MN HOUSE RESEARCH

Government Immunity from Tort Liability

October 2020

Executive Summary

The doctrine of sovereign immunity dates back to the English common law concept *rex non potest peccare* ("the king can do no wrong"), and since the time of Edward the First, the Crown of England has not been suable except with its specific consent.[1] Until the latter half of the 20th century, the doctrine of sovereign immunity generally protected Minnesota's state and local governments from tort liability.[2] In 1963, however, the legislature waived sovereign immunity for municipalities in the Municipal Tort Claims Act.[3] Then, in 1976, the legislature waived sovereign immunity for state government in the Minnesota Tort Claims Act.[4] Nevertheless, government entities still retain certain immunities from tort liability. These immunities also protect individual government officials and employees who are sued for actions taken in their official capacities.

Statutory Immunity

Statutory immunity (sometimes referred to as "discretionary immunity") arises from an exception written into both the municipal and state tort claims statutes.[5] These exceptions preserve a government entity's immunity for injury caused by the performance of, or failure to perform, a discretionary duty. In defining a discretionary duty, courts distinguish between "planning-level" decisions (to which statutory immunity does apply) and "operational-level" decisions (to which statutory immunity does not apply). A planning-level decision is one which involves policymaking and requires the balancing of various public policy objectives, such as financial, social, and political outcomes. An operational-level decision, however, merely involves the implementation of an established government policy.

[1] See *U.S. v. Lee*, 106 U.S. 196, 205 (1882).

[2] "Tort liability" means financial responsibility adjudicated in the context of a civil lawsuit for a wrongful act or the infringement of a right other than one arising in contract. Negligence is perhaps the most common example of a tort.

[3] *See* Minn. Laws 1963, ch. 798.

[4] *See* Minn. Laws 1976, ch. 331, § 33.

[5] Both tort claims statutes also contain other more narrow exceptions, but the term "statutory immunity" typically refers only to this exception for discretionary acts, which is the broadest and most significant exception in the two statutes. *See* Minn. Stat. § 3.736, subd. 3(b) (state tort claims act); Minn. Stat § 466.03, subd. 6. (municipal tort claims act).

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As the Minnesota Supreme Court has noted, statutory immunity exists "to prevent the courts from conducting an after-the-fact review which second-guesses 'certain policy-making activities that are legislative or executive in nature'."[6]

Common Law Official Immunity

Official immunity is a court-developed or "common-law" doctrine that is not based on any particular statute. Official immunity is similar to statutory immunity in that it turns on whether discretion was involved in an act or decision. Official immunity protects government officials from liability when they perform a discretionary act, that is, one that required exercising independent judgment. However, official immunity does not apply if the official has violated a nondiscretionary "ministerial" requirement, nor where the act was "malicious" (the intentional doing of a wrongful act without justification or excuse).

The Minnesota Supreme Court has noted that official immunity is "intended to insure that the threat of potential liability does not unduly inhibit the exercise of discretion required of public officers in the discharge of their duties."[7]

In addition, if a claim is based on the discretionary actions of a government official, and the court finds that the official is protected by official immunity, the court will generally dismiss any further claims against the government entity employing that official. This is referred to as "vicarious official immunity."

Legislative Immunity

The Speech or Debate Clause of the Minnesota Constitution[8] grants members of the Minnesota Senate and House of Representatives absolute immunity (sometimes referred to as "absolute privilege") against defamation claims for actions taken in the discharge of their official duties.

In addition, Minnesota Statutes, section 540.13, confers broader legislative immunity than the Speech or Debate Clause. That section provides: "No member, officer, or employee of either branch of the legislature shall be liable in a civil action on account of any act done in pursuance of legislative duties." The Minnesota Supreme Court has stated that this statute "immunizes any act done by a legislator that helps that legislator perform her legislative function."[9]

[6] *Watson by Hanson v. Metro. Transit Comm'n*, 553 N.W.2d 406, 412 (Minn. 1996) (quoting *Nusbaum v. Blue Earth County*, 422 N.W.2d 713, 718 (Minn. 1988)).

[7] *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991) (quoting *Holmquist v. State*, 425 N.W.2d 230, 233 n. 1 (Minn. 1988)).

[8] Minn. Const. art. IV, § 10

[9] *Olson v. Lesch*, 943 N.W.2d 648, 657 (Minn. 2020).

Judicial and Quasi-judicial Immunity

Judicial immunity is a well-established common law doctrine that protects judges from liability for acts taken in their judicial capacity.[10] No matter how erroneous the act, and no matter what its motivation, judges are absolutely immune from suit unless their actions were taken "absent all jurisdiction"—that is, completely outside the scope of proper judicial authority.[11] The purpose of judicial immunity is to preserve the integrity and independence of the judiciary and "to insure that judges will act upon their convictions free from the apprehensions of possible consequences."[12]

This immunity is not limited to judges. It also extends to "quasi-judicial" officers who exercise discretionary judgment within government or legal proceedings.[13] In Minnesota quasi-judicial immunity has been extended to court clerks, administrative law judges, arbitrators, prosecutors, public defenders, expert witnesses, court-appointed experts, guardians ad litem, tax assessors, and other government officials assisting in judicial proceedings or acting in an adjudicative capacity.[14]

The Public Duty Doctrine

Strictly speaking, the public duty doctrine is not an immunity, but—like the various forms of sovereign immunity discussed above—it is a common-law concept that limits a government's civil liability. The public duty doctrine states that a government cannot be held liable for damages based on its violation of a duty that it owes to the general public. Instead, liability can only arise if the government assumed (and violated) a "special duty" to a particular person or class of persons.

Providing emergency firefighting is a paradigmatic example of a public duty. By providing this service, the municipality assumes a duty to protect the general public; it does not therefore owe any special duty to a particular individual to protect his property from fire. Accordingly, a person cannot sue a city for negligent firefighting.[15]

A government may be liable to an individual person, however, if it creates a special duty to that person. The Minnesota Supreme Court has held that a special duty is created if:

1) the governmental unit had actual knowledge of the dangerous condition;
2) there was reasonable reliance by persons on the governmental unit's representations and conduct (such reliance must be based on specific actions or

[10] *Hoppe v. Klapperich*, 28 N.W.2d 780, 788 (Minn. 1947).

[11] Id.

[12] *Gammel v. Ernst & Ernst*, 72 N.W.2d 364, 368 (Minn. 1955).

[13] See *Peterka v. Dennis*, 764 N.W.2d 829, 835 (Minn. 2009).

[14] See id.

[15] *Dahlheimer v. City of Dayton*, 441 N.W.2d 534, 537 (Minn. Ct. App. 1989).

representations which cause the persons to forego other alternatives of protecting themselves);

3) an ordinance or statute set forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole; and
4) the governmental unit used due care to avoid increasing the risk of harm.[16]

In the case of *Radke v. County of Freeborn*, for example, the Minnesota Supreme Court applied the four factors above to hold that county child protection workers owed a special duty to a child under the Child Abuse Reporting Act[17] once they received reports identifying a child as suspected victim of abuse; therefore, the county may be liable for the workers' negligent investigation of the report.

[16] *Radke v. Cty. of Freeborn*, 694 N.W.2d 788, 794 (Minn. 2005) (citing *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801, 806–07 (Minn. 1979).

[17] Minn. Stat. § 626.556.