When Lawyers Attack: What Public Employees Should Know About Liability

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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
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 incompetence or unfitness;
- injury resulting from the employee's incompetence 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)

- 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 (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

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Governmental Immunity (cont’d)

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

Examples of Public Officials

<table>
<thead>
<tr>
<th>Elected Official</th>
<th>Chief Building Inspector</th>
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</thead>
<tbody>
<tr>
<td>Sheriff</td>
<td>Building Inspector</td>
</tr>
<tr>
<td>Deputy Sheriff</td>
<td>Superintendent</td>
</tr>
<tr>
<td>County/City Manager</td>
<td>Principal</td>
</tr>
<tr>
<td>Police Chief</td>
<td>Assistant Principal</td>
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<tr>
<td>Police Officer</td>
<td>Notary Public</td>
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<tr>
<td>DSS Director</td>
<td>County Health Director</td>
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<tr>
<td>Coroner</td>
<td>Animal Control Officer</td>
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<tr>
<td>EMS Director</td>
<td>Medical Examiner</td>
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Examples of Public Employees

<table>
<thead>
<tr>
<th>Street Sweeper</th>
<th>Emergency Medical Technician</th>
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</thead>
<tbody>
<tr>
<td>Public School Teacher</td>
<td>Environmental Health Specialist</td>
</tr>
</tbody>
</table>
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
<table>
<thead>
<tr>
<th>Defendants</th>
<th>Due process</th>
<th>Negligent supervision</th>
<th>Assault</th>
<th>Negligent misrepresentation</th>
<th>Negligence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hazard County</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Bo Duke</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Daisy Duke</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Deputy Enos Strate</td>
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