

HELLO HINGHAM

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MUNICIPAL LIABILITY

Towns are sued for many reasons: slips and falls on public property, civil rights violations, failure to perform official functions, appeals from land use decisions, objections about public contracts, and personnel complaints. Towns share sovereign immunity with the state, but there are some exceptions.

The General Court has removed the defense of sovereign immunity in certain tort actions against cities and towns. Under the Mass. Tort Claims Act, the Court determined that public employers are responsible for personal injury or property damage that results from negligent or wrongful acts on the job. There is a cap of \$100,000 on any suit for damages caused by negligence. Appointed and elected public officials performing their required duties are considered public employees when it comes to these types of lawsuits.

Here are additional exceptions to the Act. Towns are not civilly liable:

- for claims when public employees act or, fail to act, when “exercising due care” executing any state statute or regulation, town ordinance or by-law, even if the law is invalid.
- for any claim that a permit or license has been issued, denied, suspended or revoked.
- for claims when a public employer or employee performs, or fails to perform, a discretionary function or duty acting within the scope of the office or employment, even if the discretion involved is abused.
- for failing to establish a police or fire department or failing to prevent a fire or to protect adequate police protection.

A town CAN be sued if someone claims his or her civil rights were violated by official actions, and can prove that a town policy or custom caused the alleged constitutional violation.

And what about personal liability? Public employees on the job or public officials exercising a discretionary function and acting in good faith are shielded from personal liability. These people are entitled to legal counsel provided by the town at no cost as long as they cooperate with counsel in defense of the claim.

A public employee can be liable for civil rights violation damages if, acting within the scope of authority, he or she knows the action taken would violate someone’s constitutional rights, or acts with malicious intent to deprive someone’s constitutional rights.

Towns can and do indemnify their employees and public officials from personal financial loss, including legal fees capped at \$1 million in coverage. This does not cover civil rights violations if the action was grossly negligent, willful or malicious.

The best practice to avoid law suits is for towns to train their employees and public officials to properly and impartially discharge their duties. Board members who hire and fire employees must follow the town's written personnel by-laws and policies. Applications must be processed uniformly. Enforcement must be handled in a reasonable, even-handed manner. And if there is any doubt regarding a particular course of action, decision or policy, the best practice is to consult with legal counsel before acting.

This is the 12th and final column in a series on town government issues. To view the entire series, please visit the Hingham League's website at www.hingham.ma.lwvnet.org. For information about membership in the Hingham League of Women Voters, please contact Christine Dietterich at coed@verizon.net.