

The Tennessee Governmental Tort Liability Act



Turns out, you can sue the king. Well, maybe.

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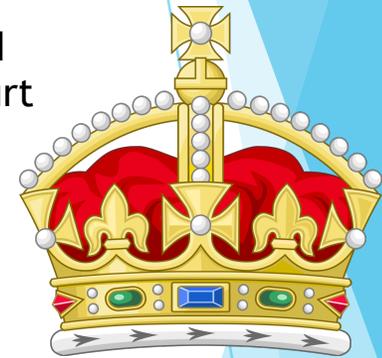
I. History

A. Sovereign Immunity

- Suit may not be brought against the government unless the government has consented to be sued. [Lucius v. City of Memphis, 925 S.W.2d 522, 525 \(Tenn.1996\)](#)
- Concept originated in the “feudal notions of the divine right of kings. In feudal England the King was at the very pinnacle of the power structure and was answerable to no court since ‘the King can do no wrong,’ ” [Cruse v. City of Columbia, 922 S.W.2d 492, 495 \(Tenn.1996\)](#) (quoting [Cooper v. Rutherford Cnty., 531 S.W.2d 783, 786 \(Tenn.1975\)](#) (Henry, J., dissenting)).
- This common law doctrine is now embodied in the Tennessee Constitution, which provides that “[s]uits may be brought against the State in such manner and in such courts as the Legislature may by law direct.” [Tenn. Const. art. I, § 17.](#)

B. In 1973, the Tennessee General Assembly enacted the Tennessee Governmental Tort Liability Act (“TGTLA” or “GTLA”)

- The GTLA reaffirmed generally the grant of sovereign immunity provided at common law and in the Tennessee Constitution by stating that “all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary.” [Tenn.Code Ann. § 29-20-201\(a\).](#)



I. History (cont.)

c. Why enacted?

- Prior to passage, there was widespread dissatisfaction with the body of law governing tort claims against local governments, “especially regarding some of the activities constructed by executive departments, such as the operation of motor vehicles and maintenance of public facilities.” [Fretwell v. Chaffin](#), 652 S.W.2d 755, 756 (Tenn. 1983)
- The General Assembly, following the pattern adopted in a number of other jurisdictions, chose to grant absolute immunity to all local governments, and then to create statutory exceptions thereto. Tenn. Code Ann. §§ 29-20-201 thru 206.
- Case law prior to 1973 does not necessarily bear very greatly upon the construction and interpretation of these statutes, except as historical background. [Fretwell v. Chaffin](#), 652 S.W.2d 755, 756 (Tenn. 1983)

The Law School/Bar Review Summary

- Very last paragraph, from the very last page of the Tennessee Bar review materials from 2008....

Governmental Tort Immunity

State Governments

Tort claims against the State of Tennessee are filed in the Claims Commission, which has jurisdiction up to \$300,000 per person or \$1 million per occurrence. [Tenn. Code Ann. §9-8-307]

Page 74, 2.b.

Municipalities

Tort claims against cities and counties fall within the Governmental Tort Liability Act. [Tenn. Code Ann. §§29-20-101 *et seq.*] Judgments are limited to insurance coverage, which municipalities must have in the amount of \$300,000 per person and \$700,000 per occurrence. Under the statute, cities and counties are immune from liability for most intentional torts, but they are not immune from liability for assault and battery. [Limbaugh v. Coffee Medical Center, *supra*]

Page 74, 2.c.

Discretionary acts are immune from judicial scrutiny.

Example: Planning level acts, such as changing school bus schedules, are discretionary. Operational acts, such as failing to stop a school bus at a safe place, are not discretionary and create liability. [Bowers v. City of Chattanooga, 826 S.W.2d 427 (Tenn. 1992)]

Under a separate statute, cities and counties may be found liable where a police officer negligently conducts a high-speed chase and thereby causes a fleeing offender to injure innocent third-person motorists. [Haynes v. Hamilton County, 883 S.W.2d 606 (Tenn. 1994)—*construing* Tenn. Code Ann. §55-8-108]

II. The Basics

- A. Tenn. Code Ann. § 29-20-201 thru Tenn. Code Ann. § 29-20-408
 - § 201(a) preserves general sovereign immunity for all governmental entities unless the GTLA specifically removes immunity.
 - The GTLA removes immunity through very specific, enumerated instances for certain injuries, set forth in Tenn. Code Ann. § 29-20-202 thru 205.
- B. Where to File
 - Suits generally must be filed in Circuit Court; however, for counties with a population of more than eight hundred fifty thousand (850,000), according to the 2000 federal census or any subsequent federal census, an action under this section may also be filed in general sessions court. Tenn. Code Ann. § 29-20-305.
- C. Statute of Limitations
 - Lawsuit must be commenced within twelve (12) months after the cause of action arises. Tenn. Code Ann. § 29-20-305.
- D. Generally, trials are heard without a jury. Tenn. Code Ann. 29-20-307
 - Claims against both governmental and nongovernmental parties may be heard by a jury. Tenn. Code Ann. § 29-20-313
 - The savings statute following a non-suit does not apply. See Rael v. Montgomery County, 769 S.W.2d 211 (Tenn. Ct. App. 1998).

III. Who is Liable?

A. The governmental entity

- Governmental Entity is liable if an employee's act or omission was negligent and the proximate cause of plaintiff's injury; (2) the employee acted within the scope of their employment; and (3) none of the exceptions listed in Tenn. Code Ann. § 29-20-205 apply. Tenn. Code Ann. § 29-20-310(a).

B. If the governmental entity *is* subject to liability, the employee of the entity is immune

- No claim may be brought against an employee or judgment entered against an employee for damages for which the immunity of the governmental entity is removed. Tenn. Code Ann. § 29-20-310(b); Hill v. City of Germantown, 31 S.W. 3d 234 (Tenn. 2000).
 - Example, police officer runs a red light and strikes plaintiff's car. Governmental entity is liable for police officer's negligence, while the police officer is immune
- **EXCEPTION** - Employee may also be liable if the employee's acts were "willful, malicious, criminal, or performed for personal gain," or unless the employee is a "health care practitioner" and the asserted claim is one for medical malpractice.
 - Example, same fact pattern, but this time the police officer is drunk, high and intentionally runs the red light because he/she is trying to ram into the car of his/her spouse's lover.



III. Who is Liable?

- c. Employee can also be liable under Tenn. Code Ann. § 29-20-310(b):
 - When a governmental entity is immune from suit, an employee of a governmental entity may be held liable to the extent of the amounts established in T.C.A. § 29-20-403, as well as for amounts in excess thereof when so provided by T.C.A. § 29-20-310.
 - Situations in which the employee can be liable include those listed in § 205(1)-(9), which are discussed *infra*.
- Governmental entity boards, commissions, authorities and other governing agencies
 - Entitled to absolute immunity under Tenn. Code Ann. § 29-20-201(b)(1) because they are “critical to the efficient conduct and management of the public affairs of the citizens of this state.” Id.
 - Similarly, § 201(b)(2) immunizes the members of such boards, commissions authorities and other governing agencies, absent conduct that “amounts to willful, wanton or gross negligence.” Id.

III. Who is Liable?

E. Liability Limits:

- Tenn. Code Ann. § 29-20-403:

Type of Claim	Limit
Bodily injury or death of any one person in any one (1) accident, occurrence or act	\$300,000
Bodily injury or death of all persons in any one (1) accident, occurrence or act	\$700,000
Injury or destruction of property of others in any one (1) accident	\$100,000



F. Limitation of liability against employee:

- If the employee is a proper defendant (i.e. immunity is retained for the entity), and the employee was acting in the course and scope of his/her employment, the amount of damages may not exceed the amounts established for governmental entities in Tenn. Code Ann. § 29-20-403, except for conduct that is willful, malicious, criminal, or performed for personal gain. Tenn. Code Ann. § 29-20-310(c)

G. No Punitive Damages!

- Punitive damages are not recoverable from the governmental entity or its employees. Johnson v. Smith, 621 S.W. 2d 570, 572 (Tenn. 1981).

H. Post Judgment Interest is only allowed up to the statutory limit for damages.

IV. Waivers of Immunity

i.e. When Immunity is Removed, and You Can Sue the King

A. Motor Vehicles

- Immunity is removed for injuries resulting from the negligent operation by an employee of a motor vehicle or other equipment (i.e. backhoe) while in the course and scope of employment. Tenn. Code Ann. § 29-20-202.

B. Highways, streets and sidewalks and dangerous structures

- Immunity from suit of a governmental entity is removed for any injury caused by a defective, unsafe, or dangerous condition of any street, alley, sidewalk or highway, owned and controlled by such governmental entity. Tenn. Code Ann. § 29-20-203.
- Immunity from suit of a governmental entity is removed for any injury caused by the dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement owned and controlled by such governmental entity. Tenn. Code Ann. § 29-20-204.
- Constructive and/or actual notice is required. Id.



IV. Waivers of Immunity (cont.)

C. Negligence of employees

- Under § 205, government is liable for negligent acts proximately caused by an employee acting within the course and scope of employment unless one of the exceptions listed in § 205(1) - (9) applies. If an exception applies, immunity is retained.

D. Exception to the Intentional Tort Exception

- For intentional torts *not* enumerated in § 205, the entity may still be liable under the GTLA if the intentional tort was proximately caused by the negligent act or omission of a governmental employee.
- See Limbaugh v. Coffee Medical Center, 59 S.W.3d 73 (Tenn. 2001). County nursing home was found liable for negligently failing to protect a resident from a foreseeable assault and battery (the intentional tort) by one of its employees.
- Infliction of emotional distress
 - Entity can be liable for negligent infliction of emotional distress but cannot be liable for intentional infliction of emotional distress. Sallee v. Barrett, 171 S.W.3d 822 (Tenn. 2005).
 - Employee can be liable for intentional infliction of emotional distress but not negligent infliction of emotional distress.



V. A Closer Look

A. § 205 Immunity (Exceptions to Exceptions)

- Immunity is not removed for injuries caused by negligent acts of employees if it arises out of any of the following:
 1. The exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused; (Discretionary Function Immunity)
 2. False imprisonment pursuant to a mittimus 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; (Intentional Tort Immunity)
 3. 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. A failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property;
 5. The institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;
 6. Misrepresentation by an employee whether or not such is negligent or intentional;
 7. Or results from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances;
 8. Or in connection with the assessment, levy or collection of taxes; or
 9. Or in connection with any failure occurring before January 1, 2005, which is caused directly or indirectly by the failure of computer software...[Y2K issues].

Tenn. Code Ann. § 29-20-205.

V. A Closer Look

B. Discretionary Function Immunity

- Regardless of whether an employee is negligent, § 205(1) preserves governmental immunity if “injury arises out of...the exercise or performance or failure to exercise or perform a discretionary function, whether or not the discretion is abused...” Tenn. Code Ann. § 29-20-205(1).
 - Ordinarily, government is liable for negligent acts of its employees; however, if conduct of the employee was discretionary, then government retains immunity
- In *Bowers v. City of Chattanooga*, 846 S.W.2d 427, 431 (Tenn. 1992), the Tennessee Supreme Court adopted the “planning operational test” to determine whether the conduct at issue is discretionary thereby preserving immunity. The *Bowers* Court explained:

If a particular course of conduct is determined after consideration or debate by an individual or group charged with the formulation of plans or policies, it strongly suggests the result is a planning decision. These decisions often result from assessing priorities; allocating resources; developing policies; or establishing plans, specifications, or schedules.

On the other hand, a decision resulting from a determination based on preexisting laws, regulations, policies, or standards, usually indicates that its maker is performing an operational act. Similarly operational are those ad hoc decisions made by an individual or group not charged with the development of plans or policies. These operational acts, which often implement prior planning decisions, are not “discretionary functions” within the meaning of the Tennessee Governmental Tort Liability Act. In other words, “the discretionary function exception [will] not apply to a claim that government employees failed to comply with regulations or policies designed to guide their actions in a particular situation.”

Bowers by *Bowers v. City of Chattanooga*, 826 S.W.2d 427, 431 (Tenn. 1992)(citations omitted).

V. A Closer Look

C. Failure to make an inspection, or negligent inspection

- § 205(4) preserves immunity if the injury arises from “a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property.”
- Even though immunity is retained under § 205(4) for a negligent inspection, “proof that a governmental entity failed to adequately inspect property...which it owned and controlled is directly relevant to the question of whether it had constructive notice of the dangerous or defective condition resulting in injury.” Hawks v. City of Westmoreland, 960 S.W.2d 10, 12 (Tenn. 1997).

D. Public duty doctrine

- The public duty doctrine is a common law doctrine that provides immunity to public employees for injuries caused by a breach of a duty owed to the public at large.
 - Although not explicitly listed in the GTLA, the public duty doctrine survived the enactment of the GTLA and has been repeatedly adopted and accepted by Tennessee Courts. Matthews v. Pickett County, 996 S.W.2d 162, 164 (Tenn. 1999).
 - Ezell v. Cockrell, 902 S.W.2d 394 (Tenn. 1995) (public duty doctrine barred suit, because officer who released drunk driver that later injured plaintiffs owed a duty to the public at large, not just to plaintiffs).

V. A Closer Look

D. Special duty exception to the public duty doctrine

- negates application of the public duty doctrine when either:
 1. A public official affirmatively undertakes to protect the plaintiff and the plaintiff relies upon the undertaking;
 2. A statute specifically provides for a cause of action against an official or municipality for injuries resulting to a particular class of individuals, of which the plaintiff is a member, from failure to enforce certain laws; or
 3. A plaintiff alleges a cause of action involving intent, malice or reckless conduct.

Matthews, 196 S.W.2d at 165.

- Example - A woman relies upon an order of protection and calls police department to request they protect her pursuant to the order. Police do not arrest husband and he later burns the woman's house to the ground. The special duty exception negates the application of the public duty doctrine, because the O.P. specifically identifies the woman and was issued solely for protecting her. The special duty exception applies by virtue of the affirmative act to protect her and the reliance thereon. See Matthews.



VI. Claims outside the GTLA

A. Claims based on contract

- But don't forget that employee may be liable for interference with contract rights, if his or her conduct was willful, malicious or performed for personal gain. Tenn. Code Ann. § 29-20-205

B. Eminent Domain

C. Worker's Compensation

D. Declaratory Judgment Act

E. Tennessee Public Protection Act

F. Tennessee Human Right's Act

G. Federal Civil Rights Actions

H. Copyright/Trademark claims (ever heard of Rocky Top, TN?)



* If a claim is “outside” the GTLA, then the provisions of the GTLA do not apply, including the liability caps and nonjury provision.

Free Resources

Municipal Technical Advisory Service (MTAS) Knowledgebase

<http://www.mtas.tennessee.edu/web2012.nsf/Web/Knowledgebase+ByTitle>

County Technical Advisory Service (CTAS) e-Li

<http://eli.ctas.tennessee.edu/>

Any Questions?



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