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## **Technical Bulletins: Municipalities Not Entitled to Qualified Immunity for Civil Rights Violations Based upon Good Faith of Their Officials**

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## technical bulletin

Municipal Technical Advisory Service  
Institute for Public Service, The University of Tennessee  
In cooperation with the Tennessee Municipal League

September 12, 1980

### MUNICIPALITIES NOT ENTITLED TO QUALIFIED IMMUNITY FOR CIVIL RIGHTS VIOLATIONS BASED UPON GOOD FAITH OF THEIR OFFICIALS.

The United States Supreme Court has held that municipalities sued for civil rights violations under 42 U.S.C. section 1983 are not entitled to qualified immunity based upon the good faith of their officials. In Owen v. City of Independence, Missouri, \_\_\_\_\_ U.S. \_\_\_\_\_ (April, 1980), the Supreme Court, saying that "there is no tradition of immunity for municipal corporations," held that a "municipality may not assert the good faith of its officers or agents as a defense to liability under section 1983." 48 L.W. at 4394.

Owen v. City of Independence involved a city chief of police who was discharged by the city manager without a hearing. The city manager fired the chief before the Supreme Court had decided the cases of Board of Regents v. Roth, 408 U.S. 564 (1972) and Perry v. Sindermann, 408 U.S. 593 (1972). These two cases established the right of a government employee to a name-clearing hearing if the employee allegedly was stigmatized in the course of discharge. Therefore, the city manager in the City of Independence case could not have known that he was violating the civil rights of the chief of police.

Nevertheless, the Court held that the municipality was liable for such violations. The Court's rationale for this holding seemed to be that if the person whose civil rights were violated could not recover against the municipality, he or she could not recover against anybody. The city manager in the City of Independence case would be entitled to immunity based upon his good faith. The Court reasoned that "owing to the qualified immunity enjoyed by most government officials, see Scheuer v. Rhodes, 416 U.S. 232 (1974), many victims of municipal malfeasance would be left remediless if the city were also allowed to assert a good faith defense." 48 L.W. at 4397. The Court further stated that:

"The knowledge that a municipality will be liable for all of its injurious conduct, whether committed in good faith or not, should create an incentive for officials who may harbor doubts about the lawfulness of their intended actions to err on the side of protecting citizens' constitutional rights. 48 L.W. at 4397."

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