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GENERAL ASSEMBLY DECIDES ON TORT IMMUNITY FOR OFFICIALS AND EMPLOYEES AND ENACTS NEW TORT LIMITS

by Dennis Huffer

The Tennessee General Assembly has drastically limited the personal liability for job-related torts that has concerned city officials for so long. Public Chapter No. 405 of the Public Acts of 1987 grants immunity to city employees and officials for torts for which the municipality is liable. This Act changes provisions in the Tennessee Governmental Tort Liability Act (Tennessee Code Annotated, Section 29-20-101 and the following sections) which allowed municipal officials and employees to be liable personally for damages in excess of the municipality's tort limits established in the Tort Liability Act. For example, if an employee driving an automobile negligently ran over a pedestrian who suffered damages of $200,000, the employee could be held personally liable for $100,000 of the damages, assuming the municipality provide insurance coverage only to the minimum limit of $100,000 for bodily injury to one (1) person in automobile cases. Under Chapter No. 405, the employee will be immune from tort liability in this situation and in all others in which the municipality itself is liable because of the employee's negligent act.

The personal immunity granted by Chapter 405 does not extend, however, to claims for medical malpractice brought against a health care practitioner who is a municipal employee. Health care practitioners will still be liable under the Act for any damages in excess of the tort limits or insurance coverage if the municipality is also sued. This leaves health care practitioners in the same situation relative to personal liability as all other employees were before Chapter 405 took effect.

Chapter 405 also puts a lid on the liability of municipal officials and employees in those situations in which they are liable but in which the municipality is immune under state law. These situations are enumerated in the Tort Liability Act in Tennessee Code Annotated, Section 29-20-205, as injuries which:

(1) Arise out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;

(2) Arise out of false imprisonment pursuant to a warrant of a commitment to prison from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or civil rights;

(3) Arise out of the 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;

(4) Arise out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property;

(5) Arise out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;

(6) Arise out of misrepresentation by an employee whether or not such is negligent or intentional;

(7) Arise out of or result from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; or

(8) Arise out of, or in connection with, the assessment, levy or collection of taxes.

The employee's liability is capped beginning July 1 at the new tort limits established by the Act. The liability cap does not apply, however, if the employee's or official's actions were willful, malicious, criminal, or performed for personal gain. The liability cap also does not apply to medical malpractice claims brought against health care practitioners.

Chapter No. 405 makes clear that municipalities may insure or indemnify their employees and officials for claims for which they are liable and the municipality is immune. Indemnification may not exceed the new tort limits established by the Act.

The Act increases personal injury tort limits for municipalities for actions arising on or after July 1, 1987. Old and new limits are as follows:

CASE	OLD	NEW
Non-auto - one person	40,000	130,000
Non-auto - multiple person	80,000	350,000
Auto - one person	100,000	130,000
Auto - multiple person	300,000	350,000

Liability limits for property damage stays the same. The increases in liability limits for municipalities will cause increases in insurance costs that could be substantial.

Chapter No. 405 eliminates the requirement that a potential plaintiff must give written notice to the municipality within 120 days after the injury to be barred from recovery. It does provide that the municipality and its employees will have 60 days in which to respond to suits brought under the Tort Liability Act.

The Act takes effect on July 1, 1987. If you have questions regarding any matter relating to the General Assembly Acts on Tort Immunity, please contact your MTAS Managment Consultant or Dennis Huffer in Nashville at (615) 256-8141.

The Municipal Technical Advisory Service (MTAS), one of four operating units of The University of Tennessee's Institute for Public Service, works closely with the Tennessee Municipal League. MTAS was created in 1949 by the General Assembly at the request of Tennessee cities.

The mission of MTAS is to assist Tennessee city officials in responding effectively to changing municipal needs. MTAS consultants work daily with city officials in an effort to provide practical assistance where and when it is most needed.

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