

Local Government Liability in the Human Services Context

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Legal Basics for Human Services Directors & Administrators

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Special Attention

- County Department of Social Services (DSS)
- County Health Department
- Area Authority



Sources of Liability

- U.S. Constitution & N.C. Constitution
- Federal & state statutes
 - Federal & state regulations
- Tort law



Sources of Liability: Constitutional Rights

- Local Gov't liability for violations of U.S. Constitution
- Liability of Local Gov't employees for violations of U.S. Constitution
- Attorney's Fees
- Liability of Local Gov't and its employees for violations of N.C. Constitution



- Right to Due Process
- Right to Just Compensation for Property Taken for Public Use

Sources of Liability: Tort Law

- Tort = wrongful conduct (other than a breach of contract) for which a victim may be entitled to recover money damages in a civil action.
- Most torts originate in common law.
- Intentional misconduct or negligence can support tort claim.



EDWARD COKE

Employer Liability for Employee Torts



- Employee action must be within scope of employment.
- Rule applies to government and private employers.
- Why sue employers?
- Local governments as employers

Assault

- Assault = intentional placing of a person in reasonable apprehension of imminent harmful or offensive contact

Battery

- Battery = intentional harmful or offensive touching of another person against the person's will.



Negligence



- Negligence = failure to exercise reasonable care in the performance of a legal duty owed to another under the circumstances

Negligent Hiring, Supervision, Retention

- specific tortious act by the employee;
- the employee's incompetence or unfitness;
- the employer's **actual or constructive notice** of the employee's incompetency or unfitness;
- injury resulting from the employee's incompetency or unfitness.

Common Defenses to Tort Claims

- Consent
- Statute of Limitations
- Contributory negligence
- Self-defense or defense of others

Hare v. Butler, 99 N.C. App. 693 (1990)

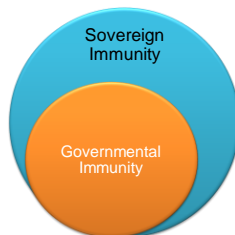
- Husband criminally charged over wife's allegation that he had sexually abused son.
- Wife had told social worker (SW) "maybe the whole matter was just in her head."
- SW had videotaped interview with child.
- DSS closed investigation w/o juvenile petition.
- Husband sought interview videotape, but SW destroyed it.
- Criminal charges against husband dismissed.
- Husband sued county & various DSS officials for negligent training/supervision of SW.



Tabor v. Orange County, 156 N.C. App. 88 (2003)

- Married couple wanted to subdivide property and place mobile home for husband's parents on lot.
- Sanitarian conducted site evaluation to verify soil would support 2nd septic system and opined that couple's improvement permit application would be approved.
- Couple began approval process with Planning Dep't, constructed a road, and bought mobile home.
- Health Dep't denied application and couple sued county, Planning Dep't, Health Dep't, and Sanitarian for negligent misrepresentation.



Governmental Immunity



- The Doctrine of **Governmental Immunity** bars **tort claims** against local gov'ts arising from **governmental functions**.
- It does not bar tort claims for injuries arising from **proprietary functions**.

Governmental v. Proprietary Functions

- **Governmental function**
 - discretionary, political, legislative, or public in nature
 - performed for the public good on behalf of the State
- **Proprietary function**
 - commercial or chiefly for the private benefit of the compact community

Sample Governmental Functions	Sample Proprietary Functions
Performance of law enforcement duties	Operation of water system that sells water for public consumption
Decision to construct sewer system	Operation of municipal sewer system which charges fees as public enterprise
Building inspection	Operation of municipal golf course
Tax collection	Operation of municipal arena or civic center
Collection of parking fines	Business interactions with private contractors
Responding to fire call	Operation of hospital
Erection & maintenance of jail	Use of public park to generate revenue
Operation of public library	Operation of municipal airport



Other Governmental Functions

- Approval or denial of septic tank permits pursuant to G.S. 130A-336 (*Tabor*)
 - Covers site evaluation and representation that septic permit will be approved
- Prescribing and dispensing contraceptives at no charge through family planning clinic run by local health dep't (*Casey v. Wake County*, 45 N.C. App. 522 (1980))

- Decision to quarantine dog due to possible rabies exposure. *Kitchin ex rel. Kitchin v. Halifax County*, 192 N.C. App. 559 (2008).

- DSS investigations of child abuse and neglect (*Whitaker v. Clark* (N.C. App. 1993))
- DSS investigations into allegations of child sexual abuse (*Hare*)



- Area Authority's revocation of provider status after investigation showed provider had struck disabled client (*Clancy v. Onslow County*, 151 N.C. App. 269 (2002))
- Mental health case worker's instruction to client with active paranoia and disorientation to visit emergency room (*Warren v. Guilford County*, 129 N.C. App. 836 (1998))

Waiver of Governmental Immunity

Local gov't may waive governmental immunity by

- Purchasing liability insurance or
- Participating in governmental risk pool.

- Governmental Immunity of Area Authority not waived by county's purchase of liability insurance (*Clancy v. Onslow County*, 151 N.C. App. 269 (2002))
- AA may waive Governmental Immunity by purchasing its own liability insurance. [G.S. 122C-152](#).

Official Capacity v. Individual Capacity Claims

- Official Capacity Claim = claim against unit of gov't.
- Individual Capacity Claim = claim directly against public official or employee.

Public Official Immunity

- Doctrine bars **tort claims** against “**public officials**” in their **individual capacities** for acts undertaken **within the scope of their duties** unless they act **maliciously or corruptly**.
- Doctrine does **not** protect **public employees**.

- Public official
 - Position created by law
 - Takes oath of office
 - Exercises discretion
 - Exercises sovereign power of state
- Public employee
 - Performs ministerial tasks

Examples of Public Officials

Elected Official	Chief Building Inspector
Sheriff	Building Inspector
Deputy Sheriff	Superintendent
County/City Manager	Principal
Police Chief	Assistant Principal
Police Officer	Notary Public
DSS Director	County Health Director
Coroner	Animal Control Officer
EMS Director	Medical Examiner

More Examples of Public Employees

- DSS Assistant Director (*Hare*)
- DSS Protective Services Investigation Supervisor (*Hare*)
- DSS Supervisor of Adult Protective Services (*Meyer v. Walls*, 122 N.C. App. 507 (1996)).
- Director of Animal Control Facility (*Kitchin*)
- Health Dep't Employee (*Kitchin*)
- Environmental Health Supervisor (*Block v. Person County*, 141 N.C. App. 273 (2000)).
- Environmental Health Specialist (*Block*)

Examples of Public Employees

Street Sweeper	Emergency Medical Technician
Public School Teacher	Environmental Health Specialist



Whether Social Worker qualifies as public official depends on:

- Degree of discretion exercised by SW and
- Whether SW functions as DSS Director's representative in matter delegated to Director by statute.



Other Immunities

- Legislative Immunity: Local officials have absolute immunity from claims arising from their actions if:
 - they were acting in a legislative capacity when the incident resulting in injury occurred; and
 - their acts were not illegal.
- Judicial Immunity: Applies to local officials when they act in a quasi-judicial manner.
- County Board of Health, Area Authority Board?

- Statutory immunities for some officials and employees (*e.g.*, emergency management workers, members of volunteer fire dep't or rescue squad)
- [G.S. 122C-210.1](#): Limited immunity for any facility or individual responsible for the custody, examination, management, supervision, treatment, or release of clients



Defense of Local Gov't Personnel

- Payment of employee's legal costs
- Payment of judgment against employee



[G.S. 143-300.8](#) – Local health dep't sanitarian entitled to defense by Attorney General and payment of judgment by DHHS if:

- Enforcing rules of Commission for Public Health under supervision of [DHHS] pursuant to [130A-4](#) and
- Claims arise from act/omission in the scope and course of enforcing rules of the CPH.

[G.S. 143-300.4](#): Sanitarian not entitled to defense by AG if:

- Outside scope of employment;
- Actual fraud, corruption, or actual malice;
- Conflict of interest between State and Sanitarian; or
- Defense of Sanitarian not in State's best interests.
- No defense against claims based on preliminary soil evals. *Cates v. N.C. Dep't of Justice* (1997).



True or False?

- Local gov'ts are immune to tort claims arising from governmental functions.
- Governmental Immunity bars constitutional claims arising from governmental functions.
- A court is more likely to classify a governmental activity as proprietary if the local gov't profits from it.

- Public employees are personally liable for their on-the-job negligence.
- Public officials are absolutely immune from tort claims when acting within the scope of their duties.

Questions?

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