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January 29, 2009

**MUNICIPAL AND PERSONAL LIABILITY UNDER THE
TENNESSEE GOVERNMENT TORT LIABILITY ACT**

Ronnie Neill, Municipal Management Consultant

Legislature creates liability for cities for failure to safeguard confidential information on laptop computers and other removable storage devices.

The Tennessee Governmental Tort Liability Act (TGTLA) passed in 1973 (T.C.A. 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 TGTLA, 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 TGTLA for injuries arising from:

1. Negligent operation of a motor vehicle;
2. Defective, unsafe or dangerous streets, etc.;
3. Dangerous or defective public building or other structure; and
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 TGTLA, the employee who caused the injury may be personally liable for it, but only to the limits of liability provided for in the act. However, the liability limits do not apply if the employee’s actions were willful, malicious, criminal, performed for personal gain or constituted medical malpractice by a health care practitioner.

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 generally cannot exceed the tort liability limits.

Boards and Commissions

The provisions immunizing boards, commissions and committees are broad. T.C.A. § 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 board, commission, agency, authority, or other governing body. Such

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immunity from suit shall be removed when such conduct amounts to willful, wanton or gross negligence.

storage devices used by a municipality. A citizen of this state must prove by clear and convincing evidence that the citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. T.C.A. § 47-18-2901. (MTAS has developed a sample policy that may be obtained from the Web site or from a management consultant.

Tort Liability Limits

Chapter 424 of Public Acts of 2001 increased the limits for municipalities for actions arising on or after July 1, 2002, and July 1, 2007. The limits and the effective dates are as follows:

INJURY Date Cause of Action Arose	Limit July 1, 1987- June 30, 2002	Limit July 1, 2002- June 30, 2007	Limit On or after July 1, 2007
One Person	\$130,000	\$250,000	\$300,000
Multiple Persons	\$350,000	\$600,000	\$700,000
Property Damage	\$ 50,000	\$ 85,000	\$100,000

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

1. The negligent operation of motor vehicles or other equipment by municipal employees in the scope of their employment. T.C.A. § 29-20-202.
2. Defective, unsafe or dangerous streets, alleys, sidewalks, or highways, including traffic control devices (provided the municipality has notice of the unsafe or dangerous condition). T.C.A. § 29-20-203.
3. Dangerous or defective public buildings and structures of various kinds (provided the municipality has notice of the danger or defect). T.C.A. § 29-20-204.
4. Failure to create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable

5. The negligent acts or omissions of their employees. Exceptions to this include injuries arising from what the employee did or did not do in the following areas. (In other words, municipalities, counties and other local governmental entities would still be immune from suit for these acts of their employees.)
 - a. 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

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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. It is not always clear which decisions of municipal employees are planning functions and which are operations decisions.

- b. 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.
- c. 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.

- d. Failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property.
- e. Institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause.
- f. Misrepresentation by an employee whether or not such is negligent or intentional.
- g. Riots, unlawful assemblies, public demonstrations, mob violence, and civil disturbances.
- h. Assessment, levy, or collection of taxes.
- i. Failure of computer software occurring before January 1, 2005, which is caused directly or indirectly by Y2K-type computer problems. T.C.A. § 29-20-205.

IF YOU NEED HELP

For more information about the Tennessee Governmental Tort Liability Act, please contact your MTAS municipal management consultant.

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