IMMUNITY OF LOCAL GOVERNMENTS AND GOVERNMENT PERSONNEL FROM LAWSUITS IN NORTH CAROLINA

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This paper summarizes immunity defenses that protect local governments from lawsuits. It also describes some of the immunity defenses that can shield public officials or employees from legal claims made directly against them.

Sovereign Immunity v. Governmental Immunity.

As a general rule, the state is immune from most kinds of lawsuits unless it consents to be sued. This immunity from suit is referred to as sovereign immunity.[1] Governmental immunity is generally understood to be that limited portion of the state's sovereign immunity which extends to local governments. Both forms of immunity derive from the English concept that, as creator of the law, the "king could do no wrong." See Estate of Williams v. Pasquotank County Parks & Recreation Dep't, 366 N.C. 195, 198 (2012); Corum v. Univ. of North Carolina, 330 N.C. 761, 785 (1992).

Claims Not Barred by Governmental Immunity

Contract Claims

Governmental immunity is not a defense to a claim for breach of a *valid* contract; by entering such a contract a local government waives immunity and consents to be sued for damages for breach of its contractual obligations. See Smith v. State, 289 N.C. 303, 320 (1976). If a contract turns out to be invalid, immunity may prohibit the injured party from recovering damages for the government's alleged failure to honor the contract. Thus, governmental immunity barred a plaintiff from recovering

[1] The state has waived its immunity against tort claims to the extent provided by the North Carolina Tort Claims Act ("TCA" or "Act"). The TCA permits recovery 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. There is 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. Claims brought under the TCA are heard by the North Carolina Industrial Commission. See Guthrie v. North Carolina Ports Auth., 307 N.C. 522, 536 (1983).

The state has waived sovereign immunity by statute in other contexts. Section 97-7 of the General Statutes, for instance, subjects the state and its political subdivisions to workers' compensation claims.

for unpaid work on a fire truck because the plaintiff's agreement with the defendant municipality did not include the preaudit certification required for a valid contract under G.S. 159-28. M Series Rebuild, LLC, v. Town of Mount Pleasant, ____ N.C. App. ____, ____, 730 S.E.2d 254, 260 (2012).

Claims for Violations of the North Carolina Constitution

Governmental immunity will not protect a local government from liability for violating an individual's rights under the North Carolina Constitution; however, a plaintiff may not pursue a state constitutional claim when another adequate legal remedy is available. Corum v. Univ. of North Carolina, 330 N.C. 761, 782 (1992). Typically, the adequate alternative remedy is some kind of tort claim.[2] For example, the availability of a tort claim for false imprisonment prevented a plaintiff from pursuing a claim that she was wrongfully imprisoned in violation of the state constitution. Davis v. Town of Southern Pines, 116 N.C. App. 663, 675-76 (1994).

Claims Arising Under Federal Law

Governmental immunity is not a defense when a plaintiff alleges that the local government has violated the plaintiff's rights under the United States Constitution. A local government may be held liable for such violations if its official policies or customs were the "moving force" behind the violation. Milligan v. City of Newport News, 743 F.2d 227, 230 (4th Cir.1984). Local government officers and employees may face personal liability for violating the federal constitutional rights of others. Legislative or judicial immunity – discussed below – may shield public officials sued individually from liability based on legislative, judicial, or quasi-judicial acts. Additionally, government personnel may have a qualified immunity/good faith defense against federal constitutional claims unless they knew or should have known that their conduct violated clearly established rights.

Local governments are subject to suit under a number of federal antidiscrimination laws, including – but by no means limited to – Title VII of the Civil Rights Act of 1964, which bans employment discrimination based on race, color, religion, sex, or national origin. See 42 U.S.C. 2000e et seq. Whether government personnel may be held personally liable for violations of federal antidiscrimination laws depends on the specific provisions of the particular law at issue.

Governmental Immunity for Tort Claims Against Local Governments

[2] A "tort" is wrongful conduct – other than a breach of contract -- for which a victim may be entitled to recover money damages in a legal action. Common tort claims include negligence, trespass, assault, battery, and false imprisonment.

Governmental immunity bars tort claims against local governments for injuries caused by their employees or agents acting within the scope of their duties in the performance of governmental functions. It does not protect a local government from tort claims arising from the performance of proprietary functions.

Much of the case law involving governmental immunity focuses on whether (1) the employee who caused the injury was acting within the scope of the employee's duties and (2) whether the activity in which the employee was engaged was governmental or proprietary.

Scope of Employment

Local governments are not liable for the torts of employees acting beyond the scope of their duties. Accordingly, if an employee exceeded the scope of the employee's duties in causing a plaintiff's injury, there is no need to analyze whether the activity was governmental or proprietary.

An employee's duties include those formally prescribed, as well as the employee's actual or customary duties. Even when an employer did not expressly authorize the specific act in question, courts will usually find that an employee acted within the scope of the employee's duties if the action furthered the employer's business. Put differently, employees do not act within the scope of their duties when they act for wholly personal reasons. For example, a town employee exceeded the scope of his duties when he took a town vehicle on a "pleasure trip" that resulted in the death of one of his passengers. Rogers v. Town of Black Mountain, 224 N.C. 119, 122 (1944).

Although employers are typically not liable for the intentional misconduct of their employees, it is possible for an employee to commit an intentional tort within the scope of the employee's duties. Thus, it was for a jury to decide whether a sanitation worker was acting in furtherance of the city's business when he assaulted the plaintiff at her residence after she asked him to collect additional garbage. Edwards v. Akion, 52 N.C. App. 688, 698 (1981). Similarly, the manager of a municipal water company acted in furtherance of the city's business when he repeatedly struck a patron who paid a portion of his water bill in pennies. Munick v. City of Durham, 181 N.C. 188, 196 (1921).

An employer will be liable for an employee's intentional misconduct if it expressly authorized the wrongdoing before-the-fact or approved it after-the-fact. This principle has led to the conclusion that an employer may be liable for one employee's sexual harassment of another if the employer fails to take appropriate steps upon being informed of the problem. Hogan v. Forsyth Country Club Co., 79 N.C. App. 483, 492-93 (1986).

Governmental v. Proprietary Functions

Assuming the employee who inflicted a plaintiff's injuries acted within the scope of the employee's duties, the local government is liable for the plaintiff's injuries if the activity in which its employee was engaged was a proprietary function. If the activity was a governmental function, governmental immunity will bar the plaintiff's tort claim unless the local government has waived its immunity from suit as described below. Steelman v. City of New Bern, 279 N.C. 589, 592-93 (1971).

Determining whether an activity is a governmental or proprietary function is difficult, and the court decisions are not always consistent. Koontz v. City of Winston-Salem, 280 N.C. 513, 528 (1972) ("[A]pplication of [the distinction between governmental and proprietary functions] to given factual situations has resulted in irreconcilable splits of authority and confusion as to what functions are governmental and what functions are proprietary.").

Proprietary functions include those activities which are not traditionally performed by government agencies. They tend to be activities which also are performed by the private sector, which benefit a definable category of individuals rather than the general public, and involve fees that do more than cover the cost of the activity. Operation of a golf course has been considered a proprietary function, for example. Lowe v. City of Gastonia, 211 N.C. 564, 566 (1937). In Sides operation of a hospital was deemed a proprietary function. 287 N.C. at 25-26. The court classified the operation of a civic center as a proprietary function in Aaser v. City of Charlotte, 265 N.C. 494, 497 (1965).

Governmental functions are those performed by governmental bodies for the benefit of the public at large. Examples of activities deemed to be governmental functions include the operation of traffic lights, Hamilton v. Town of Hamlet, 238 N.C. 741, 742 (1953), and garbage collection, James v. City of Charlotte, 183 N.C. 630, 632-33 (1922); Broome v. City of Charlotte, 208 N.C. 729, 731 (1935). A 911 call center is a governmental function. Wright v. Gaston County, 205 N.C. App. 600, 605-06 (2010). The courts have also described governmental functions as activities which are "discretionary, political, legislative, or public in nature." Britt v. City of Wilmington, 236 N.C. 446, 450 (1952). A city council's decision to construct a sewer system, for instance, is a governmental function. See Town of Sandy Creek v. East Coast Contracting, Inc., ___ N.C. App. ___, ___, 741 S.E.2d 673, 675 (2013).

Undertakings generally classified as governmental functions may have proprietary components and vice versa. Thus, although garbage collection within a city's territorial limits has been classified as a

governmental function, the collection of garbage beyond those limits for a fee is a proprietary function. Koontz v. City of Winston-Salem, 280 N.C. 513, 529-30 (1972). Selling water from a municipal or county-owned water system for private consumption is a proprietary function, but a local government acts in a governmental capacity when it supplies water for extinguishing fires. Bynum v. Wilson County, ___ N.C. App. ___, ___, No. COA12–779, 2013 WL 2991049, *10 (N.C. App. June 18, 2013). Likewise, while the decision to construct a sewer system is a governmental function, a city acts in a proprietary capacity when it contracts with engineering and construction companies to build such a system. Town of Sandy Creek, ___ N.C. App. at ___, 741 S.E.2d at 677.

Special Rule for Injuries on Government Property

When a plaintiff complains of an injury that occurred on local government property, the purpose of the plaintiff's visit determines which activity must be classified as proprietary or governmental. In Bynum the county argued that governmental immunity barred claims arising from the decedent's fall inside a building leased by the county because the operation of a county office building is a governmental function. The court held that governmental immunity did not preclude the claims inasmuch as (1) the decedent had visited the building to pay his water bill and (2) the operation of a county water system for private consumption is a proprietary function. Bynum, ___ N.C. App. at ___, 2013 WL 2991049, at *7-9.

Analytical Framework

The mere fact that an activity has been labeled as governmental or proprietary in a prior case is not necessarily dispositive. "[D]istinctions between governmental and proprietary functions are fluid and courts must be advertent to changes in practice." Estate of Williams v. Pasquotank County Parks & Recreation Dep't, 366 N.C. 195, 203 (2012).

In Williams, the North Carolina Supreme Court established the following framework for analyzing whether a particular activity is a proprietary or governmental function:

- The threshold inquiry is whether, and if so to what degree, the legislature has designated the specific activity that led to the plaintiff's injury as a governmental or proprietary function.
- If the legislature has not definitively described the specific activity as governmental or proprietary, the next question is whether the undertaking is one in which only a governmental agency could engage. If the undertaking is something only a government could do, it is a governmental function.
- If further analysis is required, the court should consider:

- O Whether the service is one traditionally provided by a governmental entity;
- O Whether a substantial fee was charged for the service; and
- O Whether the fee did more than cover the operating costs of the service provider. 366 N.C. at 200-03.

The bottom line: Absent a legislative pronouncement declaring a particular activity to be a governmental function, the more the activity appears to be intended to raise revenue, the more likely it is that the activity is proprietary. Thus, while a municipality's operation of a free public park has been characterized as a governmental function, the use of parks to generate revenue can render their operation a proprietary function. Horne v. Town of Blowing Rock, ____ N.C. App. ____, ___, 732 S.E.2d 614, 620 (2012).

Waiver of Immunity from Liability for a Governmental Function

Governmental immunity can be waived, but waiver of immunity is not to be lightly inferred, and statutes waiving immunity are to be strictly construed. Guthrie v. North Carolina State Ports Auth., 307 N.C. 522, 537-38 (1983).

By statute, boards of county commissioners, city councils and local school boards waive governmental immunity by the purchase of liability insurance, but only to the extent of coverage. G.S. 153A-435 (for counties); G.S. 160A-485 (for cities); G.S. 115C-42 (for school boards). For instance, if a 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. Similarly, if a county's insurance policy covers a particular type of negligence claim but only up to $50,000, the most a plaintiff may recover is $50,000.[3]

For counties and cities, participation in a governmental risk pool is considered the purchase of insurance and constitutes waiver of governmental immunity up to the amount of coverage. A governmental risk pool is defined by the insurance statutes and requires that more than one governmental unit participate and share risk. Lyles v. City of Charlotte, 344 N.C. 676, 680 (1996).

The statute governing school boards is worded differently than the statutes for counties and cities, and participation in the North Carolina

[3]A separate statute, G.S. 160A-485.5 allows cities with a population of 500,000 or more — only Charlotte qualifies — to waive immunity and become subject to the TCA. Claims are heard in the local superior court rather than at the Industrial Commission. Charlotte has elected to use the G.S. 160A-485.5 option.

School Boards Trust or a governmental risk pool is not considered a waiver of a school board's immunity. Hallman v. Charlotte-Mecklenburg Bd. of Educ., 124 N.C. App. 435, 438 (1996).

Local governments often purchase supplemental insurance, and the outcome of cases in which waiver of immunity is alleged often depends on a close reading of the wording of several policies and the limits of their coverage. See, e.g., Fulford v. Jenkins, 195 N.C. App. 402, 407-08 (2009) (agreeing the defendant county's general liability policy did not waive immunity as to the plaintiffs' claims but holding that the professional liability coverage purchased by the county amounted to a waiver of immunity).

Dobrowolska Claims

If a local government has governmental immunity for a tort claim, and has not waived its immunity by the purchase of insurance, but arbitrarily settles some such claims and not others, the local government may be liable for denial of the constitutional rights of due process and equal protection. Dobrowolska ex rel. Dobrowolska v. Wall, 138 N.C. App. 1, 18-19 (2000).

Punitive Damages

Punitive damages are not allowed against a governmental body unless specifically authorized by statute.[4] Jackson v. Hous. Auth. of City of High Point, 316 N.C. 259, 262 (1986); Long v. City of Charlotte, 306 N.C. 187, 208 (1982).

Public Duty Doctrine

The public duty doctrine says that, even when a governmental body has undertaken to protect the public at large, it has no legal duty to prevent harm to specific individuals. When a claim is barred by the public duty doctrine, there is

[4] Punitive damages are distinct from compensatory damages, which may be awarded against local governments when governmental immunity does not shield them from liability for personal injuries or property damage. Compensatory damages are intended to restore a plaintiff to the position he or she was in before the defendant's wrongful conduct. A court calculates compensatory damages based on the actual harm done to the plaintiff.

Punitive damages are intended to punish a defendant and to deter the defendant and others from committing similar wrongful acts in the future. They may not be awarded unless the plaintiff proves that the defendant's actions involved fraud, malice, or willful or wanton conduct. G.S. 1D-15. State law caps punitive damages at $250,000 or three times the amount of compensatory damages, whichever is greater. G.S. 1D-25.

no need to determine whether immunity applies because, in the absence of a duty of care, the plaintiff lacks a valid negligence claim.[5]

Although state agencies performing a variety of functions may invoke the public duty doctrine to avoid liability, at the local level the public duty doctrine applies only to claims made against law enforcement agencies for negligence in failing to protect individuals from harm by third parties. Lovelace v. City of Shelby, 351 N.C. 458, 460-61 (2000). Earlier cases extending the public duty doctrine to fire protection, animal control, building inspections, and other local services were overruled by Lovelace. Hargrove v. Billings & Garrett, Inc., 137 N.C. App. 759, 761-62 (2000); Willis v. Town of Beaufort, 143 N.C. App. 106, 110 (2001). In Wood v. Guilford County, 355 N.C. 161 (2002), however, the court held that the public duty doctrine barred the plaintiff from suing the county over the failure of private security guards to protect her from assault in the courthouse. Although the guards were not sworn officers in a law enforcement department, they were performing a functionally equivalent service. Wood, 355 N.C. at 167-69.

An exception to the public duty doctrine, giving rise to liability, is when the law enforcement agency has made an actual promise to protect an individual or when a special relationship has been created in which such protection is expected, as in the case of a police informant. See Multiple Claimants v. NC Dep't of Health and Human Servs., Div. of Facility Servs., Jails and Detention Servs., 361 N.C. 372, 374 (2007).

A local agency may be serving as an agent of the state in performance of a particular function and be entitled to protection of the public duty doctrine for that specific activity. For example, a county health department is an agent of the state's Department of Environment and Natural Resources for inspection of wastewater treatment systems and thus is protected by the public duty doctrine for that activity. Murray v. County of Person, 191 N.C. App. 575, 578 (2008).

Even with respect to law enforcement, the public duty doctrine is limited in scope. It is a barrier to lawsuits for failure of the law enforcement agency to protect the plaintiff from harm by third parties, but not a barrier to lawsuits for harm caused directly by the agency. It is a barrier to liability for negligence claims, but does not bar liability for intentional torts. It is a barrier to liability for discretionary actions that involve the active weighing of safety interests, but does not bar lawsuits based on failure to comply with mandatory, ministerial requirements. Smith v. Jackson County Bd. of Educ., 168 N.C. App. 452, 461 (2005).

[5] "Negligence is the failure to exercise the degree of care that a reasonable and prudent person would exercise under similar conditions." Anita R. Brown-Graham, A Practical Guide to the Liability of North Carolina Cities and Counties 2-3 (1999). To prove a negligence claim, a plaintiff must show (1) the defendant owed the plaintiff a duty of reasonable care, (2) the defendant breached that duty, (3) the defendant's breach caused the plaintiff's injury, and (4) the plaintiff suffered injury as the result of the defendant's breach. Gibson v. Ussery, 196 N.C .App. 140, 143 (2009).

The public duty doctrine provides protection from lawsuits for governmental bodies and for officers sued in their official capacity. It does not prohibit a lawsuit against someone in that person's individual capacity. Murray, 191 N.C. App. at 579.

Claims Under State Law Against an Individual Public Official or Employee.

Public officials and employees may be sued in their official or individual capacities. An official capacity claim is really nothing more than a claim against the governmental body, and the governmental body, not the official or employee, is on the hook for any damages awarded. Governmental immunity bars an official capacity claim to the same extent it would bar the claim if the governmental body were named as the defendant. See Mullis v. Sechrest, 347 N.C. 548, 554-55 (1998) (holding the plaintiffs' claims against the defendant in his official capacity were barred by governmental immunity).

An individual capacity claim seeks damages from the public official or employee personally. Williams v. Holsclaw, 128 N.C. App. 205, 208-09 (1998). While governmental immunity does not protect public officers or employees from individual capacity claims, they may be shielded by other immunities, several of which are described below.

> The courts presume that a public officer or employee is sued in an official capacity. If a plaintiff intends to allege an individual capacity claim, the complaint should reflect this intention in the caption, allegations, or relief sought. The failure to specify whether the action is in the person's official or individual capacity will result in its being treated as an official capacity claim. White v. Trew, 366 N.C. 360, 364 (2013).

It is common for lawsuits to contain both official and individual capacity claims. See, e.g., Boyd v. Robeson County, 169 N.C. App. 460 (2005) (including claims against numerous local officials in their official and individual capacities).

Public Official Immunity

> Public official immunity bars civil claims against public officials for actions requiring the exercise or judgment and discretion taken within the scope of their duties, unless those actions were malicious or corrupt. Epps v. Duke Univ., 122 N.C. App. 198, 204 (1996). This immunity does not extend to public employees, who may be held personally liable for injuries caused by negligence in the performance of their duties. Baker v. Smith, ___ N.C. App. ___, ___ (2012).
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> Much of the litigation concerning public official immunity is devoted to distinguishing public officials from public employees. Generally public

officials occupy offices created by statute, take an oath of office, and exercise discretion in the performance of their duties. Gunter v. Anders, 114 N.C. App. 61, 67 171 (1994); Pigott v. City of Wilmington, 50 N.C. App. 401, 403-04 (1981). Public employees, on the other hand, perform ministerial functions involving little or no discretion. Meyer v. Walls, 347 N.C. 97, 113 (1997).

Elected board members are public officials, Town of Old Fort v. Harmon, 219 N.C. 241, 244 (1941); as are chiefs of police and police officers, State v. Hord, 264 N.C. 149, 155 (1965); sheriffs and their deputies, Messick v. Catawba County, 110 N.C. App. 707, 718 (1993); the county director of social services, Hare v. Butler, 99 N.C. App. 693, 700 (1990); the chief building inspector, Pigott, 50 N.C. App. at 404-05; superintendents and principals, Gunter, 114 N.C. App. at 67-68; and jailors and assistant jailors, Baker v. Smith, ____ N.C. App. ____, ____, 737 S.E.2d 144, 151-52 (2012).

Teachers are public employees, not public officials, and therefore are not entitled to public official immunity, Mullis v. Sechrest, 126 N.C. App 91, 98 (1997), rev'd on other grounds, 347 N.C. 548 (1998); Daniel v. City of Morganton, 125 N.C. App. 47, 55 (1997). Other examples of public employees include street sweepers, Miller v. Jones, 224 N.C. 783, 787 (1945); and emergency medical technicians, Fraley v. Griffin, ____ N.C. App. ____, 720 S.E.2d 694, 697 (2011).

Social workers can be either public officials or public employees, depending on the context. Whether a social worker qualifies as a public official turns on (1) the degree of discretion exercised by the social worker and (2) whether the social worker is functioning as the DSS director's representative in a matter delegated to the director by statute. Public official immunity protected a social worker in one case from liability for allegedly conducting an inadequate investigation into reports of infant neglect because DSS directors have a statutory duty to investigate cases of abuse and neglect. Hunter v. Transylvania County Dep't of Soc. Servs., 207 N.C. App. 735, 740 (2010). Inasmuch as DSS directors have no comparable duty regarding incompetent adults, public official immunity did not shield social workers in another case from negligence claims arising from the suicide of a mentally incompetent person placed under the legal guardianship of the county DSS. Id.

Absolute Immunity for Legislators and Judges

Legislative Immunity

Like members of the General Assembly, local elected officials enjoy absolute immunity from claims arising from their actions so long as

(1) they were acting in a legislative capacity at the time of the incident resulting in the alleged injury and (2) their acts were not illegal. Vereen v. Holden, 121 N.C. App. 779, 782 (1996); Scott v. Greenville County, 716 F.2d 1409, 1422 (4th Cir. 1983). The decision of a city council to eliminate a department for budgetary reasons is a legislative act, regardless of the specific intent of particular council members, and the employees who lose their jobs because of the decision have no cause of action against individual council members. See Bogan v. Scott-Harris, 523 U.S. 44, 54 (1998) ("Whether an act is legislative turns on the nature of the act, rather than on the motive or intent of the official performing it."); Vereen, 121 N.C. App. at 783 ("[E]liminating a position for budgetary reasons has generally been found to be legislative. . . .").

Legislative immunity does not extend to administrative acts by elected officials. Administrative acts include employment decisions such as whether to hire or fire particular employees. Vereen, 121 N.C. App. at 783.

Legislative immunity includes a testimonial privilege. For this reason, a mayor and members of a city council could not be compelled to testify about their personal motives for certain zoning decisions. Novak v. City of High Point, 159 N.C. App. 229, *6 (2003) (unpublished).

Judicial Immunity

Judges are not liable in civil actions for their judicial acts, even when done maliciously and corruptly. Cunningham v. Dilliard, 20 N.C. 485 (1839); State ex rel. Jacobs v. Sherard, 36 N.C. App. 60, 64 (1978). The immunity applies even when the judge acts in excess of jurisdiction, but there is no immunity when the judge acts in the clear absence of all jurisdiction. Stump v. Sparkman, 435 US 349, 357 (1978). The immunity does not apply to purely administrative acts of the judge, like hiring and firing employees. Forrester v. White, 484 U.S. 219, 229 (1988).

Judicial immunity applies to non-judges when they are acting in a judicial or quasi-judicial capacity, such as a coroner conducting an inquest, Gillikin v. United States Fidelity and Guaranty Company of Baltimore, Maryland, 254 N.C. 247, 249 (1961); a clerk of court acting as judge of probate, Martin v. Badgett, 149 N.C. App. 667, *4 (2002) (unpublished); or members of a licensing board hearing a complaint, Mazzucco v. North Carolina Board of Medical Examiners, 31 N.C. App. 47, 51 (1976).

Boards of county commissioners, city councils, and school boards hold a number of different kinds of hearings which would be considered quasi-judicial, and thus would entitle them to judicial immunity. Local officials may not be compelled to testify concerning their personal motives for actions taken in a judicial or quasi-judicial capacity. Novak, 159 N.C. App. at *6.

Statutory Immunities

The General Assembly has by statute created limited immunity for certain public officials or employees in particular circumstances. Here are three examples:

- Emergency management workers enjoy immunity from civil claims for death, personal injury, or property damage arising from compliance with or reasonable attempts to comply with (1) the North Carolina Emergency Management Act ("EMA"), (2) any order, rule, or regulation promulgated pursuant to the EMA, or (3) any ordinance relating to emergency management measures enacted by one of the state's political subdivisions. G.S. 166A-19.60. This immunity does not shield emergency management workers from claims arising from willful misconduct, gross negligence, or bad faith.
- School personnel may not be held civilly liable for using reasonable force in conformity with state law, as when necessary to correct students or to quell a disturbance threatening injury to others. G.S. 115C-390.3.
- Members of volunteer fire departments or rescue squads who receive no compensation for their services are not civilly liable for their acts or omissions in rendering first aid or emergency health care treatment at the scene of a fire to persons unconscious, ill, or injured as a result of the fire, unless those acts or omissions amount to gross negligence, wanton conduct, or intentional wrongdoing. G.S. 58-82-5(c).

Defense of Local Officials and Employees and Payment of Claims Against Them

The statutes governing counties, cities, and public schools all authorize, but do not require, the governing board to provide for the defense of current and former board members, officers, and employees against civil or criminal claims based on acts or omissions allegedly within the scope of employment. G.S. 153A-97 (for counties); G.S. 160A-167 (for cities and counties); and G.S. 115C-43 (for public school systems).

Collectively G.S. 160A-167 and G.S. 115C-43 allow, but do not require, boards of county commissioners, city councils, and school boards to pay civil judgments entered against current and former board members, officers, and employees for

acts or omissions within the scope of their duties. No such claims may be paid, though, unless the governing board has adopted uniform standards stating when payment shall be made. For school boards, the uniform standards must also specify when the board will pay for the defense of claims.

APPENDIX

Does Governmental Immunity Bar a Tort Claim Against a Local Government?