

MUNICIPAL AND PERSONAL LIABILITY UNDER THE TENNESSEE TORT LIABILITY ACT MADE SIMPLE

The Tennessee Tort Liability Act (TTLA) passed in 1973 (*Tennessee Code Annotated*, title 29, chapter 20), stripped municipalities and counties of their sovereign immunity in several areas. That act, as amended several times, provides that municipalities can be sued for injuries caused by their employees only in a limited number of areas, and immunizes municipal employees or limits their liability for injuries they cause in certain cases.

MUNICIPAL EMPLOYEE AND BOARDS IMMUNITY/LIABILITY

Employees

If the injury in question is one for which the municipality is liable under the TTLA, the employee who caused the injury is totally relieved of liability (unless the employee is a “health care practitioner” sued for malpractice). Generally, the municipality is liable under the TTLA for injuries arising from: (1) the negligent operation of a motor vehicle; (2) defective, unsafe or dangerous streets, etc.; (3) dangerous or defective public building or other structure; (4) employee negligence where the negligence does not involve discretion. If the injury in question is one for which the municipality is immune from suit under the TTLA, the employee who caused the injury may be personally liable for it, but only to the limits of liability provided for in the Tennessee Tort Liability Act. However, the liability limits do not apply if the employee’s actions were willful, malicious, criminal or performed for personal gain.

Employee Indemnification

Municipalities can insure or indemnify their employees for claims for which the employee is liable but for which the municipality is immune. However, indemnification cannot exceed the tort liability limits.

Boards and Commissions

The provisions immunizing boards, commissions and committees are broad. *Tennessee Code Annotated*, section 29-20-201(b)(2), declares that:

All members of boards, commissions, agencies, authorities, and other governing bodies of any governmental entity, created by public or private act, whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such boards, commission, agency, authority or other governing body . Provided, however, such immunity from suit shall be removed when such conduct amounts to willful, wanton, or gross negligence.

Tennessee Code Annotated, section 29-20-108, specifically immunizes emergency communications district boards, but declares that the immunity shall not extend to employees of such boards.

Tennessee Code Annotated, section 29-20-109, immunizes local education agencies, including board members, superintendents, teachers, and non-professional staff for acts and omissions related to the detection, management and removal of asbestos from buildings and structures owned or controlled by the education agency.

TENNESSEE TORT LIABILITY ACT LIMITS

<u>TYPE OF INJURY</u>	<u>\$ LIMITS</u>
Non-auto, one person	130,000
Non-auto, multiple persons	350,000
Auto, one person	130,000
Auto, multiple persons	350,000
Property damage, auto	50,000
Property damage, non-auto	20,000

GROUND FOR SUIT AGAINST A MUNICIPALITY FOR INJURIES CAUSED BY ITS EMPLOYEES

The negligent operation of motor vehicles. (TCA § 29-20-202).

Defective, unsafe or dangerous streets, alleys, sidewalks or highways, including traffic control devices (provided the municipality has notice of the unsafe or dangerous condition). (TCA § 29-20-203).

Dangerous or defective public buildings and structures of various kinds (provided the municipality has notice of the danger or defect). (TCA § 29-20-204).

The negligent acts or omissions of their employees.

EXCEPTIONS-Injuries arising from what the employee did or did not do in the following areas (In other words, **municipalities and counties would still be immune from suit for these acts of their employees**):

- (1) Discretionary functions, whether or not the discretion is abused.

What is a discretionary function? In *Bowers v. City of Chattanooga*, 826 S.W.2d 427 (Tenn. 1992), the Tennessee Supreme Court adopted the “planning-operational” test for determining what constitutes a discretionary function. Under that test, said the Court:

decisions that rise to the level of planning or policy-making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational are not considered

discretionary acts and, therefore, do not give rise to immunity.

The planning-operational test focuses on the type of decision rather than on the decision maker.

Planning decisions are those which are “determined after consideration or debate by an individual or group charged with the formation of plans or policies.” Some acts indicative of planning decisions include “Assessing priorities, allocating resources, developing policies, or establishing plans, specifications, or schedules.”

Generally, operational decisions are those made on a case-by-case basis by individuals or groups that are not responsible for developing plans or policies. Some acts indicative of operational decisions are those based on “preexisting laws, regulations, policies or standards.”

However, it is probably safe to say that generally, *Bowers* pushes liability for the negligent acts of low-ranking employees upward to the municipality. Before *Bowers*, there was a great possibility that the negligent operational acts of low-ranking employees would be held to be discretionary (which meant such employees were liable for those acts). Now it is more likely that the negligent operational acts of low-ranking employees will be held not to be discretionary (which makes the municipality liable for those acts).

It is not always clear what decisions of municipal employees are planning functions and which are operations decisions. The distinction depends heavily upon the facts, and some of the cases in this area do not appear to be consistent:

- Allocation of equipment by foreman and assistant street superintendent-planning (discretionary) (*Odom v. City of Chattanooga*, 23 TAM 38-7, 8/17/98)
- Determining amount and type of equipment to send to fire-planning (discretionary) (*Harper v. City of Milan*, 825 S.W.2d 92 (Tenn. Ct. App. 1991).
- Decision not to install guardrail on highway bridge-planning (discretionary). *Kirby v. Macon County*, 892 S.W.2d 403 (Tenn. 1994).

- Decision not to install traffic control sign-planning (discretionary). Failure to maintain traffic control sign-operational (non-discretionary). *Burgess v. Harely*, 934 S.W.2d 841 (Tenn. Ct. App. 1997).
 - Adoption of policies and procedures for hiring personnel-planning (discretionary). However, hiring decisions that violate statutes, ordinances, or polices and procedures probably operational (non-discretionary). (*Doe v. Coffee County Board of education*, 852 S.W.2d 899 (Tenn.Ct. App. 1992).
 - Decision whether to establish school zone speed limits under permissive Tennessee statute-planning (discretionary). (*Harris v. Williamson County*, 835 S.W.2d 588 (Tenn. Ct. App. 1992).
 - Decision whether to adopt a sexual harassment policy-planning (discretionary). *Doe v. Coffee County Board of Education*, 852 S.W.2d 899 (Tenn. Ct. App. 1992).
 - Decision to send one police officer to escort a funeral based on unwritten “preexisting policy” of one officer for 30-40 cars. “[A]bove that, it depends on what size it is, where it is going...” -operational (non-discretionary). (*Anderson v. City of Chattanooga*, 978 S.W.2d 105 (Tenn. Ct. App. 1998).
 - Decision to restore power to mobile home where nobody was home under “long standing” policy of restoring power to residences that previously had trouble-free service and at which nobody was home-planning. (discretionary) (*Bumgardner v. Knoxville Utilities Board*, 1992 WL 107325 (Tenn. Ct. App. 1992).
- (2) False imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of privacy, or civil rights.
- (3) Issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization.
- *Helton v. City of Morristown*, 20 TAM 39-10 (Ct. App. E. Section, filed Aug 31, 1995). A general contractor who constructed an office building sued the City of Morristown, claiming that its requirement that he install a 6" water line rather than the 4" line he anticipated, use conduit wire rather than less expensive romex, and build a retention pond when there was no written requirement for such a pond, and build rated walls despite a conflict between city regulations and the Southern Building Code and the Life Safety Code, cost him an extra \$25,250. He apparently argued that the city’s officers had only ministerial, not discretionary functions with respect to the city’s building standards, and that ministerial functions were not immunized under *Tennessee Code Annotated*, § 29-20-205(1).

The Court rejected the contractor's argument, declaring that the city's immunity under that Act arose under *Tennessee Code Annotated*, § 29-20-205(3), which immunizes local governments for injuries arising from the "the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, and permit, license, certificate, approval, order or similar authorization. [*Tennessee Code Annotated*, § 29-20-205(3)] It reasoned that:

Although there may be an argument that the promulgating of regulations is discretionary, while their enforcement is ministerial, we think the issue as it applies to this case is moot. The Trial Court relied on the specific language of T.C.A. 29-20-205(3), as opposed to the more general language of 29-20-205(1). The law is clear in Tennessee that a specific provision of a statute controls a general provision. [Citations omitted] The reasoning for this law is clear as evidenced by the facts in this case. Obviously, a governmental officer who is responsible for issuing permits must carry out that responsibility absolutely, which, under Hodges, would suggest that such an action is ministerial in nature. But in order to protect the integrity of a governmental unit's duty to regulate construction within its border, the Legislature has decided that duty must be free from liability. Indeed, this Court has held that the purpose of the Governmental Tort Liability Acts is to remove the threat of liability that would make government officials unduly timid in carrying out their official duties. [At 5]

- (4) Failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property.
- Underground valves to fire hydrants were shut-off and inoperable, contributing to destruction of home by fire. Hydrants held to be dangerous and defective structures. Failure to inspect (for which local government immune under TTLA), held to be constructive notice of the defect under the TTLA. (*Hawks v. City of Westmoreland*, 960 S.W.2d 10 (Tenn. 1997).
 - Employee of private construction company that had contract to make sewer improvements in city street killed when excavation collapsed on him. Survivor sues under TTLA, claiming: (1) street was unsafe and defective; (2) city had duty to inspect the project and to insure that it was being constructed in a safe manner, and had failed to require the contractor to comply with the applicable OSHA standards. Held: (1) Injury arose directly from the construction activity of the general contractor, not a defect in the street. Where contractor completely controls premises, city owes no duty of safety to contractor's employees; (2) Under TTLA, city immune from liability for failure to inspect. (*Johnson v. EMPE, Inc.* 837 S.W.2d 62 (Tenn. Ct. App. 1992).
- (5) Institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause.

- (6) Misrepresentation by an employee whether or not such is negligent or intentional.
- (7) Riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances.
- (8) Assessment, levy or collection of taxes. (TCA 29-20-205)
- (9) Failure of computer software occurring before January 1, 2005, which is caused directly or indirectly by Y2K-type computer problems.