

## GOVERNMENTAL IMMUNITY IN NORTH CAROLINA

Appellate Training: New & Emerging Legal Issues  
North Carolina Judicial Center  
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## Governmental Immunity

“A municipal corporation is **not liable to an action for damages** either for the non-exercise of, or for the manner in which in good faith, it exercises discretionary powers of a public or legislative character.”

*Hill v. Aldermen of City of Charlotte*, 72 N.C. 55, 57 (1875)

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## Origins in Sovereign Immunity

“In feudal England the monarchy was sovereign and **could not be liable for damage** to its subjects. This was based on the theory that ‘the king could do no wrong.’”

*Steelman v. City of New Bern*, 279 N.C. 589, 592 (1971)

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## Origins in Sovereign Immunity

“Governmental immunity is that **portion of the State’s sovereign immunity** which extends to local governments.”

*Wray v. City of Greensboro*, 370 N.C. 41, 47 (2017)

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## Entities Covered by Governmental Immunity

- Municipalities
- Counties
- Boards of Education
- Other Local Governmental Units and Authorities

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## Governmental Immunity for Claims Against Government Officials

“In North Carolina, governmental immunity serves to protect a municipality, as well as its **officers or employees who are sued in their official capacity**, from suits arising from torts committed while the officers or employees are performing a governmental function.”

*Schlossberg v. Goins*, 141 N.C. App. 436, 439 (2000)

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## Scope of Governmental Immunity

“The doctrine of sovereign immunity cannot stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights. It would indeed be a fanciful gesture to say . . . that individuals whose **constitutional rights** have been violated by the State cannot sue because of the doctrine of sovereign immunity.”

*Corum v. Univ. of N. Carolina Through Bd. of Governors*, 330 N.C. 761, 785-86 (1992)

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## Scope of Governmental Immunity

“The liability of cities and towns for the negligence of their officers or agents depends upon the **nature of the power that the corporation is exercising** when the damage complained of is sustained.”

*Moffit v. City of Asheville*, 103 N.C. 237 (1889)

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## Governmental vs. Proprietary

“Any activity of the municipality which is **discretionary, political, legislative, or public in nature and performed for the public good** in behalf of the State rather than for itself comes within the class of governmental functions. When, however, the activity is **commercial or chiefly for the private advantage** of the compact community, it is private or proprietary.”

*Britt v. City of Wilmington*, 236 N.C. 446, 450 (1952)

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## Scope of Sovereign Immunity

“The **State has absolute immunity** in tort actions without regard to whether it is performing a governmental or proprietary function except insofar as it has consented to be sued or otherwise expressly waived its immunity. Claims for tort liability are allowed only by virtue of the express waiver of the State's immunity.”

*Guthrie v. N. Carolina State Ports Auth.*, 307 N.C. 522, 534-35 (1983)

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## Distinguishing Governmental vs. Proprietary Functions

“[T]he **threshold inquiry** in determining whether a function is proprietary or governmental is whether, and to what degree, the **legislature** has addressed the issue.”

*Estate of Williams ex rel. Overton v. Pasquotank Cty. Parks & Recreation Dep't*, 366 N.C. 195, 200 (2012)

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## Distinguishing Governmental vs. Proprietary Functions

“[W]hen an activity has not been designated as governmental or proprietary by the legislature, that activity is necessarily governmental in nature **when it can only be provided by a governmental agency** or instrumentality.”

*Estate of Williams ex rel. Overton v. Pasquotank Cty. Parks & Recreation Dep't*, 366 N.C. 195, 202 (2012)

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## Distinguishing Governmental vs. Proprietary Functions

“[W]hen the particular service can be performed both privately and publicly, the inquiry involves consideration of **a number of additional factors**, of which no single factor is dispositive.”

*Estate of Williams ex rel. Overton v. Pasquotank Cty. Parks & Recreation Dep’t*, 366 N.C. 195, 202 (2012)

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## Waiver of Governmental Immunity

“Under the doctrine of governmental immunity, a county is immune from suit for the negligence of its employees in the exercise of governmental functions **absent waiver of immunity**.”

*Meyer v. Walls*, 347 N.C. 97, 104 (1997)

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## Waiver of Governmental Immunity

“In the absence of **statutory authority** a municipality has no power to waive its governmental immunity.”

*Galligan v. Town of Chapel Hill*, 276 N.C. 172, 175 (1970)

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## Statutory Authority to Waive Governmental Immunity

- Counties: N.C.G.S. § 153A-435. Liability insurance; damage suits against a county involving governmental functions.
- Cities: N.C.G.S. § 160A-485. Waiver of immunity through insurance purchase.
- School Boards: N.C.G.S. § 115C-42. Liability insurance and immunity.

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## Waiver of Governmental Immunity by Purchase of Insurance

“A county may [waive governmental] immunity through the **purchase of liability insurance**. However, immunity is waived only to the extent that the county is indemnified by the insurance contract from liability for the acts alleged.”

*Dawes v. Nash Cty.*, 357 N.C. 442, 446 (2003) (cleaned up)

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## Waiver of Governmental Immunity by Purchase of Insurance

“A governmental entity does not waive sovereign immunity if the action brought against them is **excluded from coverage** under their insurance policy.”

*Patrick v. Wake Cty. Dep’t of Human Servs.*, 188 N.C. App. 592, 596 (2008)

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## Waiver of Immunity is Strictly Construed

“Waiver of sovereign immunity may not be lightly inferred and State statutes waiving this immunity, being in derogation of the sovereign right to immunity, must be **strictly construed**.”

*Guthrie v. N. Carolina State Ports Auth.*, 307 N.C. 522, 537-38, (1983)

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## Waiver of Governmental Immunity by Entering a Valid Contract

“A State or local government [waives] immunity when it **enters into a valid contract**, to the extent of that contract.”

*Wray v. City of Greensboro*, 370 N.C. 41, 47 (2017)

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## Waiver of Governmental Immunity by Entering a Valid Contract

"[W]here the entity enters into a valid contract, the entity 'implicitly **consents to be sued** for damages on the contract in the event it breaches the contract.'"

*Data Gen. Corp. v. Cty. of Durham*, 143 N.C. App. 97, 100 (2001)

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## Waiver of Governmental Immunity by Entering a Valid Contract

"A **contract implied in law**—as opposed to an express valid contract—simply will not form a sufficient basis for a court to make a reasonable inference that the State has intended to waive its sovereign immunity."

*Whitfield v. Gilchrist*, 348 N.C. 39, 45 (1998)

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## Pleading Governmental Immunity

"In order to overcome a defense of governmental immunity, the complaint **must specifically allege a waiver** of governmental immunity. . . . Absent such an allegation, the complaint fails to state a cause of action."

*Paquette v. Cty. of Durham*, 155 N.C. App. 415, 418 (2002)

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## Governmental Immunity as a Substantial Right

"An interlocutory appeal from an order addressing a governmental entity's immunity claim is **immediately appealable** because immunity represents a substantial right."

*Providence Volunteer Fire Dep't, Inc. v. Town of Weddington*, 382 N.C. 199, 209, 2022-NCSC-100, ¶ 12 (cleaned up)

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## Personal or Subject Matter Jurisdiction?

In *Teachy v. Coble Dairies, Inc.*, “the Court considered, but **did not decide**, whether sovereign immunity is a matter of personal or subject matter jurisdiction.”

*Myers v. McGrady*, 360 N.C. 460, 465 n2 (2006)

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## Personal or Subject Matter Jurisdiction?

“[W]hen a defendant raises the issue of sovereign immunity under Rule 12(b)(1) of the Rules of Civil Procedure, a denial of that motion is **not immediately appealable**.”

*Murray v. Univ. of N. Carolina at Chapel Hill*, 246 N.C. App. 86, 87 (2016), *aff'd*, 369 N.C. 585 (2017) (per curiam)

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## QUESTIONS?

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