

When Lawyers Attack: What Public Employees Should Know About Liability

Trey Allen
Clerks Certification Institute



UNC
SCHOOL OF GOVERNMENT

www.sog.unc.edu

Sources of Liability

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



UNC SCHOOL OF GOVERNMENT

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



UNC SCHOOL OF GOVERNMENT



UNC
SCHOOL OF GOVERNMENT

Sources of Liability: Constitutional Rights (cont'd)



- 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.



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



Sources of Liability: Tort Law (cont'd)

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

Sources of Liability: Tort Law (cont'd)

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

Sources of Liability: Tort Law (cont'd)

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



Sources of Liability: Tort Law (cont'd)

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.

Sources of Liability: Tort Law (cont'd)

- Negligent Misrepresentation = plaintiff justifiably relies on info prepared w/o reasonable care by one who owed the plaintiff a duty of care.

Sources of Liability: Tort Law (cont'd)

Landowner Liability

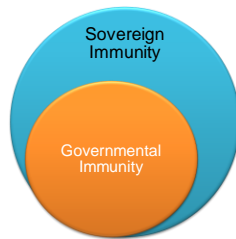
- *Lawful visitor*: Landowner must use reasonable care to keep premises safe and to warn of hidden dangers.
- *Trespasser*: Landowner is liable if the trespasser's injury resulted from the landowner's willful or wanton conduct or was intentionally caused by the landowner.



Common Defenses to Tort Claims

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

Governmental Immunity



Governmental Immunity (cont'd)

- 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 Immunity (cont'd)

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

Governmental Immunity (cont'd)

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

Governmental Immunity (cont'd)



- General Rule = Local government liability for unsafe premises depends on whether property is being used for a governmental or proprietary function.
- What about multi-use property?
 - *Bynum v. Wilson County*



Governmental Immunity (cont'd)

Local gov't may waive governmental immunity by

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

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 Immunity (cont'd)

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

Public Official Immunity (cont'd)

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

Public Official Immunity (cont'd)

Examples of Public Employees

Street Sweeper	Emergency Medical Technician
Public School Teacher	Environmental Health Specialist



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.
- LI doesn't apply to administrative decisions.
 - Most decisions to hire/fire specific individuals fall into this category.

Other Immunities (cont'd)

- Judicial Immunity:
Applies to local officials when they act in a quasi-judicial manner.


Defense of Local Gov't Personnel

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





		Claims				
Defendants		Due process	Negligent supervision	Assault	Negligent misrepresentation	Negligence
	Hazzard County					
	Bo Duke					
	Daisy Duke					
	Deputy Enos Strate					

 UNC
University of North Carolina

