, is no longer a correct statement of the law.

The supreme court's decision in *Wood* also makes clear that a county may receive the benefit of the public duty doctrine when it contracts with a private entity to provide police services, instead of providing the services directly. The court did not decide whether the private firm might be liable, because that issue was not raised in the appeal.

A county has a responsibility to provide a secure environment in local court facilities, but as *Wood* indicates, the recourse for people injured by criminal attacks in a courthouse is not likely to come through the imposition of liability on a county for its negligence in failing to prevent their injuries.

For more information about the impact of this decision, contact James Drennan at (919) 966-4160 or drennan@iogmail.iog.unc.edu.

Former M.P.A. Program Director Lauded for Accomplishments

Accolades for Deil S. Wright, a professor of political science at UNC Chapel Hill and a former director of the university's Master of Public Administration (M.P.A.) Program, mounted as the twentieth century ended and the twenty-first began. In 1999 he received two prestigious awards from the American Society for Public Administration, and in 2001 the UNC Chapel Hill M.P.A. Alumni Association honored him for his career and service. A former student of Wright's, Brendan Burke, pays tribute to him in a Web Supplement to this issue of *Popular Government*, available at http://ncinfo.iog.unc.edu/pubs/electronicversions/pg/pgsum02/wright.pdf.

October 2002 Deadline for HIPAA Compliance Plans

State and local government agencies subject to HIPAA should take note: the first HIPAA compliance deadline is fast approaching.

HIPAA, which is short for the Health Insurance Portability and Accountability Act of 1996, directed the U.S. Department of Health and Human Services (DHHS) to develop several "Administrative Simplification" regulations to standardize electronic transmission of health care information. A few of these regulations have become law, including those relating to privacy of medical information and transmission of electronic transactions and code sets. An example of a "transaction" is the filing of an insurance claim on behalf of a patient. A "code set" may include, for example, the patient's diagnosis that appears on the insurance claim. The deadline for complying with the Transactions and Code Sets regulations is October 16, 2002, unless a regulated entity obtains a one-year extension by filing a compliance plan.

The Transactions and Code Sets regulations are expected in the long run to reduce administrative costs related to health care by requiring that all the major players in the health care industry speak the same language when communicating electronically. Entities regulated by HIPAA—including many state and local government agencies, such as state-operated psychiatric hospitals, local health departments, mental health area authorities, and emergency medical services agencies—were initially required to comply with the Transactions and Code Sets regulations by October 16. Last winter, however, Congress passed a law permitting all regulated entities to request a one-year extension.

To take advantage of the one-year extension, entities must submit a compliance plan to DHHS by October 16. The plan must include answers to several specific questions about the entities' progress in implementing the regulations. Information about the requirements for compliance plans, including a link for filing a plan electronically, is available at www.cms.hhs.gov/hipaa/hipaa2/ASCAForm.asp. For more information on filing a compliance plan or on the HIPAA privacy regulations generally, contact Aimee Wall at (919) 843-4957 or wall@iogmail.iog.unc.edu. Information on the HIPAA privacy regulations also is available at www.medicalprivacy.unc.edu.

S.G. Journal