

OHIO POLITICAL SUBDIVISION STATUTORY IMMUNITY

Ohio's political subdivisions, that is, its municipal corporations, townships, counties, school districts, or other bodies corporate and politic responsible for governmental activities in a geographic area smaller than that of the state enjoy broad immunity pursuant to Chapter 2744 of the Ohio Revised Code. In addition to the governmental bodies already listed, a "political subdivision" also includes: a county hospital commission, board of hospital commissioners, board of hospital trustees appointed for a municipal hospital, regional planning commission, county planning commission, joint planning council, interstate regional planning commission, port authority, regional council established by political subdivisions, emergency planning district and joint emergency planning district, joint emergency medical services district, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, and community school established under Chapter 3314. of the Revised Code.

Ohio courts apply a three-pronged analysis to determine whether a political subdivision enjoys governmental immunity. *Cater v. City of Cleveland* (1988), 83 Ohio St.3d 24, 28. As long as the governmental entity comes under the statute's definition of "political subdivision," it may qualify for immunity. The first step in the analysis is the Code's general grant of immunity:

Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

R.C. § 2744.02(A)(1). The second prong is found in R.C. § 2744.02(B), where an exception to immunity is provided for "the negligent performance of acts by [political subdivision] employees with respect to proprietary functions of the political subdivisions." R.C. § 2744.02(B)(2). The second portion of the analysis, therefore, necessarily requires a determination of whether a function is governmental or proprietary in nature.

Governmental functions are tasks: "imposed upon the state as an obligation of sovereignty [and] performed by a political subdivision" voluntarily or pursuant to law; "for the common good of all citizens of the state" or a function that "promotes or preserves the public peace, health, safety, or welfare." R.C. § 2744.01(C)(1). Specifically included among governmental functions are a host of examples: the "provision or nonprovision" of emergency services; the "power to preserve the peace";

provision of public education and libraries; regulation, use, maintenance and repair of roads, highways, aqueducts and public grounds; judicial, prosecutorial and legislative functions; operation of government buildings and jails; enforcement or nonperformance of any law; regulation of traffic; collection of solid waste; design and construction of a sewer system; operation of job and family service departments, health department, mental health facilities; provision or nonprovision of inspection services; urban renewal projects; flood control measures; operation of a township cemetery; operation of school athletic facilities or parks including swimming pools, golf courses and bicycle paths; public defender services and a function mandated by the general assembly. R.C. §2744.01(C)(2).

A proprietary function is not a governmental function and “promotes or preserves the public peace, health, safety, or welfare and * * * involves activities that are customarily engaged in by nongovernmental persons.” R.C. § 2744.01(G)(1). Specifically included among proprietary functions are: operation of a hospital; operation of a public cemetery other than a township cemetery; operation of a utility; maintenance of a sewer system; and operation of a “public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.” R.C. § 2744.01(G)(2)(d).

Political subdivisions may be liable for damages caused during performance of a governmental function if the incident involves the “negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority.” R.C. § 2744.02(B)(1). There are three (3) “full defenses” to liability in such an instance: (a) if a police department or agency member was on an emergency run and the operation of the vehicle “did not constitute willful or wanton misconduct”; (b) if a fire department or agency member was on duty at a fire, proceeding to a fire or on an emergency run and the operation of the vehicle “did not constitute willful or wanton misconduct”; and, (c) a “member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment,” held a valid driver’s license, the operation of the vehicle “did not constitute willful or wanton misconduct,” and the vehicle’s operation complies with R.C. § 4511.03, which requires the operator to proceed cautiously through a red light. R.C. § 2744.02(B)(1)(a-c). Political subdivisions may lose immunity for performance of governmental functions if liability is imposed by statute. R.C. § 2744.02(B)(5). The immunity exceptions contained in R.C. § 2744.02(B)(1, 5) is also applicable to the performance of a proprietary function.

There are three (3) additional exceptions to the general grant of immunity for injury arising from performance of a proprietary function. These exceptions include: an employee’s negligent performance of his duties; a political subdivision’s failure to maintain its public roads or to remove obstacles therefrom; and, for injuries arising from

the negligence of its employees that occurs on, arises from defects to, a government building or its grounds, excluding jails and detention facilities. R.C. § 2744.02(B)(2-4).

The final tier of the analysis is to determine whether immunity is reimposed pursuant to any of the defenses listed in R.C. § 2744.03. In other words, if an exception to immunity is found in R.C. § 2744.02(B), immunity may be reasserted if: (1) the employee “was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function”; (2) the employee’s conduct was other than negligent and was required or authorized by law, or was necessary to the exercise of the subdivision’s or employee’s powers; (3) the action or inaction was within the employee’s discretion and involved policy-making, planning or enforcement; (4) if the injured party was performing community service or work for or in the political subdivision and, at the time, was covered by Chapter 4123 (Workers’ Compensation) for the work being performed; and, (5) the harm resulted from the exercise of discretion “in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources” unless there is evidence of malice, bad faith or wanton or reckless conduct. R.C. § 2744.03(A)(1-5).

In addition to these defenses, an employee is immune unless: his conduct was “manifestly outside the scope” of his employment or official responsibilities; his conduct was malicious, in bad faith, wanton or reckless; or, if liability is imposed by another section of the Revised Code. R.C. § 2744.03(A)(6). Political subdivisions are obligated to provide a defense for the employee unless his conduct was such. R.C. § 2744.07(A). Political subdivisions are also entitled to assert any common law or statutory defenses or immunities as are its chief legal officers and judges of any state courts. R.C. § 2744.03(A)(7).

The statute of limitation within which to file an action against a political subdivision is two (2) years. R.C. § 2744.04(A). A plaintiff may not receive punitive damages against a political subdivision and any collateral benefits received by a plaintiff are setoff from an award of compensatory damages. R.C. § 2744.05(A), (B).

The immunities described are not applicable to actions: for damages based on a subdivision’s contractual liability; employment actions undertaken by an employee or his collective bargaining representative against the subdivision; and claims arising under the United States Constitution or federal law. R.C. § 2744.09.

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